

THIS LEASE made as of the \_\_\_\_ day of \_\_\_\_, 2018

BETWEEN: **Fish and Ships Holdings Inc.** of  
280 Gower Point Road, PO Box 1307, Gibsons, BC V0N 1V0, the "Landlord"

AND: \_\_\_\_\_, of \_\_\_\_\_  
\_\_\_\_\_, the "Tenant"

WHEREAS:

A. The Landlord is the registered owner of all and singular that certain parcel or tract of land and premises situated at 280 Gower Point Road, in the Province of British Columbia, legally described as:

Lot 4 Block C District Lot 686 Plan 6125, PID# 004-112-679

which lands and premises and all improvements from time to time thereon are herein called the "Premises"; and

B. The Tenant has agreed to lease from the Landlord and the Landlord has agreed to lease to the Tenant, a portion of the Premises known and described as approximately **1485 sq ft** on the upper floor of 280 Gower Point Road. The use of the upper deck, approximately 340 square feet, and seven (7) parking spots; two (2) located behind the Premises and five (5) in the municipal parking lot next to the "Stonehurst Building", facilitating the restaurant license are included in this agreement. (the "Demised Premises"), on the terms and conditions described herein;

THIS LEASE WITNESS THAT:

## I DEFINITIONS

### 1. Defined Terms

"Additional Rent" means all sums of money other than Minimum Rent and estimated Operating Costs required under this lease to be paid to the Landlord by the Tenant whether or not designated as additional rent,

"Architect" means the architect qualified to practice and practicing in the Province of British Columbia from time to time named by the Landlord;

"Building" or "Buildings" means all buildings, structures, facilities and other improvements erected or to be erected on the Lands, including all expansions, alterations, additions or



relocations from time to time.

"Lease Year" means a period of 12 consecutive calendar months beginning at the commencement of the Term and each period of 12 consecutive calendar months thereafter during the Term of any extension thereof;

"Leasehold Improvements" means all the fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant in the Demised Premises (including by the Landlord, and the existing telephone system) with the exception of trade fixtures and furniture and equipment not of the nature of fixtures but including all partitions however affixed (including moveable partitions) and include all wall to wall carpeting with the exception of such carpeting laid over vinyl tile or other finished floor and affixed so as to be readily moveable without damage.

"Mortgage" means a mortgage or charge (including a deed of trust and mortgage securing bonds and all indentures supplemental thereto) of the reversion immediately expectant on the Term and includes all renewals, modifications, consolidations, replacements and extensions thereof;

"Mortgagee" means the mortgagee or trustee for bond holders, as the case may be, named in a Mortgage;

"Operating Costs" means the sum (without duplication) of all costs to the Landlord of operating and maintaining the Demised Premises including, but not limited to, any costs of:

- i) insuring the Demised Premises, including such insurance as the Landlord effects against public liability, property damage and other casualties and risks;
- ii) garbage and waste collection and disposal, snow removal,;
- iii) lighting, electricity (including that used for signs), gas and public utilities, such as water;
- iv) servicing, maintaining, repairing and replacing, if necessary, all heating, air conditioning, plumbing, electrical and light fixtures, and other machinery and equipment of and pertaining to the Demised Premises, but excluding the Tenant's equipment;
- v) general repairs, maintenance and improvements of the Demised Premises including but not limited to, roofing, exterior painting, exterior siding and the reasonable cost of gardening and landscaping maintenance, but excluding structural repairs which shall be the Landlord's responsibility;
- vi) the amount of all Real Property Taxes and other provincial or other governmental taxes (including local improvement rates) and business taxes, if any;
- vii) goods and service tax, "GST", social services tax and other taxes payable by the Landlord in connection with the foregoing;

but does not include any management fee relating to the administration of the Demised Premises, if any, which the Tenant shall pay as Additional Rent.

"Demised Premises" means the lands, improvements and Leasehold Improvements including that portion of the Building leased to the Tenant by this Lease;

"Prime Rate" means that certain annual rate of interest that is published or declared to the public at large by the Royal Bank of Canada at its main branch in Vancouver, British Columbia, to be its prime rate of interest for Canadian dollar loans made in Canada, commonly referred to as the "Prime Rate".

"Real Property Taxes" means all taxes, rates and assessments now or hereafter levied or assessed from time to time against the Lands and Building comprising the Premises and all improvements now or hereafter thereon, or upon the Landlord on account thereof, and includes, but is not limited to, local improvement, hospital and school taxes, rates and charges and the costs of all appeals against increased assessments of such taxes, rates and assessments, provided such appeals are in good faith;

"Rentable Area of the lands and Buildings" means the total rentable area of all Demised Premises set aside by the Landlord for leasing to the Tenant of the lands and Buildings.

"Tenant's Work" means all the items of work which are necessary to properly complete the Demised Premises ready for use and occupancy by the Tenant for the purposes of its business.

"Term" means the term of this Lease described in clause 2.02, hereof.

"Unavoidable Delay" means a delay caused by fire, strike or other casualty or contingency beyond the reasonable control of a party who is, by reason thereof, delayed in the performance of such party's covenants and obligations under this lease in circumstances where it is not within the reasonable control of such party to avoid such delay (but does not include any insolvency, lack of funds or other financial cause of delay) .

## 2. DEMISE OF PREMISES

2.01 **Demise** - The Landlord does demise and lease to the Tenant for the Term, the Demised Premises situate at 280 Gower Point Road, Gibsons, British Columbia, comprising approximately **1485 sq ft** on the upper floor. The use of the upper deck, approximately 340 square feet, and seven (7) parking spots facilitating the restaurant license are included in this agreement.

2.02 **Term**- The term of this Lease is FIVE (5) years from and including November 1st, 2018

to and including October 31st, 2023.

### 3. RENT

**3.01 Payment of Rent and Other Charges** - All rent, additional rent, and all costs and charges to be paid by the Tenant to the Landlord under this Lease shall be paid to the account of the Landlord at 280 Gower Point Road, PO Box 1307, Gibsons, BC V0N 1V0, or at such other place in Canada as the Landlord may designate in writing to the Tenant.

**3.02 Minimum Rent** - The Tenant will pay to the Landlord, its successors or assigns in lawful money of Canada and without deduction or set off (except as herein provided), for each year, rent as set out below;

- a) For the first one (1) year of the Term, fixed minimum annual rent of \$14.80 / square foot / annum, payable in advance in 12 equal monthly installments of \$1,831.50 per month, or \$21,978.00 / annum, with the first of such payments to be made from the first day of the beginning of the Term of this Lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the first year of the Term;
- b) For the second (2) year of the Term, fixed minimum annual rent of \$15.69 / square foot / annum, payable in advance in twelve equal monthly installments of \$1,941.64 / month, or \$23,299.65 / annum, with the first of such payments to be made from the first day of the beginning of the second year of the Term of this Lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the second year of the Term;
- c) For the third (3) year of the Term, fixed minimum annual rent of \$16.63 / square foot / annum, payable in advance in equal monthly installments of \$2,057.96 / month, or \$24,695.55 / annum, with the first of such payments to be made from the first day of the beginning of the third year of the Term of this lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the third year of the Term;
- d) For the forth (4) year of the Term, fixed minimum annual rent of \$17.63 / square foot / annum, payable in advance in equal monthly installments of \$2,181.71 / month, or \$26,180.55 / annum, with the first of such payments to be made from the first day of the beginning of the third year of the Term of this lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the third year of the Term;
- e) For the fifth (5) year of the Term, fixed minimum annual rent of \$18.69 / square foot / annum, payable in advance in equal monthly installments of \$2,312.89 / month, or \$27,754.65 / annum, with the first of such payments to be made from

the first day of the beginning of the third year of the Term of this lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the third year of the Term;

plus Operating Costs not paid directly by the Tenant, herein referred to as Common Area Maintenance costs or ("CAM costs"), plus goods and service tax, ("GST"), plus Additional Rent, if any, per month.

3.03 **Triple Net Lease** - The Tenant acknowledges and agrees that this Lease is intended to be and shall be a completely carefree triple net lease for the Landlord.

### 3.04 **Operating Costs and Additional Rent**

In each Lease Year the Tenant will pay to the Landlord, its successors or assigns, as additional rent:

- a) the Landlord's Operating Costs for the Demised Premises, not paid directly by the Tenant for the Lease Year; It is intended by the Landlord and Tenant that the Tenant pay to the Landlord such Operating Costs paragraphs (i), (iv), (v), (vi) and (vii), referred to herein as Common Area Maintenance ("CAM"), costs which includes Real Property Taxes, the Landlord's insurance fees, and other costs, in each and every month of the Term hereby granted, as follows, plus GST, which the Landlord has **estimated** as follows:
  - (i) For the first one (1) year of the Term, \$10.00 / square foot / annum, payable in advance in 12 equal monthly installments of \$1,237.50 per month, or \$14,850.00 / annum, with the first of such payments to be made from the first day of the beginning of the Term of this Lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the first year of the Term;
  - (ii) For the second (2) year of the Term, \$10.60 / square foot / annum, payable in advance in twelve equal monthly installments of \$1,311.75 / month, or \$15,741.00 / annum, with the first of such payments to be made from the first day of the beginning of the second year of the Term of this Lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the second year of the Term;
  - (iii) For the third (3) year of the Term, \$11.24 / square foot / annum, payable in advance in equal monthly installments of \$1,390.95 / month, or \$16,691.40 / annum, with the first of such payments to

be made from the first day of the beginning of the third year of the Term of this lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the third year of the Term;

- (iv) For the fourth (4) year of the Term, \$11.91 / square foot / annum, payable in advance in equal monthly installments of \$1,473.86 / month, or \$17,686.35 / annum, with the first of such payments to be made from the first day of the beginning of the third year of the Term of this lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the third year of the Term;
- (v) For the fifth (5) year of the Term, \$12.63 / square foot / annum, payable in advance in equal monthly installments of \$1,562.96 / month, or \$18,755.55 / annum, with the first of such payments to be made from the first day of the beginning of the third year of the Term of this lease and to continue thereafter in a like amount on the first day of each and every month until and including the first day of the last month of the third year of the Term;

The Landlord has estimated for years 2-5 of the Term that the Operating Costs will increase by up to 6% per annum for the Demised Premises. In the event that the said increases are greater than 6%, the proper adjustment shall be made and which the Tenant is whole or partially responsible and will pay the difference as an Additional Rent charge in the Lease Year within 15 days of written notice from the Landlord.

- b) but **excluding** Operating Costs (ii), (iii), which cost are to be paid directly by the Tenant to the supplier of such utilities and services;
- c) all other sums of money required under this lease to be paid to the Landlord by the Tenant whether or not designated as Additional Rent.

**3.05 Gross Monthly Rent, CAM Costs and GST** - The Landlord acting in good faith calculates the Minimum Rent plus Operating Costs not paid directly by the Tenant, including Real Property Taxes, GST and PST, if applicable, to be charged monthly to the Tenant during the years of the Term will be;

(a)	First year of the Term;	
	Rent	\$1,831.50
	GST	\$91.58
	CAM costs	\$1,237.50
	GST	<u>\$61.88</u>

	Total	<b>\$3,222.46</b>
(b)	Second Year of the Term;	
	Rent	\$1,941.64
	GST	\$97.08
	CAM costs	\$1,311.75
	GST	<u>\$65.59</u>
	Total	<b>\$3,416.06</b>
(c)	Third Year of the Term;	
	Rent	\$2,057.96
	GST	\$102.90
	CAM costs	\$1,390.95
	GST	<u>\$69.55</u>
	Total	<b>\$3,621.36</b>
(d)	Forth Year of the Term;	
	Rent	\$2,181.71
	GST	\$109.09
	CAM costs	\$1,473.86
	GST	<u>\$73.69</u>
	Total	<b>\$3,838.35</b>
(e)	Third Year of the Term;	
	Rent	\$2,312.89
	GST	\$115.64
	CAM costs	\$1,562.96
	GST	<u>\$78.15</u>
	Total	<b>\$4,069.64</b>

**3.06 Rent and Deposit** - The Tenant hereby agrees to provide the Landlord with twelve (12) post-dated cheques 10 days before the beginning of each Lease Year. The Tenant hereby agrees to give to the Landlord on November 1st, 2018, an additional cheque in the amount of \$1,000 dated November 1st, 2018 to be negotiated and held by the Landlord as a damage deposit.

**3.07 Interest on Amounts in Default** - If the Tenant fails to pay when due and payable any amount of rent (including any Operating Costs, CAM costs, GST or Additional Rent of the character described in Clause 3.04), the unpaid amount will bear interest from the due date to the date of payment at the rate of 4% plus the Prime Rate calculated and compounded monthly.

**3.08 N.S.F. cheque charges** – If the Tenant’s cheque fails to clear its bank a charge of \$50.00 per occasion will apply and be due and payable within 10 days of occurrence as Additional Rent.

#### 4. USE OF THE DEMISED PREMISES

4.01 **Purpose of Use** - The Tenant shall only use the Demised Premises for the operation of a restaurant and bar serving **French and/or Western cuisine (No Asian cuisine)** and for no other purpose without the written consent of the Landlord, which consent will not be unreasonably denied.

4.02 **Conduct of Business** - The Tenant shall conduct its business throughout the Term in an up-to-date, first class, reputable manner.

#### 5. COVENANT TO PAY RENT

5.01 **Covenant to Pay Rent** - The Tenant covenants to pay rent, Operating Costs, CAM costs, GST and Additional Rent and all other costs and charges as herein provided without set-off or deduction of any type for any reason.

5.02 **Payment of Operating Costs Directly by Tenant**- The Tenant shall provide proof of payment of Operating Costs paid directly by the Tenant and any costs for which the Tenant is liable, to the Landlord, within 15 days after a written request by the Landlord. If the Tenant fails to pay such Operating Costs when due, the Landlord may do so and in that event the Tenant will pay to the Landlord the amount so paid together with 10 percent thereof for overhead all as Additional Rent, due and payable on the first day of the month following the payment by the Landlord.

5.03 **Additional Rent** - Additional Rent shall be paid by the Tenant to the Landlord upon demand by the Landlord. The Landlord may estimate the Additional Rent for such period as the Landlord may determine and the Tenant shall pay to the Landlord or as the landlord otherwise directs, such estimated amount in monthly installments in advance during such period on the dates and the times for payment of basic rent.

#### 6. REPAIRS AND MAINTENANCE

6.01 **Repair by Landlord** - The Landlord shall:

- i) make structural repairs to the perimeter walls (excluding plate glass windows and doors), load-bearing structure and foundations of the Building and the structural elements of the Demised Premises.

6.02 **Tenant's Work**- The Tenant shall

- i) complete all Tenant's Work with first quality, new materials and equipment in a

good and workmanlike manner, in compliance with all building codes, fire codes and electrical codes, and building bylaws, to the Landlord's satisfaction and the Tenant shall provide evidence of building permits and inspections as required by a licensed building inspector and other inspectors, as the case may be;

- ii) rectify any defects or deficiencies in the Tenant's Work when and as required to do so by the Landlord or the building inspector.

**6.03 Repair by Tenant** - The Tenant shall:

- i) repair and maintain the Demised Premises in a good and substantial state of repair to the standards of a prudent owner, including all Leasehold Improvements and all trade fixtures and equipment therein, the store front, doors, all glass and utilities and all heating, air conditioning and ventilating equipment therein, but excepting:
  - a) structural elements of the Demised Premises and those repairs for which the Landlord is responsible; and
  - b) reasonable wear and tear which does not adversely affect the use or operation of the Demised Premises in accordance with Article 4 nor the safety or appearance of the Demised Premises;
- ii) permit the Landlord or its agent, at any reasonable time during normal business hours of the Tenant to enter and view the state of repair of the Demised Premises; and
- iii) reimburse the Landlord promptly upon demand for the cost of repairs or replacements paid for by the Landlord, which are the Tenant's responsibility, except to the extent that the Landlord is indemnified by insurance, less any deductible paid by the Landlord as together with 10 percent thereof for overhead all Additional Rent.

**6.04 Notice of Damage** - The Tenant shall give the Landlord prompt written notice of **any damage** to the Demised Premises or any part thereof, however caused, including but not limited to any accident or damage to, or defect in, the plumbing, water pipes, heating, air conditioning apparatus, electrical equipment, conduits or wires of the Demised Premises.

**6.05 Damage to Building or Premises** - If part of the Building or Premises becomes in disrepair or is damaged or destroyed through the negligence of the Tenant, its officers, directors, employees, customers or other invitees, the Tenant shall reimburse the Landlord for the cost of repairs or replacements on demand as Additional Rent.

**6.06 Utility and Service Charges** - The Tenant is solely responsible for and shall promptly pay all charges for water, gas, electricity, janitorial service, window cleaning and any other utility or service used on the Demised Premises. The Landlord will not be liable to the Tenant for damages or otherwise resulting from an interruption or failure in the supply of utilities or services to the Demised Premises unless caused by the negligence of the Landlord or another

person for whose negligence the Landlord is responsible in law.

**6.07 Tenant not to Overload Facilities** - The Tenant shall not install equipment that will exceed or overload the capacity of utility facilities and agrees that any equipment installed by the Tenant requiring additional facilities shall be installed at the Tenant's expense in accordance with plans and specifications approved by the Landlord prior to installation and in compliance with all building, electrical and fire codes and to be determined by the appropriate licensed inspector.

**6.08 Tenant not to Overload Floors** - The Tenant will not bring upon the Demised Premises any machinery, equipment or thing that by reason of its weight, size or use might damage the Demised Premises or the Building or the Premises or overload the floors of the Demised Premises.

**6.09 Tenant not to Place Debris** - No debris, garbage, trash or refuse shall be placed or left or permitted to be placed or left in, on or upon the Demised Premises, the Building or the Premises, but shall be deposited by the Tenant in areas and at times and in a manner specifically designated by the Landlord from time to time. All perishable debris shall be stored in refrigerated containers at the cost of the Tenant.

**6.10 Tenant to Keep Demised Premises Clean and Sanitary** - The Tenant shall maintain the Demised Premises in a clean and sanitary condition and shall use and maintain the Demise Premises in accordance with all applicable laws, rules, directions and regulations of all government officials, including the Health Officer, Fire Marshall, Building Inspector or other proper officers of the Town of Gibsons, Coastal Garibaldi Health, the Landlord, the insurers and other agencies having jurisdiction.

## 7. SUBORDINATION, ATTORNMENT AND STATUS STATEMENT BY TENANT

**7.01 Subordination and Attornment** - This Lease is subject, subordinate and postponed to every Mortgage that now affects the Demised Premises, and the Tenant shall subordinate and postpone this Lease to every Mortgage that hereafter affects the Demised Premises and will execute promptly a document in confirmation of such subordination and postponement if requested by the Landlord, in which document the Tenant also will agree with the Mortgagee that if the Mortgagee becomes a mortgagee in possession or takes action to realize the security of the Mortgage, the Tenant will attorn to the Mortgagee as a tenant upon all the terms of this Lease. The Tenant appoints the Landlord its agent and attorney to execute all documents in confirmation of a subordination and postponement of this Lease in favour of a Mortgagee or for an attornment to a Mortgagee, at the Mortgagee's option.

**7.02 Status Statement** - At any time or times at reasonable intervals within 15 days after a written request by the Landlord, the Tenant will execute, acknowledge and deliver to the

Landlord or such assignee or Mortgagee as the Landlord designates, a certificate stating:

- i) that this Lease is unmodified and in force and effect in accordance with its Terms (or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements, or if this Lease is not in force and effect, that it is not) ;
- ii) the amount of any deposit paid to the Landlord and the date of such payment;
- iii) the date to which Rent, Operating Costs, CAM costs, GST and Additional Rent, if any, have been paid under this Lease;
- iv) whether there is an existing default by the Tenant in the payment of Rent or any other sum under this Lease, and whether or not there is any other existing default by either party under this Lease with respect to which a notice of default has been served, and if there is such a default specifying its nature and extent; and
- v) whether there are any set-offs, defences or counterclaims against enforcement of the obligations to be performed by the Tenant under this Lease.

## 8. INSURANCE AND LIABILITY

### 8.01 Landlord Insurance - The Landlord will:

- i) insure the Demised Premises (excluding the property for which the Tenant is obliged to take out insurance under Clause 8.02) against all risk of loss or damage caused by or resulting from fire, lightning, tempest and other extended perils customarily insured against by a prudent owner in such amounts as would be carried by a prudent owner and such additional perils as the Landlord considers advisable to insure against; and
- ii) maintain policies of general public liability insurance insuring the Landlord, its servants, customers and agents, invitees and licensees against all claims for bodily injury, death or property damage arising out of the use or occupancy of the Demised Premises, occurring upon, on or about any of the Demised Premises.

The Tenant shall be responsible for the cost of the insurance referred to in Subclauses 8.01 (i) and (ii) in accordance with Clause 1. as an Operating Cost. The Landlord will name the Tenant as an additional insured as its interest may appear and in case of such public liability insurance, it shall contain a provision for cross liability as between the Landlord and Tenant. The Landlord will cause the policies of such insurance to contain, if available, a clause that the insurer waives any right of subrogation against the Tenant to the extent only of that part of a claim against the Tenant in excess of the amount of comprehensive general liability insurance which the Tenant is required to take out and keep in force under Clause 8.02. The Landlord shall, if requested, provide the Tenant with a copy of such insurance.

### 8.02 Tenant Insurance - The Tenant will take out and keep in force throughout the Term and

during such other time as the Tenant occupies the Demised Premises:

- i) comprehensive general liability insurance in an amount not less than five million dollars (\$5,000,000.00) for any one claim, indemnifying and protecting the Landlord and Tenant against claims for personal injury, death or property damage or loss arising out of any operations of the Tenant, subtenants, concessionaires, licensees and other persons conducting business on or from the Demised Premises;
- ii) insurance upon all glass and plate glass in or forming part of the Demised Premises including the store front against breakage or damage from any cause;
- iii) insurance against fire, lightning, tempest and other extended perils customarily insured against by a prudent owner including sprinkler leakage (where applicable), damage to the contents of the Demised Premises, including but not limited to merchandise, inventory, stock-in-trade, furniture, fixtures and improvements and all parts of the Demised Premises which the Tenants is obliged to keep in repair under Clause 6.03 to the full replacement value thereof; and
- iv) other insurance in amounts and upon terms reasonable for a prudent tenant to provide as determined by the Landlord, its insurance advisors, or its Mortgagee.

If the nature of the Tenant's operation is such as to place all of its employees under coverage of local workers' compensation or similar statutes, the Tenant also will keep in force, at its expense, so long as this Lease remains in effect, workers' compensation or similar insurance affording statutory coverage and containing statutory limits and the Tenant shall provide proof of such insurance at the time of the signing of this Lease and at such other times, as requested by the Landlord, within 15 days of such request.

**8.03 Insured** - Each insurance policy is referred to in Clause 8.02 will name the Landlord and any persons, firms or corporations designated by the Landlord as additional named insureds as their interests may appear and will contain a waiver of the rights of subrogation against the Landlord and the Tenant and a cross-liability clause protecting the Landlord and other insureds designated by it against claims by the Tenant as if the Landlord and such other insureds designated by the Landlord were separately insured, and protecting the Tenant against claims by the Landlord and other insureds designated by it as if the Tenant were separately insured, and will contain a clause that the insurer will not cancel, change or refuse to renew the insurance without first giving the Landlord 30 days' prior written notice. All policies of insurance will be with insurers acceptable to the Landlord and in a form satisfactory to the Landlord and the Tenant will deliver to the Landlord copies or certificates of such policies and renewals thereof at least 10 days prior to the commencement of the Term and at least 10 days prior to the expiry of any such policy during the Term or any renewal or extension thereof. If the Tenant fails to take out or keep in force any policy of insurance referred to in Clause 8.02 the Landlord may do so and pay the premium and in that event the Tenant will pay to the Landlord the amount so paid as the premium together with 10 percent thereof for overhead all as Additional Rent, due and

payable on the first day of the month following the payment by the Landlord.

**8.04 Increase in Landlord's Insurance Premiums** - The Tenant covenants and agrees that nothing will be done, kept, used, sold, offered for sale or omitted from being done, on or from the Demised Premises that may contravene any of the Landlord's policies insuring any part of the Demised Premises or which will prevent the Landlord from procuring policies acceptable to the Landlord. The Tenant will pay all increases in premiums for all policies of insurance obtained by the Landlord including but not limited to repair or replacement and such other insurance as is customary for prudent owners of properties similar to the Demised Premises to carry against loss of or damage to the Demised Premises or liability arising there from that may be charged during the Term for insurance carried by the Landlord insuring any part of the Demised Premises, resulting from the type of merchandise sold on or from the Demised Premises or anything done or kept thereon or any use to which they may be put, whether or not the Landlord has consented to them. If the occupancy or use of the Demised Premises causes an increase of premium for any of the policies insuring the Demised Premises or any part of the Demised Premises above the rate for the least hazardous type of use or occupancy legally permitted in the Demised Premises, the Tenant will pay the amount of the increase. Bills for the increases and additional premiums may be rendered by the Landlord to the Tenant when the Landlord elects, and will be due and payable by the Tenant when rendered, and the amount thereof will be paid as additional rent.

**8.05 Cancellation of Insurance** - If an insurance policy upon part of the Demised Premises is canceled or threatened by the insurer to be canceled, or the coverage thereunder reduced or threatened to be reduced by the insurer because of the use and occupation of the Demised Premises, and if the Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation, reduction, or threatened reduction of coverage within 48 hours after written or verbal notice thereof by the Landlord, the Landlord may either:

- i) re-enter the Demised Premises whereupon Article 12 will apply; or
- ii) enter the Demised Premises and remedy the condition giving rise to the cancellation, threatened cancellation, reduction or threatened reduction, and the Tenant will pay to the Landlord the cost of such remedy to the Landlord on demand by the Landlord as additional rent, and the Landlord shall not be liable for damage or injury caused to property of the Tenant or others located on the Demised Premises as a result of the entry.

**8.06 Indemnification of Landlord** - Except to the extent that the loss of life, personal injury or damage to property referred to in this sentence is caused by the gross negligence or misconduct of the Landlord or another person for whose conduct the Landlord is responsible in law, the Tenant shall indemnify the Landlord against and save the Landlord harmless from any and all claims, actions, damage, liability and expenses in connection with the loss of life, personal injury or damage to property arising for many occurrence on the Demised Premises or occasioned wholly or in part by an act or omission of the Tenant, its officers, employees, agents, customers,

contractors or other invitees, licensees or concessionaires or by anyone permitted by the Tenant to be on the Demised Premises.

In case the Landlord, without actual fault on its part, including vicarious fault, is made a party to any litigation, the Tenant shall protect and hold the Landlord harmless against and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with such litigation.

**8.07 Loss and Damage** Unless caused by the gross negligence or misconduct of the Landlord or other person for whose conduct the Landlord is responsible in law, the Landlord is not liable for the death of or injury to the Tenant or others on the Demised Premises, or for the loss of or damage to property of the Tenant or others by theft or otherwise. Without limiting the generality of the foregoing, the Landlord is not liable for death, injury, loss or damage of or to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Demised Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by other causes of any kind. The Landlord is not liable for death, injury, loss or damage caused by other tenants or occupants or other persons on the Demised Premises, or resulting from construction, alteration or repair.

The Tenant agrees that there is no promise, representation or undertaking by or binding upon the Landlord with respect to alterations, remodelling or decoration of or installation of equipment or fixtures in the Demised Premises. All property of the Tenant kept or stored on the Demised Premises will be kept or stored at the risk of the Tenant only and the Tenant will indemnify and hold the Landlord harmless from all claims arising out of damage to it, including subrogation claims by the Tenant's insurers.

## 9. ASSIGNMENT AND SUBLETTING

**9.01 Consent Required** - The Tenant shall not assign this Lease in whole or in part, sublease the Demised Premises in whole or in part, or part with possession or occupation of the Demised Premises or any part thereof without first obtaining the written consent of the Landlord, which consent may not be unreasonably withheld or delayed.

Provided that it shall not be unreasonable for the Landlord to consider the financial background and status, business history and capability of the proposed assignee or subtenant and to require a further guarantee and indemnity. The consent of the Landlord to an assignment, subletting or licensing will not constitute a waiver of its consent to a subsequent assignment, subletting or licensing. The prohibition herein against assignment or subletting includes a prohibition against an assignment or subletting by operation of law. If this Lease is assigned in whole or in part or if all or part of the Demised Premises is sublet or occupied by any person other than the Tenant in any case without the consent of the Landlord when such is required, the Landlord may collect

rent and additional rent from such person and apply the net amount collected to the rent and additional rent herein reserved, but no such assignment, sublease, collection or application of funds shall be considered a waiver of this covenant or the acceptance by the Landlord of such person as a tenant. Notwithstanding any assignment, the Tenant remains fully liable under this Lease. Any assignment of this Lease where consented to by the Landlord will be prepared by the Landlord at the expense of the Tenant and shall include the Landlord as a party to such assignment. For the purposes of this Clause 9.01, any material change in the control of the Tenant shall be deemed to be an assignment or sublease requiring the consent of the Landlord as aforesaid.

**9.02 Corporate Ownership and Corporate Ownership** - If the Tenant is an incorporated company any change in effective control of the voting shares of the Tenant shall be deemed for the purpose hereof to be an assignment of this Lease and the prior written consent of the Landlord is required. The Tenant will advise the Landlord forthwith, in writing, if there has been a change in control.

## 10. WASTE AND GOVERNMENT REGULATIONS

**10.01 Waste or Nuisance** - The Tenant shall not do, suffer or permit any act or neglect which may in any manner, directly or indirectly, cause injury or damage to the Demised Premises or to any fixtures or appurtenances thereof or which may be or become a nuisance, or interfere with the comfort of any property or person occupying property in the vicinity of the Demised Premises.

**10.02 Governmental and Insurance Underwriters= Regulations** - The Tenant, at the Tenant's cost, shall comply with the applicable requirements of all municipal, provincial, federal and other governmental authorities now in force or which may hereafter during the Term be in force pertaining to the Tenant's occupancy or use of the Demised Premises and shall observe in the occupancy and use of the Demised Premises all municipal bylaws and provincial and federal statutes and regulations now in force or which may hereafter during the Term be in force, and shall comply with all regulations made by fire insurance underwriters. The Tenant grants the Landlord the right to enter the Demised Premises at all reasonable times during normal business hours of the Tenant and with as little interference as is reasonably possible with the conduct of the Tenant's business to enable the Landlord to comply with any municipal bylaw or provincial or federal statute now or in the hereafter during the Term applicable to the Demised Premises, regardless of whether the application of the bylaw or statute to the Demised Premises results from an act or omission of the Landlord or another person for whose act or omission the Landlord is responsible in law.

## 11. SIGNS, FIXTURES AND ALTERATIONS

**11.01 Installations and Changes by Tenant** - All fixtures installed by the Tenant will be of

first class quality. The Tenant shall not make or cause to be made any change, decoration, addition or improvement or cut or drill into, nail or otherwise attach, secure or install any trade fixture, exterior sign, floor covering, interior or exterior lightening, mechanical or electrical system or fixture, or plumbing fixture, shade or awning to any part of the Demised Premises or to the exterior of the Demised Premises including the store front, or hang from or affix anything to a ceiling, without first obtaining the Landlord's written approval, which may not be unreasonably withheld or delayed. The Tenant shall present to the Landlord plans and specifications for work at the time approval is sought and if approved, the work shall be done by contractors or other workers or tradesmen approved by the Landlord and in good and workmanlike manner with first class materials. The Tenant shall not make any change to the structural elements of the Demised Premises.

**11.02 Removal of Installations and Restoration by Tenant** - All alterations, decorations, additions and improvements including heating and ventilating systems and hot water heating systems made by the Tenant or made by the Landlord on the Tenant's behalf, become on the affixation, the property of the Landlord. No alteration, decoration, addition or improvement shall be removed from the Demised Premises, except as herein provided for, without the Landlord's prior written consent which may not be unreasonably withheld or delayed. Furthermore, the Tenant shall not remove any of the Tenant's furniture, goods or chattels of any kind from the Demised Premises until all rent and other monies due under this Lease have been paid. Upon termination of this Lease the alterations, decorations, additions and fixed improvements will remain the property of the Landlord as part of the reversion, but the Tenant shall remove such of the Tenant's fixtures, alterations, decorations, additions and fixed improvements as may be requested by the Landlord, and restore the Demised Premises to a reasonable state of repair and as provided in Clause 6.03. Every installation, removal or restoration by the Tenant of its fixtures shall be done at the sole expense of the Tenant and the Tenant promptly shall make good or reimburse the Landlord the cost of making good all damage to structural elements relating to the Demised Premises or to the heating, ventilating, air conditioning, plumbing, electrical or other mechanical systems in the Demised Premises caused thereby.

**11.03 Liens** - The Tenant promptly shall pay all its contractors and material men and do all things necessary to minimize the possibility of a lien attaching to the Demised Premises and should a claim for lien be registered, the Tenant shall cause it to be discharged at the Tenant's expense within 14 days after the date of registration unless the Tenant validly disputes such lien and diligently prosecutes the removal thereof. However, the Tenant shall remove the said lien(s) forthwith, if and when notified in writing by the Landlord that the Mortgagee has demanded removal of said lien(s). The Tenant covenants that it has not and shall not grant or permit any lien, charge, encumbrance or claim whatsoever over any chattels on or to be brought upon the Demised Premises, except bank or supplier financing.

**11.04 Tenant's Signs Awnings and Canopies** - The Tenant shall not place or permit to be placed or maintained on the roof or any exterior or interior door, wall or window of the Demised

Premises any sign, awning, canopy, decoration, lettering, advertising matter or thing of any kind and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Demised Premises without first obtaining the Landlord's written consent which may not be unreasonably withheld, but this provision has no application to signs, awnings, canopies, decorations, lettering, advertising matter or other things to be placed inside the Demised Premises if of a reasonable standard of acceptability to the Landlord and not visible from outside the Demised Premises. The Tenant shall maintain every sign, awning, canopy, decoration, lettering, advertising matter or other thing consented to in good condition and repair at all times and will pay for the electricity used in the signs. The Tenant shall ensure that all such signs, awnings, canopies, decorations, lettering or advertising matter comply with applicable by-laws, rules and regulations of the applicable public authorities.

## 12. DEFAULT OF TENANT

**12.01 Right to Re-enter** - If the Tenant fails to pay rent, Operating Costs, CAM costs, GST or Additional Rent that is in arrears, within fifteen (15) days after written notice from the Landlord that is in arrears, or if the Tenant fails to observe, perform or keep anyone or more of the other terms, conditions or covenants of the Lease to be observed or performed by the Tenant, or if re-entry is permitted under other terms of this Lease, the Landlord, in addition to any other right or remedy it may have, shall have the right of immediate re-entry and may remove all persons and property from the Demised Premises, all without resort to legal process and without the Landlord being considered liable for trespass or becoming liable for loss or damage occasioned thereby.

### 12.02 Other Events of Default by the Tenant - If:

- i) during the Term or part thereof or any of the goods and chattels on the Demised Premises are at any time seized or taken in execution or attachment by any creditor of the Tenant;
- ii) a writ of execution or replevin order is issued against the goods or chattels of the Tenant;
- iii) The Tenant
  - a) makes an assignment for the benefit of creditors;
  - b) takes the benefit of any statute now or hereafter in force relating to bankrupt or insolvent debtors; or
  - c) makes a bulk sale from the Demised Premises other than a bulk sale to an assignee or sublessee pursuant to an assignment or sublease which under Clause 9.01 was consented to or did require a consent;
- iv) any application, petition, certificate or order is made or granted for the winding up or dissolution of the Tenant, voluntarily or otherwise;
- v) the Demised Premises, without the written consent of the Landlord become and remain vacant for a period of ten (10) days or more;
- vi) the Tenant, without the written consent of the Landlord, abandons or attempts to

- abandon the Demised Premises or sells or disposes of goods or chattels of the Tenant or removes any of them from the Demised Premises so there would not in the event of abandonment, sale or disposal be sufficient goods on the Demised Premises subject to distress, to satisfy all rent, Operating Costs, GST and Additional Rent due or accruing due hereunder; or
- vii) the Demised Premises are used by any persons other than those entitled to use the Premise under the terms of this Lease or the Demised Premises are used for any purpose other than as herein provided, without the prior written consent of the Landlord;

the then current month's rent, Operating Costs, CAM costs, GST and Additional Rent and the next ensuing three months' (or in the case of paragraph v, vi or vii, the next ensuing six month's), rent, Operating Costs, CAM costs, GST and Additional Rent immediately shall become due and payable as accelerated rent and the Landlord may re-enter and take possession of the Demised Premises as though the Tenant or the servants of the Tenant or any occupant of the Demised Premises were holding over after the expiration of the Term and the Lease forthwith will become forfeited and determined at the option of the Landlord exercisable by delivery of written notice to the Tenant. No payment or acceptance of rent, Operating Costs, CAM costs, GST or Additional Rent subsequent to any event of default aforesaid, shall give the Tenant the right to continue occupation of the Demised Premises, or in any way affect the remedies of the Landlord as herein provided, or have the effect of reinstating this Lease. In every one of the cases above mentioned the accelerated rent may be recovered by the Landlord in the same manner as rent hereby reserved and in arrears.

**12.03 Landlord May Perform Tenant's Obligations** - If the Tenant fails to perform an obligation of the Tenant under this Lease the Landlord may perform the obligation and for that purpose may enter upon the Demised Premises on not less than five (5) days' prior written notice to the Tenant or, without notice in the case of an emergency, and do such things upon or in respect of the Demised Premises as the Landlord reasonably considers necessary. The Tenant shall pay as additional rent all expenses incurred by or on behalf of the Landlord under this clause plus a reasonable amount for overhead upon presentation of a bill therefor. The Landlord shall not be liable to the Tenant for loss or damage resulting from such action by the Landlord unless caused by the negligence of the Landlord or another person for whose negligence the Landlord is responsible in law.

**12.04 Right to Re-let** - If the Landlord re-enters, as herein provided, the Landlord may either terminate this Lease or the Landlord may from time to time without terminating the Tenant's obligations under this Lease, make alterations and repairs considered by the Landlord necessary to facilitate a re-letting, and re-let the Demised Premises or any part thereof as agent of the Tenant for such term or terms and at such rental or rentals and upon such other terms and conditions as the Landlord in its reasonable discretion considers advisable. Upon each re-letting all rent and other monies received by the Landlord from re-letting will be applied, first to the

payment of indebtedness other than rent, Operating Costs, CAM costs, GST and Additional Rent due hereunder from the Tenant to the Landlord, second to the payment of costs and expenses of the re-letting including brokerage fees and solicitor's fees and costs of the alterations and repairs, and third to the payment of rent, Operating Costs, CAM costs, GST and Additional Rent due and unpaid hereunder. The residue, if any, will be held by the Landlord and applied in payment of future rent, Operating Costs, CAM costs, GST and Additional Rent as it becomes due and payable. If the rent received from the re-letting during a month is less than the rent, Operating Costs, CAM costs, GST and Additional Rent to be paid during that month by the Tenant, the Tenant will pay the deficiency to the Landlord. The deficiency will be calculated and paid monthly. No re-entry by the Landlord will be construed as an election on its part to terminate this Lease unless a written notice of that intention is given to the Tenant. Notwithstanding a re-letting without termination, the Landlord may elect at any time to terminate this Lease. If the Landlord terminates this Lease for any breach, in addition to other remedies it may have, it may recover from the Tenant all damages it incurs by reason of the breach including the cost of recovering the Demised Premises, reasonable legal fees and the worth at the time of termination of the excess, if any, of the amount of rent, Operating Costs, CAM costs, GST and Additional Rent reserved in this Lease for the remainder of the Term, over the then reasonable rental value of the Demised Premises for the remainder of the Term, all of which amounts immediately will be due and payable by the Tenant to the Landlord. If any of the events referred to in Clauses 12.01, 12.02 and 12.03, in addition to all other rights, including the rights referred to in this clause and Clause 12.01, the full amount of the current month's rent, Operating Costs, CAM costs, GST and Additional Rent and all other payments required to be made monthly and the next three months' (or 6 months' in the case of 12.02 (vi), rent, Operating Costs, CAM costs, GST and Additional Rent immediately shall become due and payable, and the Landlord may immediately distrain for those amounts together with arrears then unpaid.

**12.05 Legal Expenses** - If the Landlord brings an action against the Tenant arising from a breach of a covenant or condition in the Lease to be complied with by the Tenant and the court establishes that the Tenant is in breach of the covenant or condition, the Tenant shall pay to the Landlord all expenses incurred by the Landlord in the action including all legal fees on a solicitor and his own client basis.

**12.06 Chattel Removal** - The Tenant shall not, if in default under this Lease, remove any trade fixtures, equipment or other chattels from the Demised Premises.

### **13. DAMAGE TO DEMISED PREMISES**

**13.01 Abatement of Rent** - If there is damage:

- i) to the Demised Premises; or
- ii) to the Demised Premises which prevents access to the Demised Premises or the supply of services essential to use of the Demised Premises by the Tenant in the

conduct of its business; and if such damage renders the Demised Premises or a substantial part of the Demised Premises not reasonably capable of use by the Tenant for the conduct of its business for a period exceeding 14 days, unless the damage was caused by the wilful act or negligent act or omission of the Tenant, or an assignee, subtenant, concessionaire, licensee or other person conducting business on or from the Demised Premises or an officer, employee, customer or other invitee of any of them:

the rent payable under Clause 3.02 for the period commencing at the date of the occurrence of the damage and ending on the date when at least a substantial part of the Demised Premises is again reasonably capable of use by the Tenant for the conduct of its business will abate in the proportion that the area of the part of the Demised Premises rendered not reasonably capable of use by the Tenant for the conduct of its business bears to the total area of the Demised Premises; and

Unless this Lease is terminated under Clause 13.02 or Clause 13.03, the Landlord will with all reasonable diligence make the repairs specified in Clause 6.01 and pursuant to its obligations under this Lease and the Tenant will with all reasonable diligence make the repairs specified in Clause 6.03 and pursuant to its obligations under this Lease, in accordance with the nature of the damage, any right of the Tenant to an abatement of rent provided in this paragraph will not extend beyond the date by which, in the reasonable opinion of the Landlord, the Tenant should have completed its repairs with all reasonable diligence.

**13.02 Termination by Landlord in Event of Damage** - The Landlord may, by giving written notice to the Tenant within 30 days of the occurrence of damage, terminate this Lease:

- i) if the Demised Premises are damaged by any cause and in the reasonable opinion of the Landlord:
  - a) cannot be repaired or rebuilt with reasonable diligence within 180 days after the occurrence of the damage; or
  - b) The cost of repairing or rebuilding the Demised Premises would exceed by more than 20% the proceeds of the Landlord's insurance available for the purpose of repairing or rebuilding; or
- ii) if the Demised Premises are damaged by any cause and the damage is such that the Demised Premises are, or a substantial part of the Demised Premises is, rendered not reasonably capable of use by the Tenant for the conduct of its business and in the reasonable opinion of the Landlord cannot be repaired or rebuilt with reasonable diligence more than six months before the end of the Term unless the option to renew has been exercised.

**13.03 Termination by Tenant in Event of Damage** - The Tenant, by giving written notice of the Landlord within 30 days of the occurrence of the damage, may terminate this Lease;

- i) if the Demised Premises are damaged by any cause other than by the negligence or tortuous acts or omissions of the Tenant, and the damage is such that the Demised Premises are, or a substantial part of the Demised Premises is, rendered not reasonably capable of use by the Tenant for the conduct of its business; and
- ii) in the reasonable opinion of the Landlord, cannot be repaired or rebuilt with reasonable diligence more than six months before the end of the Term unless the option to renew has been exercised.

**13.04 Repair** - If this Lease is terminated under either Clause 13.02 or Clause 13.03, neither the Landlord nor the Tenant will be bound to repair as provided in Clauses 6.01 and 6.03, and the Tenant shall forthwith deliver up possession of the Demised Premises to the Landlord and in any event within 21 days after giving of the notice of termination, and all rent, Operating Costs, CAM costs, GST and Additional Rent will be apportioned and paid to the date upon which possession is delivered up, subject to any abatement of rent to which the Tenant may be entitled under Clause 13.01.

**13.05 Reference to Architect** - In the event of any dispute between the Landlord and Tenant with respect to:

- i) whether the damage to the Demised Premises can be repaired or rebuilt within 180 days after the date of damage;
- ii) the cost of repairing or rebuilding the part or parts of the Demised Premises damaged; or
- iii) whether the Demised Premises are, or a substantial part thereof is, capable of use by the Tenant for the conduct of its business;

such dispute shall be referred for settlement to an architect practicing and duly qualified to practice in the Province of British Columbia, chosen by the Landlord and the Tenant, whose decision in respect of any such dispute shall be final and binding upon the Landlord and the Tenant. The Landlord and Tenant agree to equally share the cost of said Architect. If the Landlord and Tenant cannot agree on the choice of Architect, the dispute shall be settled by the decision of Landlord.

## 14. REMEDIES OF LANDLORD AND WAIVER

**14.01 Remedies of Landlord Cumulative** - No exercise of a specific right or remedy by the Landlord or by the Tenant precludes it from or prejudices it in exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.

14.02 **Waiver** - The waiver by the Landlord or the Tenant of a breach of a term, covenant or condition of the Lease will not be considered to be a waiver of a subsequent breach of the same term, covenant or condition or of another term, covenant or condition. The subsequent acceptance of rent or additional rent by the Landlord will not be considered to be a waiver of a preceding breach by the Tenant of a term, covenant or condition of this Lease, regardless of the Landlord's knowledge of the preceding breach at the time of acceptance of the rent or additional rent. No covenant, term or condition of this Lease will be considered to have been waived unless the waiver is in writing and signed by the Landlord.

## 15. ACCESS BY LANDLORD

15.01 **Right of Entry** - Upon reasonable notice to the Tenant, the Landlord and its agents may enter the Demised Premises at all reasonable times during normal business hours of the Tenant, to examine it and to show it to prospective purchasers, lessees or Mortgagees. The notice as aforesaid may be written or oral. The Landlord may make alterations, additions, and adjustments to and changes of location of the pipes, conduits, wiring, ducts, and other installations of any kind in the Demised Premises which are deemed necessary in the reasonable opinion of the Landlord, and the Landlord may take all material required thereof onto the Demised Premises without constituting an eviction of the Tenant in whole or in part and the rent, Operating Costs, CAM costs, GST and Additional Rent will not abate while the alterations, additions or changes of location are being made by reason of loss or interruption of the business of the Tenant or otherwise, and the Landlord will not be liable for damage to property of the Tenant or of others located in the Demised Premises as a result an entry unless caused by the negligence of the Landlord or another person for whose negligence the Landlord is responsible in law. The Landlord shall make such alterations, additions or changes with as little interference as is reasonably possible with the conduct of the Tenant's business. During the six months prior to the expiration of the Term the Landlord may place upon the Demised Premises the usual notice "For Rent" which the Tenant will permit to remain without interference. If the Tenant is not present to open and permit entry into the Demised Premises when, in the case of emergency or in the event of default, entry is necessary or permissible, the Landlord or its agents may enter by a master key or in the event of default, may forcibly enter, without rendering the Landlord or its agents liable thereof and without affecting this Lease. Nothing in this clause imposes upon the Landlord an obligation, responsibility or liability for the care, maintenance or repair of the Demised Premises or any part thereof except as specifically provided in this Lease. The Tenant shall allow the Landlord and its authorized agents access to the Demised Premises at all reasonable times for the purposes of inspecting, maintaining and repairing the heating, ventilating and air conditioning system which services the Building.

## 16. ASSIGNMENT BY LANDLORD

16.01 **Assignment** - If the Landlord sells an interest in the Demised Premises or in this Lease,

to the extent that the purchaser or assignee is responsible for compliance with the covenants and obligations of the Landlord hereunder, the Landlord without further written agreement shall be relieved of liability under those covenants and obligations.

## 17. ACCEPTANCE OF THE DEMISED PREMISES

17.01 **Acceptance of the Demised Premises** - The Tenant shall notify the Landlord of any defects in the Demised Premises that prevent or diminish their use, within 30 days after the date when the Tenant is given occupancy by the Landlord, and failing the giving of notice the Tenant will be considered for all purposes to have accepted the Demised Premises in their then existing condition and the Landlord will not have further obligation to the Tenant for defects or faults excepting:

- i) latent defects which cannot be discovered on a reasonable examination; and
- ii) defects or faults in structural elements relating to the Demised Premises not caused by the Tenant's acts or omissions.

If a dispute occurs as to whether a defect or fault exists, such dispute shall be referred for settlement to an Architect practicing and duly qualified to practice in the Province of British Columbia, chosen by the Landlord and Tenant, whose decision in respect of such dispute shall be final and binding upon the Landlord and the Tenant. The Landlord and Tenant agree to equally share the cost of said Architect.

## 18. LANDLORD'S COVENANTS

18.01 **Consent** - The Landlord covenants with the Tenant to perform the obligations of the Landlord contained in this Lease and not unreasonably withhold or delay its consent where such consent is requested pursuant to this Lease.

18.02 **Quiet Enjoyment** - Subject to the provisions of this Lease, the Landlord covenants with the Tenant that the Tenant shall have peaceable and quiet enjoyment of the Demised Premises.

18.03 **Roof** - The Landlord covenants not to place any advertising or signs on the roof.

## 19. OVERHOLDING

19.01 **Vacant Possession** - At the end or sooner terminating of the Term, the Tenant will deliver to the Landlord vacant possession of the Demised Premises in the condition in which the Tenant is required to maintain the Demised Premises.

19.02 **No Tacit Renewal** - If after the end of the Term the Landlord does not demand vacant

possession of the Demised Premises and the Tenant remains in possession of the Demised Premises without complete execution and delivery of a new lease or a written renewal or extension of this Lease, then the Tenant will be considered to be occupying the Demised Premises as a tenant from month to month at a monthly rental payable in advance on the first day of each month equal to the sum of:

- i) twice the monthly installment of rent payable for the last month of the Term; and
- ii) the Operating Costs, CAM costs, GST and Additional Rent charges payable by the Tenant for the last Lease Year of this Lease;

and otherwise upon the terms and conditions set forth in this Lease, so far as applicable and excepting that such over-holding shall not entitle the Tenant to any option to renew in addition to any granted in this Lease.

## 20. OPTION TO RENEW

20.01 **Option to Renew** - It is further agreed between the Landlord and the Tenant that if the Tenant duly and regularly pays the rent referred to in paragraph 3.02 and Operating Costs, CAM costs, GST and Additional Rent payable hereunder and performs all and every of the covenants, provisos and agreements herein contained on the part of the Tenant to be performed, the Landlord will at the expiration of the Term herein granted, grant to the Tenant the option to renew this lease for a further THREE (3) years on the same terms and conditions as herein contained, except as to rent, Operating Costs and CAM costs, to be determined by agreement between the parties, such rent to be in an annual amount not less than the rent payable for the previous year. Failing agreement, such rent, Operating Costs and CAM costs to be determined by arbitration in the manner herein referred to; provided always, that the Tenant shall have given to the Landlord six (6) months, notice in writing before the expiration of the Term hereof of its desire to have any such extension and renewal.

20.02 **Arbitration** - The amount of the rent Operating Costs and CAM costs to be paid by the Tenant to the Landlord during the renewal term of this Lease as provided for herein shall be agreed to by the parties, and if the parties cannot agree, the rent, **which shall not be less than the rent payable for the previous year, despite the settlement contemplated herein by arbitrator(s)**, Operating Costs and CAM costs shall be settled pursuant to the Commercial Arbitration Act by the award of one arbitrator named by the Landlord, such award to be based on the prevailing fair market value for improved Demised Premises of similar size, quality, use and location, at least ninety (90) days before the expiration of the Term and any renewal hereof, and the award made shall be made before the expiration of this Term and any renewal hereof and shall be binding upon the parties hereto. The expense of the arbitrator shall be borne by the Tenant.

## 21. MISCELLANEOUS

**21.01 Expropriation** - If the entire Demised Premises shall be acquired or expropriated for any public or quasi-public use or purpose or if so much of the said Demised Premises or of the means of ingress or egress thereto or therefrom shall be so acquired or expropriated that it shall not be practical to use the un-expropriated Demised Premises in the operation of the Tenant's business at the rent and subject to the covenants and conditions of this Lease, then all rentals shall be paid up to the date of possession required by the expropriating authority and the Landlord and the Tenant shall each be entitled to receive from the award or compensation for the Demised Premises the value of their respective interests therein. In such event the Tenant shall have no claim against the Landlord for the value of any unexpired term of this Lease and the Landlord shall have no claim against the Tenant for any further payments under this Lease.

**21.02 Accord and Satisfaction** - No payment by the Tenant or receipt by the Landlord of a lesser amount than the rent and additional rent herein stipulated will be considered to be other than on account of the earliest stipulated rent and additional rent, nor will an endorsement or statement on a cheque or in a letter accompanying a cheque or payment as rent or additional rent be considered to be an accord or satisfaction, and the Landlord may accept a cheque or payment without prejudice to the Landlord's right to recover the balance of the rent or additional rent or pursue any another remedy.

**21.03 No Partnership**- The Landlord has not been, is not and shall not become in any way or for any purpose a partner of or joint adventurer or a member of a joint enterprise with the Tenant. The Tenant has not been, is not and shall not become in any way or for any purpose a partner of or joint adventurer or a member of a joint enterprise with the Landlord.

**21.04 Partial Invalidity**- If a term, covenant or condition of this Lease or the application thereof to any person or circumstance is held to any extent void, invalid or unenforceable, the remainder of this Lease or the application of the term, covenant or condition to persons or circumstances other than those as to which it is held void, invalid or unenforceable, shall not be affected.

**21.05 Licenses, Approval and Authorities** - The Tenant covenants that it has and at all times during the Term will have all licenses, approvals and authorities necessary to own and carry on its business on the Demised Premises and to hold the Term created by this lease and perform its obligations hereunder.

**21.06 Notice** - A notice, demand, request, statement or other evidence required or permitted to be given under this Lease must be written and will be sufficiently given if delivered in person to the Landlord or the Tenant, or to an officer of the Landlord or of the Tenant, as the case may be, or delivered or mailed in the Province of British Columbia by prepaid registered mail to the address of the appropriate party first set out above or, in the case of notice to the Tenant, to the Demised Premises. A notice, demand, request statement or other instrument mailed as aforesaid

will be considered to have been given to the party to which it is addressed on the fifth business day following the date of mailing, postal service interruption by labour dispute or other causes excepted. A party at any time may give notice to the other party of a change of its address to another address in British Columbia, and after the giving of notice the address therein specified will be considered to be the address of the party which gave the notice.

**21.07 Headings and Captions** - The article numbers, article headings, clause numbers and clause headings are inserted for convenience of reference only and are not to be considered when interpreting the Lease.

**21.08 Obligations as Covenants** - Each obligation of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

**21.09 Provisions Which Survive Termination** - The provisions of Articles 1, Clause 5.01, Subclauses 6.03 (ii) and (iii), Clauses 8.06, 8.07, 11.02, 11.03, 11.04, 12.05, 12.06, and 13.05 shall survive termination of this Lease

**21.10 Amendment to be in Writing** - No alteration, amendment, change or addition to this Lease will bind the Landlord or the Tenant unless in writing and signed by the party to be bound.

**21.11 Time of the Essence** - Time shall be of the essence in respect of this Lease and all matters addressed herein.

**21.12 Force Majeure** - Both the Tenant and the Landlord shall be released from their respective obligations in the event of a national emergency, war, prohibitive governmental regulation, or if any other cause beyond the reasonable control of the parties or either of them renders the performance of the obligations outlined in this Lease impossible whereupon all money due under this Lease shall be paid immediately and in particular:

- i) the Tenant shall pay to the Landlord all arrears of payments; and
- ii) each party shall be liable to pay to the other party damages for any breach of this Lease and all expenses and costs incurred by that party in enforcing its rights under this Lease.

**21.13 Registration** - The Tenant shall not register this Lease in whole or in part without the written consent of the Landlord. The Landlord may withhold such consent and is not obligated to disclose any reason for such refusal to the Tenant.

**21.14 Successors and Assigns** - This Lease binds and benefits the parties and their respective successors and assigns. No rights, however, benefit an assignee of the Tenant unless under clause 9.01 the assignment was consented to or did not require consent.

21.15 **Entire Agreement** - This Lease contains all the representations, warranties, covenants, agreements, conditions and understandings between the Landlord and the Tenant concerning the subject matter of this lease.

21.16 **Legal Costs** - The Tenant shall pay all costs, expenses and reasonable legal fees incurred by the Landlord in enforcing this Lease on a solicitor and his own client basis.

21.17 **Governing Law** - This Lease will be construed in accordance with and governed by the laws of the Province of British Columbia.

**IN WITNESS WHEREOF** the Landlord and Tenant have executed this Lease as the date first written above.

SIGNED SEALED AND DELIVERED )  
by the Fish and Ships Holdings Inc., )  
in the presence of: )  
\_\_\_\_\_)  
Signature )  
\_\_\_\_\_)  
Name )

\_\_\_\_\_  
Fish and Ships Holdings Inc.  
per: .

SIGNED SEALED AND DELIVERED )  
by \_\_\_\_\_ )  
in the presence of: )  
\_\_\_\_\_)  
Signature )  
\_\_\_\_\_)  
Name )

\_\_\_\_\_  
Tenant  
\_\_\_\_\_  
Tenant