



SUBJECT	MINISTERIAL CONSENT TO LEASE SITE B, UNIVERSITY BOULEVARD
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MEETING DATE	APRIL 14, 2015
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Forwarded to the Board of Governors on the Recommendation of the President

**APPROVED FOR
SUBMISSION**

Arvind Gupta, President and Vice-Chancellor

DECISION REQUESTED	<p>IT IS HEREBY REQUESTED that <i>the UBC Board of Governors:</i></p> <p><i>Approve the proposed Lease, the associated easement and statutory rights of way for utilities, for the mixed-use (residential/retail) building to be developed on Site B of the University Boulevard Neighbourhood Plan, all substantially as attached, as well as any statutory right-of-way agreements or road dedications required to and over University Boulevard, and direct the Administration to obtain Ministerial approval for the foregoing under Section 50(2) of the University Act, and</i></p> <p><i>Declare that the disposal of the interests in land described above will not affect the future delivery of educational programs.</i></p>
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Report Date	March 16, 2015
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Presented By Lisa Castle, Acting Vice-President Finance, Resources & Operations
 Peter Smailes, Treasurer
 Hubert Lai, University Counsel
 Michael White, Associate Vice-President Campus + Community Planning
 Al Poettcker, President and CEO, UBC Properties Trust

EXECUTIVE SUMMARY

This report presents the Board of Governors with a proposed Lease and associated easement and rights of way for various utilities, for the mixed-use residential rental/retail building proposed for Site B, as authorized by Development Permit DP 14027. The Lease and associated easement and statutory rights of way will allow UBC Properties to construct the building, and manage the residential and non-residential sub-tenancies in the building. The residential tenants will be restricted to University Users, and the non-residential subtenants will be retailers and service providers.

An additional permission is being sought for any statutory right-of-way agreements or road dedications required by the Ministry of Transportation and Infrastructure, in order to secure access to the leased lands. Such statutory rights of way and road dedications are not, at this point contemplated, but may be required prior to the registration of the Lease in the Land Title Office.

Approval by the Board and direction to the Administration to obtain Ministerial approval for the dispositions of land contemplated in the paragraphs above is necessary to obtain the approval of the Minister, as required by the University Act.

<p><i>If this item was previously presented to the Board, please provide a brief description of any major changes since that time.</i></p>	<p>The Board of Governors adopted the University Boulevard Neighbourhood Plan in January 2004. Since then the Board has approved the new Student Union Building, the Alumni Centre and the trolley bus loop. Significant changes in the surrounding area have taken place, and a presentation on the broader precinct is scheduled for the Board's June meeting.</p>
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INSTITUTIONAL STRATEGIC PRIORITIES SUPPORTED

- Learning
 Research
 Innovation
 Engagement (Internal / External)
 International

or Operational

DESCRIPTION & RATIONALE

The UBC Land Use Plan is the guiding policy for the evolution of UBC Vancouver's campus. The plan provides for development on academic lands (Vancouver Campus Plan) and for the non-institutional lands to support the academic mission in the Neighbourhood Housing Areas and other special plan areas, such as North Campus and the Village Centre Academic area. The Land Use Plan designates the Village Centre Academic area as coterminus with the University Boulevard and references the neighbourhood plan that was adopted in 2004.

The development of Site B in the University Boulevard Neighbourhood Plan has established a development form for mixed-use (residential above ground floor commercial/retail). The proposal for the Site B project was reviewed through the processing of Development Permit DP 14027, which concluded that the project is in keeping with the Land Use Plan's objectives and development controls.

In order to use the Site B building for its intended benefit to UBC, the project will be leased to UBC Properties, who will manage the subtenancies.

The ground floor of the Site B building will be divided into commercial units, which will be subleased to commercial tenants (retail and service providers), as arranged by UBC Properties, with UBC's approval.

The remaining floors of the Site B building will be used for residential purposes, and be subleased to University Users at market rent. The term University User means:

- (a) students, faculty or staff of any of UBC or a theological college operating on the Campus;
- (b) employees of any other employer whose premises are situated on the Campus; or
- (c) such other persons as may be permitted by UBC from time to time.

Utilities to serve Site B will be drawn to the site from the off-site areas described in the attached statutory rights of way.

The proposal is for UBC to grant UBC Properties the Lease and have such Lease registered in the Land Title Office. This will allow UBC Properties to utilize the Lease as security for construction and other financing purposes.

Access to the Site B building will be assured by way of an access easement, the terms of which are contained in the Lease. There is the possibility that the Ministry of Transportation and Infrastructure will require that access to the Site B building be assured by way of a statutory right-of-way or the dedication of a portion of University Boulevard adjacent to Site B and connecting to the dedicated road adjacent to the Strangway Building. Statutory rights of way, and road dedications are grants of an interest in land, and require Board approval and Ministerial approval. If a statutory right of way or road dedication is required by the Ministry, the Administration and UBC Properties recommend acceding to such a requirement for the benefit of the Site B building. Approval is being sought from the Board now, so that if such grants are required, an additional Board approval will not be required (and the development of the Site B building will not be delayed).

BENEFITS
Learning, Research,
Financial, Sustainability
& Reputational

The Lease will lease the land comprising Site B to UBC Properties. UBC Properties will construct and operate the Site B building, at its cost. The rents received by UBC Properties will be utilized to service any debt incurred by UBC Properties to construct the building, and the balance will be combined with other sources of income and be distributed to the UBC Endowment.

RISKS
Financial, Operational
& Reputational

Previously, the Strangway Building (Site A) was subdivided by way of strata plan, and the commercial strata lots were leased to UBC Properties for subleasing and management. The result was that UBC was required to dedicate a portion of University Boulevard as road.

The Site B project does not involve a strata or any other form of subdivision. Rather, it is a lease of a part of a parcel by way of reference plan.

Proceeding in this manner reduces the risk that UBC will be required to dedicate any additional portions of University Boulevard as road, or grant statutory right-of-way agreements in favour of the Ministry of Transportation and Infrastructure. However, the risk has not been eliminated.

CONSULTATION
Relevant Units, Internal
& External
Constituencies

The Site B building proposal was subject to the steps involved in the development review process. It was reviewed by the Advisory Urban Design Panel (Sep 4, 2014, Dec 4, 2014) the Development Review Committee on (Nov 27, 2014), and was presented at a public open house on (Jan 7, 2015). The project was presented to the Development Permit Board on January 21, 2015 where the Development Permit Board recommended that the Director of Planning issue a Development Permit.

UBCPT COMMENTS Complete for all reports that include a property component	Date of Review: March 16, 2015	Signed off by: Al Poettcker
	UBCPT is in full agreement with the terms of this request.	

Previous Report Date	January 13, 2011
Decision	Land Use Plan Amendments include designation of the University Boulevard neighbourhood plan area as “Village Centre Academic” and a special plan area. Maximum building height increased from 5-storeys to 6-storeys, with the flexibility to achieve 8-storeys for design or program reasons.
Action / Follow Up	On going development of building sites
Previous Report Date	January 29, 2004
Decision	University Boulevard Neighbourhood Plan approved and University Boulevard International Design Competition approved
Action / Follow Up	Design Competition held September 2004 through April 2005.
Previous Report Date	July 18, 2002
Decision	Establishment of the Development Permit Board, approval of terms-of-reference and appointees
Action / Follow Up	The Development Permit Board considers development permit applications where neighbourhood plans have been adopted.

Attached:

1. Lease for Site B
2. BC Hydro SRW (with the recent changes, including change to “Arbitration Act” and addition of the definition of “Person”)
3. Fortis SRW
4. Shaw SRW
5. Telus SRW without plan
6. Telus SRW hub room access

Attachment 1

TERMS OF INSTRUMENT - PART 2

**LEASE BETWEEN THE UNIVERSITY OF BRITISH COLUMBIA
AND UBC PROPERTIES INVESTMENTS LTD.
AS TRUSTEE FOR UBC PROPERTIES TRUST**

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THIS LEASE dated for reference <@>, 20<@>

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA, a university continued pursuant to the *University Act*, with an address of 6th Floor, Walter C. Koerner Library, 1958 Main Mall, Vancouver, British Columbia, V6T 1Z2

(the "**Landlord**")

AND:

UBC PROPERTIES INVESTMENTS LTD., a British Columbia company having an office at 200 - 3313 Shrum Lane, Vancouver, British Columbia, V6S 0C8, as Trustee, for UBC Properties Trust

(the "**Tenant**")

WHEREAS:

A. The Landlord owns the Lands described in Part 1, Item 2 of this Lease and defined as such in subsection 1.1(q) below;

B. The Tenant wishes to construct upon the Lands, at the Tenant's sole cost, a six storey building (defined in subsection 1.1(cc) below as the Premises) containing one floor of underground parking, non-market rental residential units (defined in subsection 1.1(hh) below as the "**Residential Space**"), and space on the ground floor to be used for commercial operations, academic purposes or both (defined in subsection 1.1(x) below as the "**Non-Residential Space**"); and

C. The Landlord has agreed to lease the Lands to the Tenant on the terms and conditions set out in this Lease.

NOW THEREFORE in consideration of the terms and agreements hereinafter contained the parties hereto covenant and agree as follows:

1.0 DEFINITIONS AND SCHEDULES

1.1 Whenever any of the following expressions are used in this Lease they shall have the following meanings:

- (a) "**Additional Pollution**" means Pollution of the Lands and Premises as disclosed by a Further Audit and which was caused by the Tenant or a Subtenant and which is not Existing Pollution or the result of the migration of Pollution onto the Lands and Premises;
- (b) "**Affiliate**" has the meaning ascribed to it in the *Business Corporations Act* of British Columbia;
- (c) "**Appraiser**" means any qualified real estate appraiser agreed upon in writing by the Landlord and the Tenant or failing such agreement by June 30 in any Lease Year, means an accredited appraiser who is a member in good standing with the

Appraisal Institute of Canada, British Columbia Association, and who has experience valuing land and interests in land such as the Premises and who is appointed by arbitration pursuant to Section 25.7;

- (d) **"Approved Lender"** means:
 - (i) a government, chartered bank, trust company, credit union, insurance company or pension fund authorized to carry on business in British Columbia;
 - (ii) such other Person as may be approved by the Landlord, acting reasonably;
- (e) **"Arbitration"** has the meaning set out in Section 25.7;
- (f) **"Audit"** means the environmental investigation of the Lands performed by the Consultant on behalf the Tenant pursuant to Section 8.1;
- (g) **"Authority"** means any government agency, body, corporation, organization, department or authority responsible for administering or enforcing any Law;
- (h) **"Campus"** means the lands and premises situate west of the Point Grey District of the City of Vancouver, Province of British Columbia which comprise the Vancouver campus of The University of British Columbia, but excluding any lands and Premises owned by The University of British Columbia which are situate within the University Endowment Lands;
- (i) **"Complementary Facilities"** means facilities on the Campus such as roadways, parking areas and other improvements that are to be used in connection with the operations of the Tenant;
- (j) **"Consultant"** means any qualified environmental consultant agreed upon in writing by the Landlord and the Tenant;
- (k) **"Easement Area"** means those areas comprising 221.6m² shown in bold outline and hatched on the reference plan attached as Schedule "A" hereto;
- (l) **"Environment"** has the meaning given to it in the *Canadian Environmental Protection Act* (Canada) as of the date of this Lease;
- (m) **"Existing Pollution"** means the Pollution of the Lands, if any, disclosed by the Audit;
- (n) **"Fair Market Value"** means the assessed value as determined by the provincial assessor, if the Lands and Premises are so assessed, or such variation thereof as may be set on an appeal of such assessed value, and if no such assessment is made means actual market value of the Lands and Premises available in an unrestricted market between informed prudent parties, acting at arm's length and under no compulsion to act, putting the Lands and Premises to their permitted use pursuant to the terms of this Lease as determined in August of each year during the Term, by the Appraiser at the Landlord's cost;

- (o) **"Fiscal Year"** means after the reference date of this Lease, the 12-month period commencing on April 1 and ending on March 31 during the Term, provided that the first Fiscal Year shall commence on the commencement date set out in Section 3.1 and end on the last day of the following March and the last Fiscal Year shall end on the last day of the Term and commence on the preceding first day of April and provided further that if the Tenant changes its fiscal year at any time, there shall be a corresponding change in the Fiscal Year so that the Fiscal Year for the purposes of this Lease is the same as the fiscal year of the Tenant from time to time;
- (p) **"Further Audit"** means an environmental audit of the Lands and Premises performed by the Consultant on behalf of the Landlord and the Tenant at the Tenant's expense to determine the existence, nature and extent of any Additional Pollution and to determine what Remedial Action if any is necessary with respect to any Additional Pollution and to determine the cost of remediating that Additional Pollution;
- (q) **"Lands"** means those lands forming part of the Campus outlining 0.354 hectares more or less shown in bold outline on the reference plan filed in the Land Title Office under No. <@> and attached as Schedule "A" hereto The Lands are a section of the land legally described as:
- PID: 015-891-909
- District Lot 3044 Group 1 NWD Except Firstly; Part on Plan 6147 Secondly; Part on Plan 9301 Thirdly; Part on Plan BCP6556 Fourthly; Part on Plan BCP23719
- (r) **"Land Use Rules"** means the plans, memorandums of understanding, policies, handbooks, guidelines, rules, regulations, bylaws and any other documents no matter how they are titled governing land use and the construction, renovation, maintenance, repair and replacement of buildings on the Campus and in the Village Centre Academic area in the form adopted by UBC's Board of Governors from time to time, and all permits that are required to be issued by the Municipal Authority Having Jurisdiction in connection with the construction, renovation, maintenance, repair and replacement of the Premises by the Lessee from time to time during the Term;
- (s) **"Law"** means any Federal, Provincial, Municipal and other governmental laws and regulations relating to protection of the Environment or its Pollution including the *Canadian Environmental Protection Act (Canada)* and the *Environmental Management Act, SBC2003* and the regulations made under them and includes any amendment, revision, re-enactment or replacement of any such Law, regulation or bylaw;
- (t) **"Lease Year"** means after the reference date of this Lease, the 12-month period commencing on January 1 and ending on December 31 during each year of the Term, provided that the first Lease Year shall commence on the commencement date set out in Section 3.1 and end on the last day of the following December and the last Lease Year shall end on the last day of the Term and commence on the preceding first day of January;
- (u) **"Medium"** means any land, water or air and includes the Lands and Premises;

- (v) **"Minimum Rent"** means the amount payable by the Tenant pursuant to subsection 4.1(a) of this Lease;
- (w) **"Municipal Authority Having Jurisdiction"** means Campus & Community Planning in its capacity as regulatory, inspection and permitting authority for the Campus or such other department of The University of British Columbia as becomes responsible for this function from time to time. In the event that the Lands become part of a municipality, or the University Endowment Lands, or any other governing body acquires jurisdiction over the Lands similar to that of municipalities and assumes these functions, that governing body shall become the Municipal Authority Having Jurisdiction;
- (x) **"Non-Residential Space"** means the space in the Premises on the ground floor with separate entrance containing approximately <@> square feet that is intended to be used for commercial operations, academic purposes or both;
- (y) **"Notice of Non-Compliance"** means any written notice, requisition, requirement or order made by an authority having jurisdiction under any Law relating to the Lands and Premises, Pollution of the Lands and Premises or the Permitted Activities;
- (z) **"Permitted Activities"** means the use and occupation of the Premises by the Tenant for the purpose of constructing, operating, repairing, maintaining and replacing from time to time, as the case may be, a building or buildings, including related facilities, containing:
 - (i) residential dwelling units in the Residential Space which will be subleased only to University Users for residential purposes only; and
 - (ii) space suitable for commercial (including retail) and academic uses or both, in the Non-Residential Space, which will be operated by the Tenant or subleased to Subtenants for commercial or academic purposes as applicable;
- (aa) **"Person"** includes a person, firm, corporation, partnership, group of persons, or any combination of them, and the personal or other legal representatives of such person to whom the context can apply at law;
- (bb) **"Pollute"** is a verb which means to Release into or unto any Medium any Substance that:
 - (i) alters the physical, biological or chemical nature of that Medium;
 - (ii) alters the capacity of the Medium to support any living thing whether animal or plant life;
 - (iii) injures or is capable of injuring the health or safety of a person in or near the Medium;
 - (iv) injures or is capable of injuring property or any life form in or near the Medium;

- (v) interferes with or is capable of interfering with visibility or the dispersion of light or any photochemical activity within the Medium;
- (vi) interferes with or is capable of interfering with normal conduct of business in, on, near or from the Medium;
- (vii) causes or is capable of causing physical discomfort to a person in, on or near the Medium;
- (viii) damages or is capable of damaging the Environment; or
- (ix) is Waste;

and such Release is prohibited, regulated, controlled or licensed under any Law and "Polluted" is an adjective and "Pollution" and "Pollutant" are nouns which have meanings that correspond to the meaning contained in this section;

- (cc) "**Premises**" means the building to be constructed by the Tenant upon the Lands, at the Tenant's sole cost, in accordance with development permit 14027 issued by the Municipality Having Jurisdiction, as it may be amended from time to time;
- (dd) "**Prime Rate**" means the rate of interest per annum (regardless of how or when calculated) designated from time to time by the Landlord's principal banker from time to time (the "**Bank**") as being the prime commercial lending rate (now commonly known as the Bank's prime rate) charged by the Bank for demand loans in Canadian funds made at the main branch of the Bank in Vancouver, British Columbia (and if at any time there is more than one prime commercial lending rate of the Bank then the Prime Rate shall be the highest prime commercial lending rate of the Bank);
- (ee) "**Release**" includes release, store, manufacture, treat, generate, transport, spill, leak, pump, pour, dump, abandon, emit, empty, discharge, spray, inoculate, deposit, seep, throw, place, exhaust, inject, escape, leach, dispose, infuse or introduce;
- (ff) "**Remedial Action**" means any act, measure, work or thing done, taken, carried out, acquired or constructed that is or may be reasonably necessary to investigate, assess, control, abate, dissipate, render harmless, mitigate or remove Pollution in accordance with the requirements of governmental authorities having jurisdiction over a Pollutant;
- (gg) "**Rent**" means the Minimum Rent set out in subsection 4.1(a) and all other money payable by the Tenant under this Lease whether or not designated as "Rent";
- (hh) "**Residential Space**" means the space in the Premises containing one floor of underground parking and non-market rental residential units;
- (ii) "**Sales Taxes**" means any and all taxes, fees, levies, charges, assessments, rates, duties and excises (whether characterized as sales taxes, purchase taxes, value added taxes, goods and services taxes, harmonized sales taxes, or any other form of tax) which are imposed on the Landlord or which the Landlord is liable to pay, and which are levied, rated or assessed on the act of entering into this Lease or otherwise on account of this Lease, on the use or the occupancy of

the Lands and Premises or any portion of the Lands and Premises, on the Rent payable under this Lease or any portion of the Rent or in connection with the business of renting the Lands or any portion of the Lands. Provided that if the Sales Taxes are reduced by reason of any exemption or deduction to which the Landlord is entitled by virtue of:

- (i) the payment of any taxes, fees, levies, charges, assessments, rates, duties or excises upon the purchase price of any lands or of any interest in such lands whether before, concurrently with or after the execution and delivery of this Lease; or
- (ii) the payment of any taxes, fees, levies, charges, assessments, rates, duties or excises with respect to rents, additional rents and any other amounts payable by the Landlord as a tenant under any lease whether such lease is now existing or arises after the date of execution and delivery of this lease, then the Sales Taxes shall be deemed to be the amount which would have been imposed on the Landlord with respect to the Rent payable by the Tenant to the Landlord under this Lease had no such exemption or deduction been permitted. The Landlord shall have the right, in its sole discretion, to allocate any exemption or deduction to which the Landlord is entitled:
 - (A) in such a way as to reduce the Sales Taxes to the extent and in such proportion as the Landlord may in its sole discretion determine; or
 - (B) in such a way as not to reduce the Sales Taxes at all.

Provided however, Sales Taxes shall exclude income tax under Part I of the *Income Tax Act* of Canada, the Tenant's Taxes, and the Taxes;

- (jj) "**Service Levy**" means an annual charge levied by the Landlord against tenants with premises on the Campus for the provision of and use of certain services, sometimes provided by municipalities or other public authorities, and for the use of the Complementary Facilities both of which are provided by the Landlord to all tenants located on the Campus, in an amount equal to the Fair Market Value of the Lands and Premises as determined during the previous Lease Year, multiplied by the difference between the general mill rate of the City of Vancouver levied on properties put to similar uses as the Lands and Premises and the general mill rate imposed by the Surveyor of Taxes for unorganized territories on same class properties in each case, so that the total of the Taxes levied on the Lands and Premises by the Surveyor of Taxes and the amount of the Service Levy is approximately what the Taxes would have been if the Lands and Premises had been located in the City of Vancouver;
- (kk) "**Sublease**" means a written sublease in respect of any part of the Premises between the Tenant and a Subtenant;
- (ll) "**Subleased Lands**" means all portions of the Premises subleased to Subtenants, or in the context of any particular Sublease, means the portion of the Premises subleased pursuant to such Sublease;

- (mm) "**Substance**" has the meaning given to it in the *Canadian Environmental Protection Act* (Canada) as of the date of this Lease;
- (nn) "**Subtenant**" means a subtenant of the Tenant in respect of any portion of the Premises and any Person who undertakes or assumes the obligations of that subtenant;
- (oo) "**Taxes**" means all taxes, fees, levies, charges, assessments, rates, duties and excises which are not or may hereafter be levied, imposed, rated or assessed for the Term upon or with respect to the Lands and Premises or any part of the Lands and Premises or any personal property of the Landlord used therefor, whether levied, imposed, rated or assessed by the Government of Canada, the Government of British Columbia, or any political subdivision, political corporation, district, municipality, city or other political or public entity, and whether or not now customary or in the contemplation of the parties on the date of this Lease. Without restricting the generality of the foregoing, Taxes shall include all:
- (i) real property taxes, general and special assessments and capital taxes;
 - (ii) taxes, fees, levies, charges, assessments, rates, duties and excises for transit, housing, schools, police, fire or other governmental services or for purported benefits to the Lands and Premises;
 - (iii) local improvement taxes, service payments in lieu of taxes, and taxes, fees, levies, charges, assessments, rates, duties and excises, however described, that may be levied, rated or assessed as a substitute for, or as an addition to, in whole or in part, any property taxes or local improvement taxes, including for greater certainty, the Service Levy; and
 - (iv) costs and expenses including legal and other professional fees and interest and penalties on deferred payments, incurred by the Landlord in contesting or appealing any taxes, assessments, rates, levies, duties, excises, charges or other amounts as aforesaid;
- but Taxes shall exclude all of the following:
- (A) income tax under Part I of the *Income Tax Act* of Canada;
 - (B) the Tenant's Taxes; and
 - (C) the Sales Taxes;
- (pp) "**Tenant's Mortgagee**" means an Approved Lender who is a mortgagee of the interest of the Tenant under this Lease provided that the amortization period of such mortgage shall not exceed 25 years unless the Landlord otherwise agrees;
- (qq) "**Tenant's Taxes**" means all taxes, fees, levies, charges, assessments, rates, duties and excises which are now or may hereafter be levied, imposed, rated or assessed for the Term by any lawful authority relating to or in respect of the business of the Tenant or a Subtenant or relating to or in respect of personal property and all business and trade fixtures, machinery and equipment, cabinet work, furniture and movable partitions owned or installed by the Tenant or a Subtenant at the expense of the Tenant or a Subtenant or being the property of

the Tenant or a Subtenant, or relating to or in respect of improvements to the Lands built, made or installed by the Tenant or a Subtenant, on behalf of the Tenant or a Subtenant or at the Tenant's or a Subtenant's request whether any such amounts are payable by law by the Tenant or a Subtenant or by the Landlord and whether such amounts are included by the taxing authority in the Taxes; provided however, Tenant's Taxes does not include income tax payable by the Tenant under Part 1 of the *Income Tax Act* of Canada or Sales Taxes;

- (rr) "**Term**" means the term as set out in Section 3.1 herein;
- (ss) "**UBC's Rules and Regulations**" means those rules (including the Land Use Rules), policies, bylaws and regulations passed by The University of British Columbia from time to time, whether made before or after the date of this Lease, that are applicable to the Lands, Premises and/or the residents thereof and/or the Campus generally;
- (tt) "**University Users**" means:
 - (i) students, faculty or staff of any of the Landlord or a theological college operating on the Campus;
 - (ii) employees of any other employer whose premises are situated on the Campus; or
 - (iii) such other persons as may be permitted by the Landlord from time to time; and
- (uu) "**Waste**" has the meaning given to it in the Environmental Management Act, SBC2003 but if the Environmental Management Act, SBC2003 is repealed, "Waste" has the meaning given to it on the day immediately preceding the repeal of that Act or if that Act is amended so that the term "Waste" is no longer used in it then "Waste" has the same meaning as the term which replaces it in that Act.

1.2 The following are the schedules forming part of this Lease:

Schedule "A"	Reference Plan showing the Lands and the Easement Area
Schedule "B"	Form of Agreement with the Tenant's Mortgagee
Schedule "C"	Form of Agreement with the Tenant's Mortgagee for CMHC Insured Loans

2.0 DEMISE AND EASEMENT

2.1 Demise. In consideration of the Rent prescribed herein and the faithful performance by the Tenant of the terms, covenants and conditions herein on the part of the Tenant to be kept and performed the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the Lands for the Term as hereinafter defined.

2.2 Easement. The Landlord grants to the Tenant for the duration of the Term appurtenant to the Lands, for itself, its permitted Subtenants, invitees, licensees, employees and customers, the right, privilege and easement as follows:

- (a) over the Easement Area the free and uninterrupted right to enter, use, go, return, pass and repass along, over, across or on the Easement Area for the purposes of and ingress and egress to and from the Lands by foot and by vehicle and for the purpose of supplying utilities to the Lands, and
- (b) over the common roadways on the Campus a free and uninterrupted right in common with others entitled thereto for the purpose of access and egress to the Lands.

2.3 Parking. The Tenant is entitled to use, regulate and control, during the Term, all parking that is located on the Lands.

2.4 Registration. The Landlord will provide this Lease to the Tenant in registrable form. The Tenant shall bear the cost of the registration and any property transfer tax.

3.0 TERM OF LEASE

3.1 The term of this Lease shall commence on <@>, 20<@> and continue for a term of <@> years to and including <@>, 21<@>, unless sooner terminated as herein provided.

4.0 RENT

4.1 Rent. The Tenant covenants and agrees to pay during the Term to the Landlord, or as the Landlord may in writing direct, in lawful money of Canada without set-off, compensation or deduction, Rent which shall be the aggregate of the sums specified in subsections (a), (b), (c) and (d) of this section:

- (a) a Minimum Rent in the sum of \$1.00 for the entire Term, which Minimum Rent shall be fully prepaid in advance on the first day of the Term;
- (b) all utilities and other costs referred to in Article 10.0 hereof which are incurred by the Landlord in connection with the Lands and Premises shall be payable on their due dates;
- (c) the Service Levy and all other Taxes and Tenant's Taxes, which shall be payable on their due dates; and
- (d) all Sales Taxes, which shall be payable on their due dates.

4.2 Tenant's Responsibility Re Taxes and Tenant's Taxes. The Tenant shall, at the Landlord's request, promptly deliver to the Landlord receipts for payments of all Taxes and Tenant's Taxes payable by the Tenant, notices of any assessments for Taxes or Tenant's Taxes or other assessments received by the Tenant that relate to the Lands and Premises, and whatever other information relating to Taxes or Tenant's Taxes the Landlord reasonably requests from time to time. The Tenant shall deliver to the Landlord, at least 10 days after filing an appeal, notice of any appeal or contestation that the Tenant commences with respect to Taxes or Tenant's Taxes payable by the Tenant. If the Tenant does not pay the Taxes or Tenant's Taxes before the appeal or contestation, the Tenant shall deliver to the Landlord whatever security for the payment of the Taxes or Tenant's taxes as the Landlord reasonably requires, promptly and diligently prosecute the appeal or contestation, and keep the Landlord informed on all aspects of it. The Tenant shall indemnify and save the Landlord harmless from all loss, cost, charges and expenses arising from Taxes or Tenant's Taxes as well as any taxes, rates levies and assessments that may be levied or imposed for the Term in place of Taxes or

Tenant's Taxes, whether against the Landlord or the Tenant including, but not limited to, increases in Taxes or Tenant's Taxes arising out of an appeal or contestation by the Tenant. The Tenant shall deliver to the Landlord any security for such an increase in Taxes or Tenant's Taxes that the Landlord reasonably requires.

4.3 Sales Taxes. It is the intention of the parties that the Landlord shall be fully reimbursed by the Tenant in respect of any and all Sales Taxes payable by the Landlord. The amount of the Sales Taxes so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation and shall be paid to the Landlord at the same time as the amounts to which such Sales Taxes apply are payable to the Landlord under the terms of this Lease or upon demand at such other time or times as the Landlord from time to time determines. Notwithstanding anything in this Lease to the contrary, the amounts payable by the Tenant under this Section 4.3 shall be deemed not to be Rent, but the Landlord shall have all of the same rights and remedies for the recovery of such amounts as it has for recovery of Rent under this Lease

4.4 Pro-rata Adjustments. All Rent reserved herein including the Service Levy shall be deemed to accrue from day-to-day and if for any reason it shall become necessary to calculate the same for irregular periods of less than 12 consecutive months an appropriate pro rata adjustment shall be made on a daily basis in order to compute for such irregular period.

4.5 No Set-off. Except as provided in this Lease, the Tenant hereby waives and renounces any and all existing and future claims, set-off and compensation against any Rent or other amounts due hereunder and agrees to pay such Rent and other amount regardless of any claim, set-off or compensation which may be asserted by the Tenant or on its behalf.

4.6 Service Levy Replaced. If the Lands become part of a municipality or the University Endowment Lands or any other governing body acquires jurisdiction over the Lands similar to that of municipalities, the Service Levy shall be replaced by the local governing body's taxes (unless the Lands and Premises remain exempt from such taxes, in which case the Service Levy shall continue to be paid by the Tenant to the Landlord) which shall be paid directly to such local governing body and the Tenant's obligation to pay the Service Levy shall be of no further force or effect.

4.7 Accounting. The Tenant shall:

- (a) maintain accounts in respect of this Lease and each of the Subleases;
- (b) prepare a budget for each fiscal year of the Tenant or portion thereof occurring during the Term, with respect to the Lands and Premises, the Lease and the estimated revenue and expenses related thereto, identifying funds proposed to be borrowed during the period of such budget and secured by a mortgage of the Tenant's interest in this Lease, and if requested by the Landlord, provide a copy of each such budget and each revision thereof to the Landlord's Vice-President, Finance (or then equivalent) within 15 days of their approval by the Tenant's directors each year;
- (c) if requested by the Landlord, prepare periodic statements at least four times in each Fiscal Year of all amounts received pursuant to, and expenses incurred in connection with the Lease, the Premises and the Subleases showing variances from budgeted amounts and deliver a copy of each such periodic statement to

the Landlord's Vice-President, Finance (or then equivalent), within 15 days of their approval by the Tenant's directors;

- (d) deliver to the Landlord's Vice-President, Finance (or then equivalent), a copy of the Tenant's annual consolidated summary financial statement showing:
 - (i) total current assets;
 - (ii) total non-current assets; and
 - (iii) total assets; and
 - (iv) total current liabilities;
 - (v) total non-current liabilities; and
 - (vi) total liabilities; and
 - (vii) total equity

certified by an officer or trustee of the Tenant to accurately represent the summary of the consolidated financial statement of the Tenant for such year, and a copy of detailed statements with respect to the operations of the Tenant on the Lands and Premises and under the Lease, provided however, the obligation in this subsection 4.7(d) to deliver a copy of the Tenant's consolidated summary financial statements shall not apply to the Tenant's Mortgagee, or any assignee from the Tenant's Mortgagee or subsequent assignee of this Lease. Such statements shall be delivered to the Landlord's Vice-President, Finance (or then equivalent), within 15 days of their approval by the Tenant's directors;

- (e) permit the Landlord to review the files, books and financial records of the Tenant in connection with the Tenant's management of the Lease and Subleases, the collection of the amounts coming due under the Subleases and the expenses incurred in connection therewith, upon receiving reasonable notice of the Landlord's desire to do so;
- (f) if the Tenant intends to enter into a major real estate project which would cause the total balance sheet liabilities of the Tenant to exceed 80% of the total liabilities and equity of the Tenant, it shall so advise the Landlord's Vice-President, Finance (or then equivalent) and the Landlord's Vice-President, Finance (or then equivalent), may request a pro forma summary financial statement as described in subsection 4.7(d) herein which would include the proposed project, certified by an officer or trustee of the Tenant to accurately represent the expected impact of the proposed project on the summary financial statements, provided however, the obligation in this subsection 4.7(f) shall not apply to the Tenant's Mortgagee, or any assignee from the Tenant's Mortgagee or subsequent assignee of this Lease.
- (g) all financial information with respect to the Tenant obtained by the Landlord, its employees, officers and governors, shall be held confidential and not disclosed to any party and shall not be circulated to any other party whether within the employ of the Landlord or otherwise, except with the prior written consent of the Tenant.

5.0 CONSTRUCTION OF IMPROVEMENTS

5.1 Plan and Specification Approval. Notwithstanding any other terms or provisions of this Lease, the Tenant shall not make substantial renovations, repairs or alterations to the Lands or Premises that are governed by the BC Building Code adopted by the Landlord, without the written consent of the Landlord, and until complete drawings, plans and specifications for the construction thereof have been approved in writing by the Landlord, such consent and approval not to be unreasonably withheld or unduly delayed. Such drawings, plans and specifications shall specify the location, design, layout, appearance, materials to be used and any and all other necessary details requested by the Landlord, acting reasonably. The Landlord's reasonable costs of assessing drawings, plans and specifications submitted by the Tenant for approval by the Landlord or any other reasonable related costs, including but not limited to the cost of permits and inspections required, shall be payable by the Tenant. If the Landlord approves of such proposed construction it shall have the right to inspect such construction on reasonable notice during normal business hours. Notwithstanding what is set out above, so long as there is no municipality or other local governing body which has jurisdiction, it is agreed that the only approval process which the Tenant must go through pursuant to this Section 5.1 is that established by the Municipal Authority Having Jurisdiction from time to time for the development of buildings on the Campus; it being understood and agreed however, that notwithstanding anything else set out in this Lease, the Municipal Authority Having Jurisdiction shall have no liability to the Tenant for claims arising in negligence, causing delay, or otherwise, in connection with assessing drawings, plans and specifications, issuing permits, granting approvals and consents, or conducting inspections.

5.2 Compliance with Authorities. The Tenant shall operate all improvements constructed by the Landlord on the Lands in accordance with any applicable statute, bylaw, rule or regulation of any governmental authority, including any bylaw, rule or regulation of the Municipal Authority Having Jurisdiction and also including without limitation the British Columbia Building Code, the Land Use Rules and UBC's Rules and Regulations, and pay all necessary fees, permits, assessments and charges properly payable to such authorities in relation to any such improvements and the operation thereof.

5.3 Liens. The Tenant covenants that during the currency of this Lease it shall neither do nor fail to do, any act which may result in any builders' lien, or any other statutory lien being registered against the lands of the Landlord, and if any such lien should be registered against the lands of the Landlord as a result of any act or failure to act on the part of the Tenant, the Tenant hereby agrees to indemnify and hold harmless the Landlord with respect to such lien, and to take all necessary steps to remove such lien from title to the Campus and or the Lands and Premises forthwith upon notice by the Landlord. In the event that the Tenant fails to take such necessary action within two weeks of receipt of notice from the Landlord, the Landlord may take all necessary action to remove the same in the name of the Tenant and the Tenant agrees to indemnify the Landlord for any and all costs, charges or expenses with respect to the same including solicitor's fees on an indemnity basis and to pay to the Landlord such costs, charges and expenses within 10 days of notice from the Landlord of the same or the Tenant shall be in default as defined in subsection 18.1(a) herein.

5.4 *Builders Lien Act.* The Landlord has filed a notice of interest in the land title office pursuant to paragraph 3(b) of the *Builders Lien Act* stating that the Landlord is giving notice that it will not be responsible for any improvements done to the Lands and Premises or improvements thereon, unless the improvements are undertaken at the express request of the Landlord.

5.5 Ownership of Building. All buildings and improvements situated upon the Lands, as between the Landlord and the Tenant, shall become and remain the property of the Tenant provided that at the termination of this Lease such buildings and improvements shall remain on the Lands and shall become the property of the Landlord, subject to the rights of the Tenant pursuant to this Lease including without limitation Section 5.6 and to the rights of the Tenant and those claiming under or through the Tenant to the proceeds of insurance as provided herein.

5.6 Removal of Fixtures. At any time when the Tenant is not in default under this Lease, and upon termination of the Lease or any part thereof, the Tenant may remove from the Lands any fixtures or equipment installed in the Premises whether or not such fixtures or equipment are fastened to a building or other improvements located upon the Lands and regardless of the manner in which they are so fastened, provided however that under no circumstances shall any fixture or equipment be removed:

- (a) prior to the termination of the Term if such fixture or equipment is used in the operation of the building or improvement upon the Lands unless the same is coincidentally being replaced or unless such removal is by reason of the termination or expiry of a Sublease;
- (b) if the removal would result in impairment of the structural strength of the building or improvement upon the Lands; or
- (c) that changes the exterior appearance of the building on the Lands,

unless the Landlord has given its prior written consent, such consent not to be unreasonably withheld or unduly delayed. The Tenant shall fully repair any damage occasioned by the removal of any such fixtures and equipment and, unless the building or improvement is being demolished as required or permitted hereunder, shall leave the building and improvement in good, clean and neat condition, subject to normal wear and tear.

6.0 USE OF LANDS AND PREMISES

6.1 Facility. The Tenant shall not use the Lands and Premises, nor permit them to be used by other Persons, for any purpose other than for Permitted Activities unless the written consent of the Landlord is first obtained. Provided that the Landlord has not previously consented to such use, the Landlord may prohibit any use that is either inconsistent or incompatible with the definition of the Permitted Activities, or, in the Landlord's opinion, is materially detrimental to the Landlord.

6.2 Continuous Use and Standard of Operation. If the Tenant does not continuously use the Lands and Premises or any portion thereof throughout the Term for the purpose of offering the same for sublease in accordance with the terms of this lease, then the Landlord may terminate this Lease, but subject to the rights of Subtenants as provided in Section 15.10 and the rights of Tenant's Mortgagees pursuant to Section 16.1; provided however, this Section 6.2 shall not apply if and whenever the Tenant is the Tenant's Mortgagee, or any assignee of the Tenant's Mortgagee or subsequent assignee of this Lease, and shall not apply while the Premises, or a substantial part of the Premises, are not reasonably capable of use by the Tenant as a result of damage to the Premises, the Campus or Complementary Facilities.

6.3 Approvals. The Tenant will ensure that all licenses, designations, permits and approvals necessary for the operation of its activities on the Lands and Premises have been obtained and are maintained.

6.4 Promotion. The Tenant agrees to promote actively and continuously the subletting of the Residential Premises for rental residential purposes and the subletting of the Non-Residential Premises and shall, as vacancies arise from time to time in the Residential Premises or Non-Residential Premises, use its reasonable commercial efforts to attract potential Subtenants in compliance with the Permitted Activities; provided however, this Section 6.4 shall not apply if and whenever the Tenant is the Tenant's Mortgagee, or any assignee of the Tenant's Mortgagee or subsequent assignee of this Lease, and shall not apply while the Premises, or a substantial part of the Premises, are not reasonably capable of use by the Tenant as a result of damage to the Premises, the Campus or the Complementary Facilities.

7.0 CONDUCT OF TENANT IN OCCUPATION

7.1 Signs. The Tenant will not erect or place or suffer to be erected or placed or maintain any sign of any nature whatsoever on the Campus or on the Lands and Premises without first obtaining the Landlord's (through Campus and Community Planning) written approval and consent in each instance and abiding by the Land Use Rules and UBC's Rules and Regulations (through Campus and Community Planning) with respect to such signs. Such consent shall not be unreasonably withheld or delayed.

7.2 Overloading of Utilities. The Tenant will not install or suffer to be installed equipment which will exceed or overload the capacity of utility facilities servicing the Lands and Premises. The Landlord represents and warrants that the utility capacity required by the Tenant as identified in the plans and specifications for the Premises to be constructed by the Tenant will not overload the capacity of utility facilities serving the Lands and Premises. If equipment installed or allowed to be installed by the Tenant requires additional utility facilities and capacity in excess of that identified in the said plans and specifications, the Tenant shall advise the Landlord of such additional requirements and the Landlord will supply the same subject to its obligations to do so as provided in this Lease and the Tenant will bear the costs as provided in Section 10.2 herein.

7.3 Cleanliness. At the sole cost and expense of the Tenant the Lands and Premises shall be kept by the Tenant in a clean and sanitary condition in accordance with all Laws, other laws, directions, rules and regulations of all governmental bodies having jurisdiction there over including all health officials, fire marshals, building inspectors or other officials, the insurers of the Landlord, the Land Use Rules and UBC's Rules and Regulations. In the event the Tenant fails to comply with the foregoing provisions the Landlord may rectify the situation and collect the expense for such work from the Tenant, or the Tenant shall be considered to be in default as defined in subsection 18.1(a) herein.

7.4 Nuisance. The Tenant will not carry on or perform or suffer or permit to be carried on or performed or suffered on the Lands and Premises any practice or act or engage in any activity which is or becomes a nuisance or a menace or which in any way adversely affects the Lands and Premises, the Campus or any part thereof or is or becomes a hazard or nuisance to any person using or occupying the Lands and Premises, the Campus or any part thereof.

7.5 Compliance with Laws. The Tenant shall comply with and abide by the Land Use Rules, UBC's Rules and Regulations and all federal, provincial, municipal and other

governmental statutes, ordinances, Laws, other laws and regulations affecting the Lands and Premises or any activity or conduct of the Tenant on or in the Lands and Premises.

7.6 Compliance with Insurance Policies. The Tenant shall comply with and abide by all policies of insurance (and the policies of insurers thereunder and the underwriters thereof) from time to time in force with respect to any improvement or operation on, or any condition, use or occupation of, the Lands and Premises or to any liability which might arise therefrom.

7.7 Rubbish Removal. The Tenant will provide proper and adequate receptacles for refuse and rubbish of all kinds and will attend to the removal of the same from the Lands and Premises at regular intervals.

7.8 Snow and Ice Removal. The Tenant will dutifully and promptly provide for the removal of snow and ice from the Lands and Premises to the extent that the same will not form a hazard to any person using the Lands and Premises.

7.9 Control of the Tenant and Subtenants. INTENTIONALLY DELETED.

7.10 Abandonment of Purpose. Notwithstanding anything herein contained should the Tenant operate on the Lands and Premises in a manner so as to place the Tenant in default with the provisions of Article 7.0 hereof then, at the option of the Landlord, this Lease may be terminated pursuant to the provisions set forth in Article 18.0.

7.11 Termination and Default. INTENTIONALLY DELETED

7.12 Landscaping. The Tenant shall at its cost maintain the landscaping on the Lands and Premises to at least the standards reasonably imposed by the Municipal Authority Having Jurisdiction from time to time and consistent with those standards to which the Landlord maintains the landscaping on other lands owned by the Landlord and situate on the Campus.

8.0 ENVIRONMENTAL CONSIDERATIONS

8.1 Audit. The Tenant shall, at its expense, if it is requested to do so by the Landlord, cause the Consultant to perform the Audit. A copy of the Audit shall be provided by the Consultant to the Landlord at the same time that it is provided to the Tenant together with a letter from the Consultant addressed to the Landlord confirming that the Landlord is entitled to rely on such Audit as if the Audit had been prepared at the request of the Landlord.

8.2 Release of Landlord. The Tenant hereby releases the Landlord from and in respect of any cost, expense, damage, loss or liability which may be incurred or suffered by the Tenant, its employees or agents in connection with the:

- (a) need for the Tenant to take any Remedial Action and the taking of Remedial Action as a result of Additional Pollution; or
- (b) effect of Additional Pollution on the health or the property of any Persons;

except to the extent that any such cost, expense, damage, loss or liability was caused or contributed to by the Landlord's negligent or willful act or default or that of its employees or those for whom in law the Landlord is responsible.

8.3 Tenant to Avoid Pollution. The Tenant must take all necessary precautions so as to ensure that the Lands and Premises and any areas surrounding the Lands and Premises do

not and are not likely to become Polluted by any Additional Pollution and agrees to indemnify and save harmless the Landlord for any cost, damage, loss or liability incurred or suffered by the Landlord, its officials, employees and agents in respect of any Additional Pollution of the Lands and Premises and any area or areas surrounding the Lands and Premises caused by the Permitted Activities or any other action of the Tenant or any Subtenant.

8.4 No Waste to be Used on the Lands and Premises. The Tenant must use the Lands and Premises only as provided under Article 6.0 and must not at any time cause or allow any Waste to be generated, created, used, stored, treated, transferred, transported or disposed of on the Lands and Premises except in compliance with all Laws.

8.5 Landlord's Rights Regarding Additional Pollution. If during the Term, the Lands and Premises are found to be Polluted by any Additional Pollution or the Landlord is required by any Authority to determine whether the Lands and Premises are Polluted by Additional Pollution or to take Remedial Action regarding Additional Pollution, the Landlord may:

- (a) cause the Consultant to perform a Further Audit;
- (b) notify the Tenant of the nature and extent of the Additional Pollution and any Remedial Action the Consultant considers reasonably necessary or which any Authority requires be taken, or both, or which has already been performed where an emergency existed and any Authority required the Landlord to take Remedial Action immediately;
- (c) take any Remedial Action which any Authority requires be taken; or
- (d) require the Tenant to take any Remedial Action which any Authority requires be taken with regard to Additional Pollution including Remedial Action which must be taken immediately where an emergency exists and any Authority requires Remedial Action to be taken immediately;

and the Tenant must permit the Landlord, its employees and agents including the Consultant to have that access to the Lands and Premises which is reasonably necessary to enable the Landlord to comply with the requirements of any Authority and to take Remedial Action. After request by the Tenant, the Landlord must provide the Tenant free of charge with a copy of the results of the Further Audit. The Tenant within 10 days after demand by the Landlord must pay the Landlord the amount which is equal to the actual costs to the Landlord of a Further Audit performed under this Section 8.5 and of any Remedial Action which any Authority required the Landlord to take to the extent that the Further Audit confirmed Additional Pollution or the Remedial Action was in respect of Additional Pollution.

8.6 Landlord's Rights Regarding Existing Pollution. If during the Term, the Landlord is required by any Authority to take Remedial Action regarding the Existing Pollution the Landlord, its employees and agents may enter the Lands and Premises and at the Landlord's expense may:

- (a) perform any audits, investigations and surveys any Authority considers necessary to determine better the nature and extent of the Existing Pollution and the necessary Remedial Action; and
- (b) take any Remedial Action any Authority requires be taken and the Tenant must permit the Landlord, its employees and agents including the Consultant to have that access to the Lands and Premises which is reasonably necessary in the

opinion of the Landlord to enable the Landlord to comply with the requirements of any Authority and to take Remedial Action.

8.7 Further Audit and Cost of Remedial Action. Not less than 90 days before expiry of the Term or promptly after the sooner termination of this Lease the Landlord shall cause the Consultant to perform a Further Audit. As part of the Further Audit the Consultant must be instructed to provide:

- (a) a detailed estimate of the cost of Remedial Action to remediate the Lands and Premises which were attributable to any Additional Pollution; and
- (b) a program of Remedial Action necessary to remediate any Additional Pollution. The Tenant at its cost, shall be required to undertake immediately and complete without delay the program of Remedial Action and failing which the Landlord may remediate any Additional Pollution in accordance with that program of Remedial Action and the Tenant shall within 10 days after demand by the Landlord pay the Landlord the amount which is equal to the actual cost to the Landlord of a Further Audit performed and if the Landlord remediates, pay to the Landlord the costs of any Remedial Action carried out pursuant to this subsection in respect of the Additional Pollution.

9.0 COMPLEMENTARY FACILITIES LICENCE

9.1 Use of Complementary Facilities. The Tenant, its directors, officers, employees, invitees and licensees in common with others designated by the Landlord or otherwise entitled shall during the Term of this Lease have the use and benefit of the Complementary Facilities for the purposes from time to time permitted, approved or designated by the Landlord, subject to the reasonable management and control of the Complementary Facilities by the Landlord provided that such rules and regulations that the Landlord may establish, specify and enforce and the management and control of the Campus and the Complementary Facilities shall at all times be consistent with the terms of this Lease, the use permitted of the Lands and Premises under this Lease and the requirements of the Tenant and its Subtenants to obtain access to, egress from and the supply of services to the Lands and Premises. The Landlord shall maintain the roads, sidewalks, utilities and other Complementary Facilities required for the access and egress to and from the Lands and Premises and the supply of services and utilities in good order and repair. It is also understood and agreed that:

- (a) access to the Lands and Premises is by dedicated provincial roads;
- (b) there are no Complementary Facilities that are required to permit the Tenant to use the Lands and Premises for the Permitted Activities; and
- (c) there are no Complementary Facilities situate on the Lands.

9.2 Management and Control of Campus. The Landlord has the exclusive right to manage and control the Campus including the Complementary Facilities, the Lands and Premises and other premises leased to other tenants, and from time to time the Landlord may establish, specify and enforce rules and regulations regarding the use, maintenance and operation of the Campus and Complementary Facilities and the activities of tenants and others conducted thereon and the rules and regulations in all respects to be observed and performed by the Tenant, its officers, employees and other invitees. Without limitation the Landlord has the right in the management and control of the Campus and Complementary Facilities to:

- (a) supervise and police the Campus and Complementary Facilities that are located on the Campus, excluding the Lands and Premises, and provide such security measures and patrols as the Landlord deems reasonably necessary;
- (b) close off all or any part of the Campus or such Complementary Facilities at such times as in the opinion of the Landlord are advisable;
- (c) convey, modify and terminate licences, easements or other rights pertaining to the use of all or any part of the Campus or such Complementary Facilities, except in accordance with the Landlord's obligations as set out in Section 2.2 herein;
- (d) close off all or part of the Campus or such Complementary Facilities for maintenance, repair, construction or development;
- (e) employ such persons required for the management and control of the Campus and security thereon as the Landlord may from time to time deem advisable;
- (f) designate the entrances, roadways, parking areas and times when and where vehicles and pedestrians may use such Complementary Facilities or the Campus;
- (g) change from time to time the area, level, location, arrangement or use of any part or parts of such Complementary Facilities or Campus but not so as to permanently materially interfere with access to the Lands and Premises;

provided that such rules and regulations that the Landlord may establish, specify and enforce and the management and control of the Campus and the Complementary Facilities shall at all times be consistent with the terms of this Lease, the use permitted of the Lands and Premises under this Lease and the requirements of the Tenant and its Subtenants to obtain access to, egress from and the supply of services to the Lands and Premises. The Landlord shall maintain the roads, sidewalks, utilities and other Complementary Facilities required for the access and egress to and from the Lands and Premises and the supply of services and utilities in good order and repair.

9.3 **Trespassing Vehicles.** Should the Tenant, its officers or employees, park vehicles in areas outside the boundaries of the Lands and Premises not allocated for that purpose, the Landlord shall have the right to remove the trespassing vehicles and the Tenant shall indemnify and save harmless the Landlord from any costs, claims, damage, liability and expense from any claims by third parties arising out of the trespass or removal of trespassing vehicles.

9.4 **Parking Charges.** The Landlord reserves the right to impose reasonable charges for the use of parking areas and facilities on or in the Complementary Facilities.

9.5 **Alterations or Addition to Complementary Facilities.** The Tenant covenants that nothing contained in this Lease shall be construed so as to prevent the Landlord from varying or altering the location or size of the Complementary Facilities including parking areas, driveways and sidewalks from time to time or from erecting additional buildings or extending buildings and without limiting the foregoing, the Landlord shall have the unrestricted right to construct additional buildings from time to time on the Campus and Complementary Facilities, add or change any building, or may alter the ingress and egress to the Campus or the Lands and Premises, change the loading or unloading facilities and service entrances from time to time

without in any way being responsible to the Tenant, provided only that the Landlord shall at all times provide reasonable access to the Lands and Premises for the Tenant, its directors, officers, employees, licensees and invitees, the supply of utilities and services to the Lands and Premises and the Landlord shall bear any additional costs of the Tenant caused by such change and the Landlord shall use its best endeavours to cause the least disruption in the operation of the Lands and Premises. Subject to the foregoing, the Landlord may transfer or dispose of portions of the Campus or dedicate or transfer to government authorities, lands for road widening and other purposes, and when and so often as the Landlord shall dispose or transfer or dedicate any portion of the Campus, then the reference herein to "**Campus**" shall mean and refer to the portion of the Campus remaining after such transfer, disposition or dedication together with any land which may be acquired by the Landlord.

10.0 UTILITIES AND OTHER COSTS

10.1 Utilities and Other Costs. The Tenant shall pay promptly as the same become due and indemnify the Landlord against:

- (a) all rates for electricity, gas, scavenging, sewage, telephone, water and other utilities and services used upon or furnished to the Lands and Premises during the Term;
- (b) all costs of all maintenance, repairs and replacements to the Lands and Premises except as provided in Article 12.0, and except for such costs as are caused or contributed to by the Landlord or those for whom the Landlord is responsible in law;
- (c) every cost with respect to the provision of security services requested by the Tenant from the Landlord, including patrols for the Lands and Premises.

10.2 Utilities and Services. The Landlord will supply water, natural gas, electrical, telecommunication services, sanitary sewer and storm sewer to the Lands and Premises and the Tenant agrees to accept such services from the suppliers which are designated by the Landlord from time to time. To the extent that the Landlord provides these utilities and services, and any and all other maintenance, repairs, security and other services necessary for the operation of the Lands and Premises, the Tenant shall pay as additional Rent the Landlord's reasonable charges therefor, such payments to be made as accounts are rendered by the Landlord or its agents from time to time or as the Landlord shall otherwise direct, without duplication, and provided that the charge of the Landlord for such supply, maintenance, repairs, security and other services shall be comparable to the cost that the Tenant would have incurred with respect to the same if the Lands and Premises were situate within the City of Vancouver and provided further that the quality of all such services is comparable to the quality of such services available to consumers in the City of Vancouver.

10.3 Utility Rates. In respect of utility rates and charges, these will be levied at the same rate as assessed against other non-university tenants on the Campus, or as may be otherwise agreed to between the Landlord and the Tenant.

10.4 Provision of Services. Subject always to this Article 10.0, the Tenant may provide services normally provided by the Landlord to its tenants provided such services are supplied in a manner consistent with the Landlord's standards.

10.5 Utility Failure. The Landlord shall not be liable to the Tenant for any cost, claim, expense or liability of the Tenant arising from the failure of the Landlord, its servants, agents or contractors to supply any of the utilities or services herein referred to. If the supply of utilities or services is interrupted to the Premises, the Landlord agrees that it will not resupply such utilities or services to any other non-essential university building serviced by the same line as the Premises, without also resupplying the Premises.

10.6 Maintenance of Internal Roads. The Tenant agrees to maintain any necessary sidewalks, street lighting, roads and parking areas situate upon the Lands and Premises.

10.7 Failure to Comply In the event that the Tenant fails to comply with the covenants contained in Section 10.1, 10.2 or 10.6, the Tenant shall be in default as defined in Section 18.1 hereof.

11.0 REPAIRS AND MAINTENANCE

11.1 The Tenant covenants with the Landlord that:

- (a) Premises. The Tenant shall at all times during the Term repair, maintain and keep the Lands and Premises and all landscaping, sidewalks, street lighting, roads, parking areas, equipment and fixtures, within the Lands and Premises, including without limitation, exterior and interior doors, walls, the roof, structure, windows, glass, partitions, heating, ventilating, air-conditioning, plumbing and electrical equipment and equipment and fixtures located on the Lands and Premises in a good and substantial state of repair, normal wear and tear excluded, and the Tenant covenants to perform such maintenance, to effect such repairs and replacements and to decorate at its own cost and expense as and when necessary or reasonably required by the Landlord to do so, excluding normal wear and tear.
- (b) Examination. The Landlord and any employee, servant or agent of the Landlord shall be entitled at any reasonable time during normal business hours and during any emergency, from time to time, to enter and examine the state of maintenance, repair, decoration and order of the Lands and Premises, all equipment and fixtures within the Lands and Premises and any improvements now or hereafter made to the Lands and Premises, and the Landlord may give notice to the Tenant requiring that the Tenant perform such maintenance or effect such repairs, replacements or decorations as may be found necessary from such examination, normal wear and tear excluded. The failure of the Landlord to give such notice shall not however relieve the Tenant from its obligation to maintain, repair, decorate and keep the Lands and Premises and appurtenances in good order and repair as aforesaid and to make replacements as may be necessary.
- (c) Cost. The Tenant shall, when necessary, and whether upon receipt of notice from the Landlord or not, effect and pay for such maintenance, repairs, replacements or decoration as may be the responsibility of the Tenant. If the Tenant fails to comply with the Landlord's request to effect repairs, replacement or maintenance within a reasonable time as provided by the Landlord, then the Landlord may cause such repairs, replacements or maintenance to be undertaken at the cost of the Tenant, such cost to be paid by the Tenant immediately upon notification thereof and recoverable by the Landlord as Rent.

- (d) **Damage Caused by Negligence.** If part of the Lands and Premises, Campus or the Complementary Facility is damaged or destroyed through negligence of the Tenant or those for whom it is responsible in law, the Tenant shall reimburse the Landlord for the cost of repairs or replacements immediately upon demand.
- (e) **Repairs to Conform to Codes.** All repairs, replacements maintenance or construction undertaken by the Tenant shall be done in accordance with the Land Use Rules, UBC's Rules and Regulations and all applicable laws, codes, rules and regulations and in a good and workmanlike manner.

12.0 DAMAGE OR DESTRUCTION

12.1 **Blocked Access.** If there is damage to the Lands and Premises or damage to the Campus or Complementary Facilities, which prevents access to the Lands and Premises or the supply of service essential to the Lands and Premises, and if the damage is such that the Premises or a substantial part of the Premises is rendered not reasonably capable of use by the Tenant for the purposes contemplated herein for a period of time exceeding 30 days, then the rent payable hereunder for the period beginning at the date of occurrence of the damage until at least a substantial part of the Premises is again reasonably capable of use and occupancy for the purpose aforesaid, will abate in the proportion that the area of the Premises rendered not reasonably capable of use by the Tenant bears to the whole of the Premises, and such abatement shall be credited immediately against the Rent payable hereunder.

12.2 **Termination.** The Landlord or the Tenant by written notice to the other given within 120 days of the occurrence of damage to the Lands and Premises or the Campus may terminate this Lease:

- (a) if the Campus or Complementary Facilities are damaged by any cause and such damage prevents access to the Lands and Premises or the supply of services essential to the Lands and Premises and either cannot be repaired or rebuilt with reasonable diligence within one year after the occurrence of the damage provided that if the Premises are not damaged so as to permit the Tenant to terminate this Lease under subsection 12.2(b), then the Tenant may affirm this Lease (which right shall have precedence over the Landlord's right to cancel this Lease) within such 120-day period, whereupon neither the Landlord nor the Tenant may terminate this Lease and the Landlord and the Tenant shall cooperate to provide such access, egress and the supply of such services as may be reasonably necessary to permit the Tenant and its Subtenants to occupy and use the Lands and Premises; or
- (b) if the Premises are damaged by any cause and the damage is such that the Premises or a substantial part of the Premises are rendered not reasonably capable of use by the Tenant for its operations in the Premises and cannot be repaired or rebuilt with reasonable diligence within two years after the occurrence of the damage.

12.3 **Reconstruction.** If this Lease is not terminated pursuant to Section 12.2, provided that the damage was caused by a hazard against which the Tenant was required to insure in accordance with the terms of this Lease and such insurance proceeds would be sufficient for rebuilding, and provided that all necessary access, egress and the supply of such services have been provided to the Lands and Premises, or shall be prior to the completion of such rebuilding, as may be reasonably necessary to permit the Tenant and its Subtenants to

occupy and use the Lands and Premises in accordance with the terms of this Lease, then the Tenant covenants to commence the reconstruction of the Premises at its sole cost within two years of the date of destruction upon plans to be approved by the Landlord as aforesaid, and to complete such reconstruction and rebuilding with all due dispatch. If the Tenant is not required to reconstruct the Premises and elects not to do so, then the Tenant by notice to the Landlord to that effect, may terminate this Lease, subject to the written consent of the Tenant's Mortgagee; provided however, if the Tenant has not made such election and so terminated this Lease within 12 months of the occurrence of damage to the Lands and Premises, then the Landlord may terminate this Lease by notice to the Tenant to that effect, subject to the written consent of the Tenant's Mortgagee. If the Tenant decides to reconstruct the Premises even though it is not required to do so pursuant to this Section 12.3, then the Tenant shall give notice to the Landlord that it will reconstruct the Premises in accordance with the terms of this Lease, subject to any delays due to lack of access, egress, or supply of services to the Lands and Premises.

12.4 Arbitration. If the Premises, the Complementary Facilities or the Campus are damaged and the parties disagree as to whether the Premises, the Complementary Facilities or the Campus can be repaired or rebuilt within the time periods set out in subsection 12.2(a) or 12.2(b) or as to whether the Premises or the substantial part of the Premises are rendered not reasonably capable of use by the Tenant for its operations in the Premises for its purposes the issue in dispute shall be referred to arbitration in accordance with Section 25.7 herein.

13.0 INDEMNITY AND LIABILITY

13.1 Indemnity. Unless the Landlord or its servants or agents are negligent or willfully in default, the Tenant indemnifies the Landlord and saves it harmless from and against any and all claims, actions, damages, liability and expenses in connection with the loss of life, personal injury or damage to property arising from any act on the Lands and Premises or the occupancy or use of the Lands and Premises or occasioned wholly or in part by an act or omission of the Tenant, its officers, employees, agents, contractors or other invitees, licensees or by any one permitted by the Tenant to be on the Lands and Premises. In case the Landlord, without actual (as opposed to merely vicarious) fault on its part, is made party to litigation begun by or against the Tenant, excepting a bona fide action by the Tenant against the Landlord, the Tenant will protect and hold the Landlord harmless and will pay the costs, expenses and reasonable legal fees on an indemnity basis incurred or paid by the Landlord in connection with the litigation. The Tenant will also pay all costs, expenses and reasonable legal fees on an indemnity basis incurred by the Landlord in enforcing this Lease provided the Landlord's contention or position is upheld by the court or an arbitrator. It is understood and agreed that all references to Landlord in this section shall be read and construed as being references to the Landlord in its capacity as the owner of the Lands and also in its capacity as the Municipal Authority Having Jurisdiction.

13.2 Liability. Unless the Landlord or its servants or agents are negligent or in default, the Landlord is not liable for:

- (a) the death of or injury to the Tenant or those for whom it is responsible in law, or for the loss of or damage to property of the Tenant or others by theft or otherwise or for consequential damage or loss of profits or for any other costs, losses, damages of whatsoever kind. Without limiting the generality of the foregoing, the Landlord is not liable for death, injury, loss or damage of or to any party or persons or property of such party or person resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Campus 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 cause of any kind; and

- (b) death, injury, loss or damage caused by the Landlord's faculty, staff, students, other occupants or other persons on the Lands and Premises or in any other part of the Campus or resulting from construction, alteration or repair to any part of the Campus. All property of the Tenant kept or stored on the Lands and Premises will be kept or stored at the risk of the Tenant only and the Tenant will hold the Landlord harmless from all claims arising out of damages to it, death or injury as enumerated above including subrogation claims by the Tenant's insurers.

It is understood and agreed that all references to Landlord in this section shall be read and construed as being references to the Landlord in its capacity as the owner of the Lands and also in its capacity as the Municipal Authority Having Jurisdiction.

13.3 Survival of Indemnity. Maintenance of the insurance described in Sections 14.1 and 14.4, and the performance by the Tenant of its obligations under such sections shall not relieve the Tenant of liability under the indemnity provisions set forth in Sections 13.1 and 13.2 and this indemnity shall survive the expiry or sooner termination of this Lease.

14.0 INSURANCE

14.1 All Risk Coverage. The Tenant, without expense to the Landlord, shall obtain and keep in force or cause to be obtained and kept in force throughout the Term All Risk property insurance, including coverage for floods and earthquakes, and such other coverage as the Landlord may reasonably require, on all buildings, improvements and equipment located on the Lands and Premises. The amount of such insurance shall be the full replacement value of all such buildings, improvements, equipment, landscaping, sidewalks, street lighting, roads and parking areas. Without limiting the generality of the foregoing, the Tenant waives as against the Landlord, and those for whom it is responsible in law, each claim and demand of every nature whatsoever for damage, loss or injury to such buildings, improvements and equipment, landscaping, sidewalks, street lighting, roads and parking areas and to property of the Tenant and each Subtenant in, upon or about the Lands and Premises which shall be caused by or result from fire or other perils, events or happenings which ought to have been covered by insurance pursuant to this section whether or not such claim or demand is covered by insurance.

14.2 Full Replacement Value. For the purposes of Section 14.1 "full replacement value" of any building, improvements or equipment, landscaping, sidewalks, street lighting, roads and parking areas shall be determined by the Tenant at the time the insurance is initially taken out and thereafter at least once every 12 months, and the Tenant shall promptly notify the Landlord in writing of each such determination, provided that the Landlord may at any time, by written notice to the Tenant, require the full replacement value of any building, improvement, equipment, landscaping, sidewalk, street lighting, road or parking area to be redetermined by an independent qualified valuator designated by the insurer's agent. Such redetermination shall be made promptly and the results thereof communicated in writing to the Tenant and the Landlord.

14.3 Respective Interests. The policies of insurance provided for in Section 14.1 shall name the Landlord as an insured and shall be payable to the Landlord, the Tenant and the Tenant's Mortgagee, as their respective interests may appear, and any loss adjustment shall require the written consent of each of them with an interest therein. The parties hereto agree

that the proceeds paid by any such insurer shall be applied to reconstruct the Premises, landscaping, sidewalks, street lighting, roads and parking areas and the Landlord, the Tenant and the Tenant's Mortgagee shall take all such actions to ensure that such funds are so applied; provided however, that if the Tenant is not required to commence and complete reconstruction of the Premises in accordance with Section 12.3 and elects not to do so, or if this Lease is terminated pursuant to either subsection 12.2(a) or 12.2(b) or Section 12.3, the proceeds from the insurance shall be applied, in priority, as follows:

- (a) first, towards payment of all moneys owing on the Tenant's Mortgagee's mortgage (including without limitation, any yield maintenance fee or similar amount);
- (b) second, but only if and to the extent required by the Landlord or the Tenant, toward clearing and restoring the Lands as nearly as possible to their condition prior to the commencement of construction;
- (c) third, towards payment of all moneys payable to the Landlord under this Lease; and
- (d) fourth, in payment to the Landlord and the Tenant in accordance with their interests therein,

and upon such application of the insurance proceeds, if this Lease has been terminated, then this Lease shall be of no further force or effect, or if this Lease has not been terminated, then the Tenant shall not be obligated to repair or rebuild or restore.

14.4 Liability Insurance. Throughout the Term the Tenant shall obtain and keep in force, and cause each Subtenant to obtain and keep in force general liability insurance fully insuring against liability of the Tenant and each Subtenant with respect to the Lands and Premises or arising out of the maintenance, use or occupation thereof. Such policy shall be in an amount of not less than \$5 Million per occurrence at the commencement of the Term, and thereafter in such amounts as the Landlord may reasonably require. The general liability policy shall name the Landlord, its Board of Governors, employees, servants and agents as additional insureds, and shall include a cross liability clause and broad form coverage for contractual liability. Such insurance shall be primary in respect of all claims arising out of this Agreement and shall not participate with nor be excess over any valid and collectable insurance carried by the Landlord. The Tenant shall obtain and keep in force, and cause each Subtenant to obtain and keep in force, liability insurance for all motor vehicles, owned and non-owned, operated on the Campus and such other types of insurance as the Landlord may reasonably require.

14.5 Approval. All of the insurance provided for in Section 14.1 and 14.4 and all renewals thereof shall be issued by such reputable and duly qualified insurers and in such form and substance as are approved by the Landlord, such approval not to be unreasonably withheld. All policies provided for in Sections 14.1 and 14.4 shall expressly provide that the policy shall not be cancelled or altered without 60 days' prior written notice to the Landlord, the Tenant, and that all rights of subrogation against the Landlord are waived. Upon the issue and each renewal thereof, each policy or a certified duplicate thereof or other satisfactory evidence of adequate insurance shall be delivered to the Landlord. Proof of payment of premiums for insurance shall also be delivered to the Landlord if requested.

15.0 ASSIGNMENT, SUBLETTING AND MORTGAGING

15.1 Assignment

- (a) The Tenant shall not sell, assign or transfer or part with possession of this Lease or any portion of the Term or the Lands and Premises or any interest therein, provided however the Tenant may grant Subleases pursuant to Sections 15.2, 15.3 and 15.4 and the Tenant may mortgage this Lease by sublease or assignment pursuant to Section 15.5.
- (b) Neither this Lease nor any Sublease nor the leasehold estate of the Tenant or any Subtenant in the Lands and Premises or any portion of the Lands and Premises shall be subject to involuntary assignment, transfer or sale, or to assignment, transfer or sale by operation of law in any manner whatsoever (except as expressly contemplated in Article 16.0), and any such attempted or purported involuntary assignment, transfer or sale shall be ineffective as against the Landlord.

15.2 Subleases. The Tenant may seek Subtenants for the Premises and may enter into written Subleases and agreements to grant Subleases, with the consent of the Landlord, such consent not to be unreasonably withheld. If the Landlord so requests, the Tenant shall provide to the Landlord, within 14 days of the request, an executed copy of every Sublease and agreement to part with possession of a self-contained dwelling unit in the Premises to which the Tenant is a party.

15.3 Limitation on Subleases. No Sublease or agreement to grant any Sublease shall grant rights to a Subtenant beyond the scope of this Lease except as provided in Section 15.10 and except with respect to mortgages by way of sublease granted to the Tenant's Mortgagee and a Subtenant shall have no rights to the Lands and Premises except under this Lease.

15.4 Requirements of Sublease. Each Sublease shall contain such reasonable terms and conditions as either the Tenant or the Landlord shall suggest from time to time. The Tenant agrees to provide to the Landlord from time to time a copy of the form of Sublease then in use by the Tenant and to notify the Landlord in writing of changes which are made to such form from time to time.

15.5 Tenant May Mortgage. The Tenant may assign or sublet by way of mortgage its interest in this Lease to an Approved Lender without the consent of the Landlord, but may not mortgage such interest to any Person other than an Approved Lender without the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed. All moneys borrowed and secured by a mortgage of the Tenant's interest in this Lease shall be used by the Tenant to pay the Minimum Rent or to reimburse the Tenant in connection with payment of the Minimum Rent, for work to be done on or off the Lands and Premises relating to this Lease, for tenant inducements to Subtenants, and/or for the payment of other obligations of the Tenant arising pursuant to this Lease. The Tenant shall advise the Landlord of the Tenant's intention to raise funds and secure the same by a mortgage of its interest in this Lease from time to time, as soon as possible after the Tenant determines to do so, and shall endeavour to give the Landlord 90 days' notice of such new financing prior to granting a mortgage of the Tenant's interest in this Lease.

15.6 No Release. INTENTIONALLY DELETED

15.7 Deliver Certificates. INTENTIONALLY DELETED

15.8 Landlord May Terminate Subleases. INTENTIONALLY DELETED

15.9 Extinguishment of Subleases. Subject to Section 15.10, upon termination, forfeiture or acceptance of surrender of this Lease as to all or any portion of the Lands prior to the expiry of the Term, all Subleases and other interests created by the Tenant in respect of such portion of the Lands and the rights of all persons claiming thereunder shall be extinguished.

15.10 Preservation of Subleases. Notwithstanding Section 15.9, upon the termination, forfeiture or acceptance of surrender of this Lease as to any Subleased Lands prior to the expiry of the Term, the Landlord shall recognize the rights and tenure of each Subtenant not then in default under its Sublease and shall grant quiet enjoyment of the Subleased Lands to the Subtenant for the balance of the term of its Sublease (but not beyond the final date of the Term), and shall observe and perform the covenants and obligations of the Tenant under the Sublease, all provided that, and as long as, the Subtenant:

- (a) pays to the Landlord the rent and any other moneys as provided in the Sublease as and when due under such Sublease;
- (b) attorns to the Landlord as tenant in respect of such Subleased Lands;
- (c) observes and performs each covenant, term and condition on its part to be observed and performed under the Sublease;
- (d) agrees in written form prescribed by the Landlord, acting reasonably, and prepared at the expense of the Subtenant that the Landlord shall be entitled to exercise each of the rights that the Tenant had under the Sublease;
- (e) executes and delivers all documents which the Landlord shall require to give effect to this Section 15.10;

and without limiting any other right of the Landlord, as to each Subtenant recognized by the Landlord, whether in conformity with the foregoing subsections or not, the liability under this Lease to the Landlord of the Tenant (including that under Articles 13.0 and 14.0) with respect to the Subleased Lands in favour of that Subtenant shall continue uninterrupted and in full force.

15.11 Landlord's Acknowledgment. Provided that a Sublease complies with the requirements of Section 15.4, the Landlord agrees that within 30 days after written request by any Subtenant, the Landlord will execute and deliver to that Subtenant a written acknowledgment whereby the Landlord agrees that Subtenant and its Sublease shall have the rights and protections provided under Section 15.10 of this Lease and that the Sublease complies with the requirements of Section 15.4 of this Lease.

16.0 RIGHTS OF TENANT'S MORTGAGEES

16.1 Cure Defaults. No termination of this Lease, or the exercise of its right of distress by the Landlord, shall be valid or effective against the Tenant's Mortgagee who has filed with the Landlord a copy of its mortgage together with a written notice specifying an address for notices to be given to such Tenant's Mortgagee hereunder, unless the Landlord has first given to the Tenant's Mortgagee the same amount of notice of the default or situation which would entitle the Landlord to terminate this Lease and such default or situation has not been corrected

within such time. The latter notice shall specify the nature of that default or situation and state the Landlord's intention to take such action. The Landlord shall not object to the Tenant's Mortgagee, prior to the expiry of the notice period, taking whatever reasonable steps it wishes to take to cure such default or rectify the situation. If the default cannot reasonably be cured or the situation cannot reasonably be rectified within such period and the Tenant's Mortgagee so notifies the Landlord, and advises the Landlord in writing that it will cure the default or the rectification of the situation as soon as reasonably possible, the Landlord agrees not to take the action specified in its notice. The exercise of such rights shall not relieve the Tenant of its obligations under this Lease. The Tenant's Mortgagee shall be given reasonable access to the Lands and Premises to cure any default by the Tenant.

16.2 Proceedings. If a Tenant's Mortgagee commences foreclosure or other realization proceedings under its mortgage (the "**Proceedings**") in respect of the Lease, the Landlord shall not, as against that Tenant's Mortgagee, terminate the Lease to which the Proceedings relate while the Proceedings are continuing on the ground of any default or situation entitling the Landlord to do so, if the Tenant's Mortgagee:

- (a) shall first have given to the Landlord notice of its mortgage, the Proceedings, and an address for service of notices hereunder;
- (b) actively prosecutes the Proceedings;
- (c) except for Non-Curable Defaults, cures any default in accordance with notice given under Section 16.1 or proceeds to complete the cure of any default which cannot reasonably be cured in accordance with the period specified in the notice given under Section 16.1; and
- (d) performs and observes all of the Tenant's covenants and agreements in the Lease other than those which are the subject of a Non-Curable Default.

A "**Non-Curable Default**" means the happening of any of the events described in Section 18.2 or any other non-financial default or circumstance which is of a nature which is not reasonably capable of being cured or remedied by the Tenant's Mortgagee.

16.3 Non-Curable Default. If this Lease is subject to termination by reason of a Non-Curable Default and the Tenant's Mortgagee has filed with the Landlord a copy of its mortgage together with a written notice specifying an address for notices to be given to the Tenant's Mortgagee, then no termination of this Lease by the Landlord by reason of a Non-Curable Default, shall be valid or effective against the Tenant's Mortgagee if the Tenant's Mortgagee:

- (a) commences Proceedings in respect of this Lease and diligently prosecutes the Proceedings;
- (b) as part of the Proceedings, applies to a Court of competent jurisdiction for the appointment of a receiver of the leasehold interest charged by the Tenant's Mortgagee's mortgage.
- (c) except for any Non-Curable Default, cures any default in accordance with notice given under Section 16.1 or proceeds to complete the cure of any such default which cannot reasonably be cured in accordance with the period specified in the notice given under Section 16.1; and

- (d) performs and observes all of the Tenant's covenants and agreements in this Lease other than those which are the subject of a Non-Curable Default.

16.4 **Attornment.** If and when the Tenant's Mortgagee acquires the leasehold interest of the Tenant pursuant to the Proceedings, then the Tenant's Mortgagee may continue in possession as tenant for the balance of the term of this Lease then remaining, provided that the Tenant's Mortgagee first attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of the Tenant under this Lease until the earlier of:

- (a) the expiration of the term of this Lease; or
- (b) the date on which the Tenant's Mortgagee assigns this Lease as permitted by it or as is otherwise agreed by the Landlord.

16.5 **New Lease.** If the Tenant's Mortgagee complies with the provisions of Section 16.2 or 16.3 and acquires the leasehold interest of the Tenant pursuant to the Proceedings or the leasehold interest of the Tenant is sold pursuant to the Proceedings to an assignee permitted by this Lease or as is otherwise agreed by the Landlord or this Lease is terminated as against the Tenant for default, then the Landlord shall, upon written request by the Tenant's Mortgagee within 90 days after such acquisition or sale, grant to the Tenant's Mortgagee or such assignee a new lease on the terms of this Lease.

16.6 **Right to Assign.** The Tenant's Mortgagee shall have the right to assign this Lease and the remaining term of it, subject to obtaining the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed, provided always that:

- (a) the Tenant's Mortgagee, a subsequent purchaser or assignee having cured all defaults under this Lease, except for Non-Curable Defaults, pursuant to Section 16.1 of this Lease, may sell, assign or sublet without restriction, prohibition or consent; and
- (b) the assignee covenants with the Landlord to observe and perform all of the covenants and obligations of the Tenant under this Lease, whereupon the Tenant's Mortgagee shall be released from liability for any obligations arising from and after the date of the assignment.

16.7 **Landlord's Agreement.** The Landlord and the Tenant agree to enter into an agreement with each Tenant's Mortgagee substantially in the form attached as Schedule "B", provided that the Landlord is indemnified by the Tenant or the Tenant's Mortgagee in respect of the costs it incurs in the preparation and execution of such agreement and also provided that if the loan made by the Tenant to the Tenant's Mortgagee is insured by Canada Mortgage and Housing Corporation ("**CMHC**"), the Landlord and the Tenant agree to enter into an agreement with each Tenant's Mortgagee substantially in the form attached as Schedule "C".

16.8 **Valid Termination.** Intentionally deleted.

16.9 **No Release.** No entry by a Tenant's Mortgagee pursuant to this Article 16.0 upon the Lands and Premises for the purpose of curing any default of the Tenant shall release or impair the continuing obligations of the Tenant.

16.10 **Recognition of Sublease Mortgagee.** If the Landlord is required to recognize the rights and tenure of a Subtenant pursuant to Section 15.10, the Landlord shall continue to recognize the rights of a Sublease Mortgagee of that Subtenant as set forth in this Article 16.0.

16.11 Priority between Tenant's Mortgagees. If there is more than one mortgage charging the leasehold interest of the Tenant, the right of a Tenant's Mortgagee to cure any default or contingency and to obtain the protections and rights under this Article 16.0 shall be based on the respective priorities of such mortgages.

16.12 Applicability of Article 16.0 to a Sublease Mortgagee. This Article 16.0 and Section 15.5 shall apply mutatis mutandis to any Approved Lender to any Subtenant. All references to Tenant's Mortgagee shall be read as references to Sublease Mortgagee, references to this Lease as references to the Sublease, references to Landlord as references to the Tenant and references to Tenant as references to Subtenant.

16.13 Landlord's Right to Pay Out Tenant's Mortgagee. The Landlord shall have the right but not the obligation after the Tenant's Mortgagee has accelerated the balance due and owing on its mortgage, to pay to the Tenant's Mortgagee all amounts owing on its mortgage (including, without limitation, any yield maintenance fee or similar amount) and in such event the Tenant's Mortgagee shall assign to the Landlord the mortgage and all other security which the Tenant's Mortgagee holds as security for its loan to the Tenant and the Landlord shall then be entitled to take possession of the Lands and Premises in accordance with the rights of the Mortgagee, subject to the Subleases.

17.0 SPECIAL RIGHTS OF THE LANDLORD

17.1 Entry. If the Landlord wishes to enter or to permit the City of Vancouver, the Province of British Columbia, or other governmental bodies, public utilities or other persons having legal right to do so, to enter upon the Lands and Premises for the purposes of installing underground water, oil, gas, steam, storm sewer, sanitary sewer and other pipelines and conduits or to grant or obtain an easement or right of way therefor, the Landlord shall apply in writing for the consent of the Tenant specifying the reason for entry or the nature and extent of such easement or right of way. The Tenant shall not unreasonably withhold its consent and shall use all reasonable efforts to obtain its Lender's consent to such entry or to such easement or right of way. If the Tenant reasonably denies the Landlord's request for such easement or right of way the Tenant shall specify and consent to a reasonable alternative easement or right of way. No activity conducted pursuant to this section shall interfere with the use of the Lands and Premises for the Permitted Activities or the stability of any building or improvement constructed on the Lands and Premises.

17.2 Reservation of Oil. The Landlord expressly reserves all oil, gas, hydrocarbons and other minerals of every type whatsoever in and under the Lands and Premises and the right to enter by its servants, agents and licensees upon the Lands and Premises to conduct the activities of exploring for, mining, extracting and removing the same without payment therefor to the Tenant. Prior to such entry the Landlord shall give the Tenant written notice describing in reasonable detail the activities which the Landlord proposes to undertake. No activity conducted pursuant to this section shall interfere with the use of the Lands and Premises for the Permitted Activities, the stability of any building or improvement constructed on the Lands and Premises. No operation for such exploration, mining, extraction or removal will be conducted on or from the Lands and Premises unless it is at a depth beneath the surface as will ensure no interference with the use of the Lands and Premises as agreed herein or the stability of any building or improvement constructed on the Lands and Premises.

17.3 Landlord May Mortgage. The Landlord expressly reserves the right to mortgage its interest in the Lands and to mortgage its rights under this Lease provided that such mortgage is expressly subject to this Lease. The Landlord shall reimburse the Tenant for, and indemnify

the Tenant against, any loss, cost (including reasonable legal costs) or damages actually suffered or incurred by the Tenant as a result of or arising out of the exercise by the Landlord of any of the rights reserved in this Section 17.3.

17.4 Easements. If during the Term the Landlord reasonably requires an easement for utilities and facilities or systems on or under the Lands and Premises or the expansion of any such easement, the Tenant shall consent to and shall use all reasonable efforts to obtain its lender's consent to the grant of such easement provided the same does not interfere with the Tenant's or Subtenants use or occupation of the Lands and Premises. In the event the Tenant, being required to do so, does not wish to grant an easement, the Tenant shall pay the Landlord the sum equal to the cost of constructing and relocating the utilities, facilities and systems through an alternate route less the estimated cost for the proposed installation or expansion of such utilities, facilities and systems that would have been incurred had the same not been relocated. The Landlord may enter the Lands and Premises alongside the easement as may be reasonably necessary to maintain and replace the works within the easement. The Landlord covenants that any and all damage to the Lands and Premises occasioned by its entry for the purposes aforesaid, shall be replaced and/or repaired to at least the same condition the said Lands and Premises were at the time of entry.

18.0 DEFAULT, TERMINATION AND EXPIRY

18.1 Default. If the Tenant:

- (a) fails or neglects to make any payment due to the Landlord, in accordance with the terms of this Lease, within 30 days after the Landlord gives the Tenant written notice that the payment is overdue; or
- (b) abandons the Premises or fails or neglects to cure any default of any of the other terms, covenants, agreements, or conditions herein on its part to be observed, kept or performed, within 60 days after the Landlord gives to the Tenant written notice of such default, or if a longer period is required to cure the same, within such 60-day period the Tenant has commenced to cure such default and continues diligently thereafter to cure such default;

then in such event the Landlord may, subject to Article 16.0, by written notice to the Tenant forthwith terminate this Lease. Such right to terminate this Lease shall be in addition to any additional rights that exist through the failure of the Tenant to comply with any other covenant or condition herein.

18.2 Bankruptcy and Other Circumstances. The Tenant covenants that:

- (a) if any proceedings under the *Bankruptcy and Insolvency Act* of Canada, the *Companies Creditors Assistance Act* or other statute of similar purport are commenced against the Tenant, and such proceedings are not dismissed before an adjudication of bankruptcy, the appointment of a Trustee, or the confirmation of a composition, arrangement or plan or reorganization; or
- (b) if the Tenant is adjudged insolvent or makes an assignment for the benefit of its creditors or otherwise takes the benefit of any statute for the benefit of insolvent debtors; or

- (c) if a writ of attachment or execution is levied on the leasehold estate hereby created or any property of the Tenant upon the Lands and Premises and is not released or satisfied within 30 days thereafter; or
- (d) if a receiver, trustee, sequestrator or liquidator is appointed in any proceeding or action with authority to take possession or control of the leasehold interest of the Tenant hereunder, any portion of the Lands and Premises or the business conducted thereon by the Tenant, and such appointee is not discharged within a period of 45 days after his appointment; or
- (e) if any sale, transfer, assignment, sublease or parting with possession which is contrary to Article 15.0 occurs; or
- (f) if any resolution is passed or other step taken for the winding-up, liquidation or other termination of the existence of the Tenant and is not abandoned prior to the completion of the winding-up, liquidation or other termination of existence,

each such event shall be deemed to constitute a default under this Lease by the Tenant and, subject to Article 16.0, shall, at the election of the Landlord by written notice, but without entry or other action of the Landlord, terminate this Lease as to all or any portion of the Lands and Premises immediately upon the sending of such notice and in respect of such terminated portion of all rights of the Tenant under this Lease and all rights of any persons claiming under the Tenant, shall thereupon cease and all Rent then due plus Rent for the next following three months shall forthwith become due and be payable to the Landlord, provided that if the Tenant has sublet, assigned or mortgaged or otherwise parted with possession of the Land and Premises in accordance with the terms of this Lease, the Landlord will not terminate this Lease with respect to the interest of such Subtenant, assignee, mortgagee or other party.

18.3 Termination. In the event of termination or expiration of the Lease, the Tenant agrees to deliver the Premises to the Landlord in reasonable repair, except for normal wear and tear and any damage referred to in Article 12.0, free and clear of all rights, mortgages, privileges and encumbrances placed thereon by or on account of the Tenant, except the interests of any Subtenants, assignees or mortgagees in accordance with the terms of this Lease and without indemnity or compensation to the Tenant for any reason whatsoever other than any compensation which may be due by the Landlord to the Tenant pursuant to this Lease prior to such termination; loss or damage from fire or other perils covered by the insurance policy effected by the Tenant excepted.

18.4 Force Majeure. Notwithstanding anything in this Lease, the Tenant shall not be in default with respect to the performance of any of the obligations within this Lease, if the default is due to any strike, lockout, labour dispute, civil commotion, invasion, rebellion, hostilities, sabotage, delay or inability to obtain supplies or labour or permits or approvals or consents contemplated under this Lease or other like cause beyond the reasonable control of the Tenant or due to acts of God.

19.0 INSPECTION

19.1 Inspection of the Lands and Premises. The Landlord, its servants, agents, contractors and representatives, shall be entitled at all reasonable times (after written notice given to the Tenant specifying the purpose) to go upon the Lands and Premises and into each building and other improvement thereon for any of the following purposes:

- (a) inspecting the same;
- (b) inspecting the performance by the Tenant of the terms, covenants, agreements and conditions of this Lease, and by any permitted Subtenant claiming by, through or under the Tenant of any of its obligations under its sublease;
- (c) reading utility metres;
- (d) posting and keeping posted thereon notices as required or permitted by any law or regulation; or
- (e) any other reasonable purpose.

The Landlord will give reasonable notice to the Tenant of the Landlord's intention to enter the premises and provide an opportunity of the Tenant to accompany the Landlord during such entry. The Landlord acknowledges that the nature of the undertakings in the Premises may be confidential or sensitive and access to the Landlord may be delayed if such access would be likely to interfere with the undertakings.

20.0 GENERAL TERMS AND INTERPRETATIONS

20.1 Rules and Regulations. Subject to the terms of this Lease, the Tenant shall observe and cause those for whom the Tenant is responsible in law, to observe such rules and regulations with respect to the use of the Complementary Facilities and conduct on the Campus and amendments and changes therein, not inconsistent with the permitted use of the Lands and Premises and the terms of this Lease, as may hereinafter be made by the Landlord of which notice in writing shall be given to the Tenant and all such rules and regulations, including without limitation, UBC's Rules and Regulations, shall be deemed to be incorporated into and form a part of this Lease to the extent that the same are not inconsistent with the terms of this Lease.

20.2 No Waiver Implied. No condoning, excusing or overlooking by the Landlord of any default, breach or non-observance at any time or times in respect of any covenant, proviso or condition herein contained shall operate as a waiver of the Landlord's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat in any way the rights of the Landlord in respect of any such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord save only an express waiver in writing.

20.3 Labour Disputes. The Landlord and the Tenant covenant to cooperate with each other in minimizing the effect of any labour dispute which any such party may have upon the operations of the other party. The Landlord and the Tenant covenant that in the event of a labour dispute, the party involved in such dispute shall take all appropriate steps to protect the party not involved in the dispute from interference with its or their operations caused by the dispute and without limiting the generality of the foregoing, to eliminate picketing which may cause such interference. Such steps shall be taken at the expense of the party involved in the dispute and the non-involved party shall have the right to retain counsel at its own expense to recommend to the party involved in the dispute appropriate action to protect the party not involved. The party involved shall give due consideration to the recommendation of counsel for the party not involved. This section shall not be construed to require a party involved in a dispute to meet the demands of any party with whom it has the dispute.

20.4 Limit on Claims. Neither the Landlord nor the Tenant shall bring any action against or claim damages for compensation from the other for any loss, cost, expense or liability suffered as a result of a labour dispute other than in respect of a breach of the covenant contained in these Sections 20.3 and 20.4.

20.5 No Prejudice. No exercise of a specific right or remedy by the Landlord 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.

20.6 Entry. The Landlord and its agents may enter the Lands and Premises at all reasonable times to examine them and to show them to a prospective lessee during the last year of the Term.

21.0 QUIET ENJOYMENT

21.1 If the Tenant without default pays the Rent and Additional Rent at the times and in the manner herein provided and keeps and performs all the terms, covenants and agreements herein on the Tenant's part to be kept and performed, the Tenant may possess and enjoy the Lands and Premises for the Term without disturbance or interruption by the Landlord or any person claiming by, through or under the Landlord but subject to the rights of the Landlord herein.

22.0 OVERHOLDING

22.1 If the Tenant remains in possession of the Lands and Premises after the end of the Term, there is no tacit or other renewal of this Lease, and the Tenant will be considered to be occupying the Lands and Premises as a tenant from month-to-month and otherwise upon the terms and conditions set forth in this Lease, so far as applicable.

23.0 EXPROPRIATION

23.1 If the Lands and Premises or any portion thereof are expropriated or condemned at any time during the term, the Landlord shall have no liability to the Tenant for the Landlord's inability to fulfill any of its covenants herein, but in each such event the Landlord and the Tenant may seek compensation separately from the expropriating authority but shall cooperate in seeking such compensation, and if a joint award of compensation is made, it shall be divided as agreed between the Landlord and the Tenant and failing agreement within 90 days of the award, as determined by arbitration hereunder.

24.0 INDEMNITY BY THE INDEMNIFIER

24.1 INTENTIONALLY DELETED

25.0 MISCELLANEOUS

25.1 Time. Time shall be of the essence of this Lease.

25.2 No Representations. The parties acknowledge that there have been no representations made by the other party which are not set out in the Lease or other written agreement between the parties.

25.3 Proper Law. The Lease shall be construed and governed by the laws of the Province of British Columbia. Should any provision or provisions of the Lease and or its

conditions be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions and conditions shall remain in force and be binding upon the parties hereto as though the said provision or provisions or conditions had never been included.

25.4 No Joint Venture etc.. It is understood and agreed that nothing contained in this Lease nor in any acts of the parties hereby shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

25.5 Use of Name. The Tenant shall not, nor shall any Subtenant, without the prior written consent of the Landlord, use the Landlord's name in any publication, advertisement, notice, document or otherwise and shall not hold itself out as being associated with the Landlord.

25.6 Enurement. Subject to the provisions of the Lease respecting assignment by the Tenant, this indenture shall enure to the benefit of and be binding upon the Landlord, its successors and assigns and the successors and permitted assigns of the Tenant.

25.7 Arbitration. If a dispute arises as to the meaning of any section in this Agreement, the rights of the Landlord and the Tenant hereunder, the appointment of any party to be appointed herein, or the decision of any party so appointed, and the parties are unable to resolve such dispute, the matter in dispute shall be referred to a single arbitrator appointed pursuant to the *Arbitration Act* and amendments thereto. The decision of any arbitrator shall be final and binding upon the parties, including any decision of the arbitrator with respect to the costs of arbitration.

25.8 Interest. If the Tenant defaults in making any payment due to the Landlord under this Lease, the Tenant shall pay to the Landlord from the date the payment was due until the date payment is actually made to the Landlord, interest on the amount due at the rate which is the aggregate of 2% per annum plus the Prime Rate, calculated monthly, not in advance. It is agreed that if the Prime Rate changes, and so often as the same occurs at any time the rate of interest charged under this Lease shall change on the same day and in the same amount as the Prime Rate changed. Acceptance of any late payment without interest shall not constitute a waiver of the Landlord's right to require interest on the amount due.

25.9 Right to Distrain. Subject to Article 16.0, in the event of default in payment of any amount payable to the Landlord under this Lease, the Landlord may seize and sell the Tenant's property on the Lands and apply the proceeds of such sale first to the costs of the seizure and sale, then to interest payable on unpaid amounts, and then to payment of the unpaid amounts. The Landlord shall not levy distress against nor seize or sell any property of a Subtenant. If the Tenant vacates the Lands leaving any Rent or other amount payable under this Lease unpaid, the Landlord, in addition to any remedy otherwise provided by law, may seize and sell the property of the Tenant removed from the Lands at any place to which the Tenant or any other person may have removed such property in the same manner as if such property had remained upon the Lands.

25.10 Notice. Any notice, demand, request, consent or objection required or contemplated to be given or made by any provision of this Lease shall be given or made in writing and may be either delivered personally or sent by fax or registered mail, postage prepaid, addressed to the Landlord at:

The University of British Columbia
6th Floor, Walter C. Koerner Library
1958 Main Mall
Vancouver, British Columbia
V6T 1Z2

Attention: The Vice-President, Finance

or addressed to the Tenant at:

UBC Properties Investments Ltd.
200 - 3313 Shrum Lane
Vancouver, British Columbia
V6S 0C8

Attention: The President

or to such other address as such party from time to time may specify by written notice to the other. The time of giving or making such notice, demand, request, consent or objection shall be, if delivered, when delivered, and if mailed, then on receipt at such address.

25.11 Captions. The captions appearing in this agreement have been inserted as a matter of convenience only and in no way define, limit or enlarge the meaning of this agreement or any provision thereof.

25.12 Severability. In the event that any part, section, paragraph or subsection of this Lease shall be held to be indefinite, invalid, illegal, or otherwise voidable or unenforceable, the entire Lease shall not fail on account thereof, and the balance of the Lease shall continue in full force and effect.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands as of the day and year first above written on Schedule "D" of the Form C General Instrument – Part 1 to which this Lease is attached.

Schedule "A" to the Lease
Reference Plan of the Lands and the Easement Area

**Schedule "B" to the Lease (Section 16.7 With No CMHC Insurance) Form of Agreement
With the Tenant's Mortgagee
AGREEMENT AMONG THE LANDLORD,
THE TENANT AND THE TENANT'S MORTGAGEE**

This Agreement is made as of the <@> day of <@>, 20<@>

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA, a British Columbia university created pursuant to the *University Act*, with an address of 6th Floor, Walter C. Koerner Library, 1958 Main Mall, Vancouver, British Columbia, V6T 1Z2

(hereinafter called the "**Landlord**")

OF THE FIRST PART

AND:

UBC PROPERTIES INVESTMENTS LTD., a British Columbia company having an office at 200 - 3313 Shrum Lane, Vancouver, British Columbia, V6S 0C8, as Trustee, for UBC Properties Trust

(hereinafter called the "**Tenant**")

OF THE SECOND PART

AND:

<@>

(hereinafter called the "**Mortgagee**")

OF THE THIRD PART

WHEREAS:

- A. The Landlord leased to the Tenant the premises (the "**Premises**") described in and demised by the lease dated for reference purposes <@> ("**Lease**") on the terms and conditions contained in the Lease;
- B. The Lease was registered in the Land Title Office under number _____ against the lands legally described in Schedule "A" attached to this Agreement;
- C. By a mortgage dated <@>, 20<@> (the "**Mortgage**") from the Tenant as mortgagor to the Mortgagee, the Tenant did demise and sublease by way of mortgage all of the Tenant's right, title and interest in and to the premises described in the Lease (save and except the last day thereof);
- D.. The Mortgagee is a "**Tenant's Mortgagee**" as defined in the Lease and desires to have every opportunity to protect its interest and the security of the Mortgage, and to have the advantage of the covenants between the Landlord and the Tenant with respect to protection of the Mortgagee's interest as contained in the Lease;

E. The Landlord and the Tenant have agreed to enter into this Agreement for the purpose of providing adequate security for the Mortgagee.

NOW THEREFORE in consideration of the premises and in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto hereby covenant and agree, each with the other, as follows:

1. The Tenant acknowledges and represents to the Mortgagee that the Tenant has entered or intends to enter into possession of the Premises pursuant to the terms of the Lease.
2. The Landlord and the Tenant warrant and represent to the Mortgagee that:
 - (a) all necessary consents or approvals to the granting of the Lease and the Mortgage required under applicable legislation have been obtained and any relevant reservations or limitations in such legislation or affecting the Premises have been complied with and observed and the Landlord has the full right and authority to grant the Lease of the Premises to the Tenant for the use as provided in the Lease;
 - (b) the Landlord has not directed the Tenant to take any remedial action pursuant to the Lease; and
 - (c) the Landlord has not asserted against the Tenant any claim for indemnification pursuant to the Lease.
3. The Tenant warrants and represents to the Landlord and the Mortgagee that all of the issued and outstanding shares in the capital of the Tenant are owned legally and beneficially by the Landlord.
4. The Landlord acknowledges, agrees and confirms to and with the Mortgagee that:
 - (a) the Mortgagee is an Approved Lender (as defined in the Lease) who is a mortgagee of the interest of the Tenant under the Lease and is defined as such in the Lease;
 - (b) the Mortgage will secure monies used by the Tenant for the Lands and the Premises for work done off the Lands by the Tenant and related to the Lease or the Lands and the Premises, for the Lease or for the obligations of the Tenant arising therefrom;
 - (c) the Lease is in good standing and has not been amended;
 - (d) the Mortgagee shall be entitled to all of the rights, privileges and benefits accruing to a Tenant's Mortgagee as provided in Section 15.5 of the Lease and the whole of Article 16.0 (comprising Sections 16.1 to 16.13 inclusive thereof) of the Lease to the same extent as for any Tenant's Mortgagee thereunder;
 - (e) a Non-Curable Default under the Lease shall include any of the events described in Section 18.2 of the Lease;

- (f) the Mortgagee shall have no obligation or liability to cure any Non-Curable Default under the Lease in order to invoke, enforce or derive any benefits or advantages from any of the provisions of Article 16.0 of the Lease (comprising Sections 16.1 to 16.13 inclusive thereof);
- (g) there has been no prepayment of rent under the Lease except in accordance with the terms thereof, if any;
- (h) there are no rental arrears outstanding under the Lease;
- (i) the Landlord has not determined to act or given notice of its intention to act upon any default under the Lease, and to the best knowledge of the Landlord there has been no default under the Lease by either the Landlord or the Tenant;
- (j) any buildings and other improvements constructed on the Premises will become and remain the property of the Tenant during the term of the Lease.

5. The Landlord acknowledges receipt of notice of the Mortgage and a copy of the Mortgage from the Mortgagee and of written notice specifying an address for notices to be given to the Mortgagee, such address being the address of the Mortgagee as shown on the first page hereof, all in accordance with Article 16.0 and Section 14.3 of the Lease and the Landlord hereby covenants and agrees to grant and provide to the Mortgagee all rights, assurances and notices afforded under the terms of the Lease to a Tenant's Mortgagee as defined in the Lease.

6. The Landlord and the Tenant will at any time and from time to time, upon not less than 30 days' prior written request by the Mortgagee, execute, acknowledge and deliver to the Mortgagee a statement in writing certifying:

- (a) that the Lease is unmodified and in full force and effect or, if there have been any modifications, that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which the rent or other charges payable under the Lease have been paid, provided that the request specifies the charges in respect of which such information is required; and
- (c) so far as the maker of the statement is aware, the other party to the Lease is not in default under any provision of the Lease, or, if in default, the particulars thereof.

7. The Tenant and the Landlord covenant and agree with the Mortgagee that:

- (a) they will not accept a surrender of the Lease, in whole or in part, without the prior written consent of the Mortgagee;
- (b) they will not agree to any modification or amendment to the Lease:
 - (i) which may materially adversely affect the Mortgage or the Mortgagee's security, without the prior written consent of the Mortgagee; or
 - (ii) which does not materially adversely affect the Mortgage or the Mortgagee's security, without giving the Mortgagee 30 days' prior written notice of such modification or amendment.

8. Neither the Mortgagee nor any receiver or receiver-manager appointed thereby nor any assignee, transferee or purchaser of the Lease pursuant to enforcement proceedings initiated by the Mortgagee shall, unless it elects to do so, be subject to or bound by any other agreements between the Landlord and the Tenant.

9. If the Landlord and the Tenant cannot agree as to any matters regarding the Lease and they decide that the resolution of the matter is to be determined by arbitration pursuant to the arbitration provisions of the Lease, the Mortgagee shall be given adequate notice of such arbitration proceeding and if in the reasonable opinion of the Mortgagee, such proceeding may affect the Mortgage or the Mortgagee's security, the Mortgagee shall be given a reasonable opportunity by the Tenant and the Landlord to participate in the arbitration proceedings

10. If the Mortgagee shall have cured any default in the payment of rent or any other amount required to be paid by the Tenant under the Lease and shall continue to pay currently such monetary obligations as and when the same fall due, or if the Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction over any proceeding involving the Tenant, from commencing or prosecuting foreclosure or other appropriate proceeding or from obtaining possession of the Premises, then the time for commencing or prosecuting such foreclosure or other proceedings or for curing defaults (other than payment of rent or any other amount required to be paid by the Tenant under the Lease) shall be extended for the period of such prohibition or injunction.

11. The Landlord has filed a notice of interest in the land title office pursuant to paragraph 3(b) of the *Builders Lien Act* stating that the Landlord is giving notice that it will not be responsible for any improvements done to the Lands or improvements thereon, unless the improvements are undertaken at the express request of the Landlord.

12. If the Lease is terminated, surrendered, disclaimed or forfeited and as a result the Tenant ceases to have any leasehold interest in the Premises, all covenants and obligations of the Tenant hereunder shall be assumed by the Landlord without any further act or agreement of the parties.

13. The Mortgagee agrees that if it gives any written notice of default to the Tenant under the Mortgage, it will concurrently therewith give a copy of such notice to the Landlord at the address specified on page 1 of this Agreement and the Landlord shall have the right to cure such default.

14. The Mortgagee covenants and agrees that if the Tenant defaults under the Lease and the Mortgagee demands payment of the full principal sum owing under or secured by the Mortgage and commences foreclosure or other realization proceedings under the Mortgage, the Landlord shall have the right to require the Mortgagee to assign the Mortgage to the Landlord (or to another entity nominated by the Landlord in which the Landlord has an interest) upon payment to the Mortgagee of the principal sum, accrued interest, costs and any other moneys secured by or to which the Mortgagee is otherwise entitled, under or pursuant to the Mortgage.

15. The Tenant agrees to pay the costs of the Landlord incurred in connection with this Agreement.

16. This Agreement shall be deemed to terminate at such time as the Mortgage has been paid in full in accordance with the terms and conditions therein contained and, if the Mortgage has been registered, is discharged from the title to the Lands and Premises.

17. The Tenant hereby acknowledges and agrees that nothing contained in this Agreement shall in any way release or limit the covenants and obligations of the Tenant under the Mortgage or the Lease.

18. The Tenant expressly consents to the exchange of notices or information between the Landlord and the Mortgagee as contemplated herein, including in particular, but without limiting the generality of the foregoing, the giving to the Landlord or Mortgagee as the case may be of a copy of any written notice to the Tenant of default.

19. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF this Agreement has been executed as of the date first above written.

SIGNED FOR AND ON BEHALF of)
THE UNIVERSITY OF BRITISH)
COLUMBIA by:)
)
)
_____)
Authorized Signatory)
)
_____)
Authorized Signatory)

SIGNED FOR AND ON BEHALF of)
UBC PROPERTIES INVESTMENTS LTD.)
as Trustee for UBC Properties Trust by:)
)
)
_____)
Authorized Signatory)
)
_____)
Authorized Signatory)

SIGNED FOR AND ON BEHALF of)
<@> by:)
)
)
_____)
Authorized Signatory)
)
_____)
Authorized Signatory)

**Schedule "C" to the Lease (Section 16.7 With CMHC Insurance)
Form of Agreement With the Tenant's CMHC Insured Mortgagee
AGREEMENT AMONG THE LANDLORD,
THE TENANT AND THE TENANT'S MORTGAGEE**

This Agreement is made as of the <@> day of <@>, 20<@>

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA, a British Columbia university created pursuant to the *University Act*, with an address of 6th Floor, Walter C. Koerner Library, 1958 Main Mall, Vancouver, British Columbia, V6T 1Z2

(hereinafter called the "**Landlord**")

OF THE FIRST PART

AND:

UBC PROPERTIES INVESTMENTS LTD., a British Columbia company having an office at 200 - 3313 Shrum Lane, Vancouver, British Columbia, V6S 0C8, as Trustee, for UBC Properties Trust

(hereinafter called the "**Tenant**")

OF THE SECOND PART

AND:

<@>

(hereinafter called the "**Mortgagee**")

OF THE THIRD PART

WHEREAS:

- A. The Landlord leased to the Tenant the lands and premises (together the "**Premises**") described in and demised by the lease dated for reference purposes the <@> day of <@>, 20<@> (the "**Lease**") on the terms and conditions contained in the Lease;
- B. The Lease was registered in the Land Title Office under number <@> against the lands legally described in Schedule "A" attached to this Agreement.
- C. By a mortgage dated for reference purposes the <@> day of <@>, 20<@> (the "**Mortgage**") from the Tenant as mortgagor to the Mortgagee, the Tenant did demise and sublease or assign by way of mortgage all of the Tenant's right, title and interest in and to the Premises (save and except the last month thereof);
- D. The Mortgagee has insured the Mortgage with Canada Mortgage and Housing Corporation ("**CMHC**") pursuant to Certificate of Insurance No. <@> dated 20<@> - <@> - <@>, and the special conditions forming part thereof (the "**Certificate of Insurance**");

E. The Mortgagee is a "**Tenant's Mortgagee**" as defined in the Lease and desires to protect its interest and the security of the Mortgage, and to have the advantage of the covenants between the Landlord and the Tenant with respect to protection of the Mortgagee's interest as contained in the Lease and in this Agreement;

F. The Landlord has agreed that if CMHC becomes the holder of the Mortgage or of the leasehold interest as a result of a claim being made by the Mortgagee under the Certificate of Insurance, that CMHC will be the holder of the leasehold interest as defined in the Lease and in such event CMHC will have the advantage of the covenants between the Landlord and the Tenant with respect to protection of the Mortgagee's interest as contained in the Lease and in this Agreement;

G. The Landlord and the Tenant have agreed to enter into this Agreement for the purpose of providing adequate security for the Mortgagee and CMHC and to ensure that the Lease, as modified in this Agreement is in compliance with the requirements of CMHC.

NOW THEREFORE in consideration of the premises and in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto hereby covenant and agree, each with the other, as follows:

1. The Tenant acknowledges and represents to the Mortgagee that the Tenant has entered or intends to enter into possession of the Premises pursuant to the terms of the Lease.

2. The Landlord and the Tenant warrant and represent to the Mortgagee that:

- (a) all necessary consents or approvals to the granting of the Lease and the Mortgage required under applicable legislation have been obtained and any relevant reservations or limitations in such legislation or affecting the Premises have been complied with and observed and the Landlord has the full right and authority to grant the Lease of the Premises to the Tenant for the use as provided in the Lease;
- (b) the Landlord has not directed the Tenant to take any remedial action pursuant to the Lease; and
- (c) the Landlord has not asserted against the Tenant any claim for indemnification pursuant to the Lease.

3. The Tenant warrants and represents to the Landlord and the Mortgagee that all of the issued and outstanding shares in the capital of the Tenant are owned legally and beneficially by the Landlord.

4. The Landlord acknowledges, agrees and confirms to and with the Mortgagee that:

- (a) the Mortgagee is an Approved Lender (as defined herein and in the Lease) who is a mortgagee of the interest of the Tenant under the Lease and is defined as such in the Lease;
- (b) if CMHC becomes the holder of the Mortgage or of the Leasehold estate in the Lands, as a result of a claim being made by the Mortgagee under the Certificate of Insurance, CMHC will become a Tenant's Mortgagee as defined in the Lease

and in such event all references in this Agreement or in the Lease, to Mortgagee or Tenant's Mortgagee shall be read and construed as being references to CMHC;

- (c) the Mortgage will secure monies used by the Tenant for the Lands and the Premises and for the Lease or for the obligations of the Tenant arising therefrom;
- (d) the Lease is in good standing and has not been amended;
- (e) the Mortgagee shall be entitled to all of the rights, privileges and benefits accruing to a Tenant's Mortgagee as provided in Section 15.5 of the Lease and the whole of Article 16.0 (comprising Sections 16.1 to 16.13 inclusive thereof) of the Lease to the same extent as for any Tenant's Mortgagee thereunder and for greater certainty the Landlord agrees that if the Tenant defaults under the Mortgage, then the Tenant's Mortgagee may take possession of the Lands and Premises, both as defined in the Lease, collect the rents and otherwise administer the Lands and Premises in accordance with the terms of the Lease as and where modified and amended by this agreement;
- (f) a Non-Curable Default under the Lease shall include any of the events described in Section 18.2 of the Lease;
- (g) the Tenant's Mortgagee shall have no obligation or liability to cure any Non-Curable Default under the Lease in order to invoke, enforce or derive any benefits or advantages from any of the provisions of Section 16 of the Lease (comprising Sections 16.1 to 16.13 inclusive thereof);
- (h) the Minimum Rent, as defined in the Lease, has been fully prepaid by the Tenant to the Landlord for the entire Term, as defined in the Lease;
- (i) there are no rental arrears outstanding under the Lease;
- (j) the Landlord has not determined to act or given notice of its intention to act upon any default under the Lease, and to the best knowledge of the Landlord there has been no default under the Lease by either the Landlord or the Tenant;
- (k) any buildings and other improvements constructed on the Premises will become and remain the property of the Tenant during the term of the Lease;
- (l) for greater certainty the Service Levy, as defined in the Lease, means and annual charge levied by the Landlord against tenants with premises on the Campus for the provision of and use of certain services, sometimes provided by municipalities or other public authorities, and for the use of the Complementary Facilities both of which are provided by the Landlord to all tenants located on the Campus, in an amount equal to the Fair Market Value of the Lands and Premises as determined during the previous Lease Year, multiplied by the difference between the general mill rate of the City of Vancouver levied on properties put to similar uses as the Lands and Premises and the general mill rate imposed by the Surveyor of Taxes for unorganized territories on same class properties in each case, so that the total of the Taxes levied on the Lands and Premises by the Surveyor of Taxes and the amount of the Service Levy is approximately what the Taxes would have been if the Lands and Premises had been located in the City of Vancouver;

- (m) Sales Taxes, as defined in the Lease, during the period of any foreclosure action, would be limited to goods and services taxes and/or harmonized sales taxes, if and when the latter are levied in the Province of British Columbia, or any similar tax which is brought in, either in addition to such taxes or in replacement of such taxes.

5. The Landlord acknowledges receipt of notice of the Mortgage and a copy of the Mortgage from the Mortgagee and of written notice specifying an address for notices to be given to the Mortgagee, such address being the address of the Mortgagee as shown on the first page hereof, all in accordance with Article 16.0 and Section 14.3 of the Lease and the Landlord hereby covenants and agrees to grant and provide to the Mortgagee all rights, assurances and notices afforded under the terms of the Lease to a Tenant's Mortgagee as defined in the Lease.

6. The Landlord and the Tenant will at any time and from time to time, upon not less than 30 days' prior written request by the Mortgagee, execute, acknowledge and deliver to the Mortgagee a statement in writing certifying:

- (a) that the Lease is unmodified and in full force and effect or, if there have been any modifications, that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which the rent or other charges payable under the Lease have been paid, provided that the request specifies the charges in respect of which such information is required; and
- (c) so far as the maker of the statement is aware, the other party to the Lease is not in default under any provision of the Lease, or, if in default, the particulars thereof.

7. The Tenant and the Landlord covenant and agree with the Mortgagee that:

- (a) the Landlord will not accept a surrender of the Lease, in whole or in part, without the prior written consent of the Mortgagee;
- (b) they will not agree to any modification or amendment to the Lease.

8. Neither the Mortgagee nor any receiver or receiver-manager appointed thereby nor any assignee, transferee or purchaser of the Lease pursuant to enforcement proceedings initiated by the Mortgagee shall, unless it elects to do so, be subject to or bound by any other agreements between the Landlord and the Tenant.

9. If the Landlord and the Tenant cannot agree as to any matters regarding the Lease and they decide that the resolution of the matter is to be determined by arbitration pursuant to the arbitration provisions of the Lease, or other dispute resolution process, the Mortgagee shall be given adequate notice of such arbitration proceeding or other process and if the Mortgagee considers that such proceeding or other process may affect the Mortgage or the Mortgagee's security, the Mortgagee shall be given a reasonable opportunity by the Tenant and the Landlord to participate in the arbitration proceedings.

10. If the Mortgagee shall have cured any default in the payment of rent or any other amount required to be paid by the Tenant under the Lease and shall continue to pay currently such monetary obligations as and when the same fall due, or if the Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction over any proceeding involving

the Tenant, from commencing or prosecuting foreclosure or other appropriate proceeding or from obtaining possession of the Premises, then the time for commencing or prosecuting such foreclosure or other proceedings or for curing defaults (other than payment of rent or any other amount required to be paid by the Tenant under the Lease) shall be extended for the period of such prohibition or injunction. The Landlord, the Tenant and the Mortgagee agree each with the other that, provided the Mortgagee, a subsequent purchaser or assignee have cured all defaults under this Lease, except for Non-Curable Defaults, pursuant to Section 16.1 of the Lease), any sale or assignment of the Tenant's leasehold interest in the Land and Premises and the Lease, by such Mortgagee, subsequent purchaser or assignee, may be made to any purchaser or assignee without restriction, prohibition, or consent notwithstanding anything to the contrary contained in the Lease and specifically contained in Article 1.0 Definitions, Article 6.0 Use of Land and Premises, Article 15.0 Assignment, Subletting and Mortgaging, and Article 16.0 Rights of Tenant's Mortgagees, specifically Sections 16.4 and 16.6 thereof, all as amended by this Agreement, so long as such Mortgagee, subsequent purchaser or assignee first attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of the Tenant under the Lease, as modified herein.

11. The Landlord has filed a notice of interest in the land title office pursuant to paragraph 3(b) of the *Builders Lien Act* stating that the Landlord is giving notice that it will not be responsible for any improvements done to the Lands or improvements thereon, unless the improvements are undertaken at the express request of the Landlord.

12. If the Lease is terminated, surrendered, disclaimed or forfeited and as a result the Tenant ceases to have any leasehold interest in the Premises, all covenants and obligations of the Tenant hereunder shall be assumed by the Landlord without any further act or agreement of the parties.

13. The Mortgagee agrees that if it gives any written notice of default to the Tenant under the Mortgage, it will concurrently therewith give a copy of such notice to the Landlord at the address specified on page 1 of this Agreement and the Landlord shall have the right to cure such default.

14. The Mortgagee covenants and agrees that if the Tenant defaults under the Lease and the Mortgagee demands payment of the full principal sum owing under or secured by the Mortgage and commences foreclosure or other realization proceedings under the Mortgage, the Landlord shall have the right for a period of 60 days following receipt of a notice in writing from the Mortgagee with respect thereto, to require the Mortgagee to assign the Mortgage to the Landlord (or to another entity nominated by the Landlord in which the Landlord has an interest) upon payment to the Mortgagee of the principal sum, accrued interest, costs and any other moneys secured by or to which the Mortgagee is otherwise entitled, under or pursuant to the Mortgage (including without limitation, any yield maintenance fee or similar amount). If the Landlord has not exercised such right within the time limited therefor, then the Mortgagee may exercise its right to sell or assign the Tenant's leasehold interest set out in section 10 of this Agreement upon compliance with the other requirements of such section 10.

15. Intentionally Deleted.

16. It is understood and agreed that the Mortgagee may wish to self-insure the Tenant's obligations under Article 14.0 of the Lease, if it becomes the holder of the leasehold interest pursuant to the terms of this Agreement and the Lease. In such event, prior to cancelling the insurance coverage then in force, if any, the Mortgagee shall provide to the Landlord full details of the self-insurance plan which shall have the characteristics set out in

Article 14.0 of the Lease and upon the Mortgagee receiving the Landlord's written consent (which may have reasonable conditions attached) to the self-insurance plan, such consent not to be unreasonably withheld or delayed, the Mortgagee may cancel the insurance coverage then in force, if any.

17. Notwithstanding Sections 16.1 and 16.8 of the Lease and any sections in the Lease that set deadlines for curing those defaults that are not Non-Curable Defaults, it is understood and agreed that the Mortgagee shall have in every case, 60 days, or such longer time as is permitted by the section in question from receipt of a notice of such default within in which to cure the default.

18. The Tenant agrees to pay the costs of the Landlord incurred in connection with this Agreement.

19. The Definitions to the Lease are hereby amended as follows for purposes of this Agreement:

Section 1.1(pp) "Tenant's Mortgagee" is amended by deleting it entirely and replacing it with the following:

"Tenant's Mortgagee" means an Approved Lender insured by CMHC who is a mortgagee of the interest of the Tenant under this Lease;"

20. "The following Articles of the Lease are hereby amended as follows for purposes of this Agreement:

(a) Article 5.0 - Construction of Improvements

Section 5.3 - Liens is amended by deleting it entirely and replacing it with the following:

"The Tenant covenants that during the currency of this Lease it shall neither do nor fail to do, any act which may result in any builders' lien or any other statutory lien being registered against the Lands of the Landlord, and if any such lien should be registered against the Lands of the Landlord as a result of any act or failure to act on the part of the Tenant, the Tenant hereby agrees to indemnify and hold harmless the Landlord with respect to such lien, and to take all necessary steps to remove such lien from title to the Campus and or the Lands and Premises forthwith upon notice by the Landlord. In the event that the Tenant fails to take such necessary action within two weeks of receipt of notice from the Landlord, the Landlord may take all necessary action to remove the same in the name of the Tenant and the Tenant agrees to indemnify the Landlord for any and all costs, charges or expenses with respect to the same including reasonable solicitors fees and to pay to the Landlord such costs, charges and expenses within 10 days of notice from the Landlord of the same or the Tenant shall be in default as defined in subsection 18.1(a) herein. Notwithstanding anything to the contrary above, the

Landlord agrees that so long as the Tenant is taking all necessary action to contest the lien and the Tenant has posted reasonable security for costs and for the lien as approved by the Landlord and as may be required by a court of law or statute, the Landlord will not pursue its rights to remove the lien as provided herein."

(b) Article 7.0 - Conduct of Tenant in Occupation

Section 7.10 - Abandonment of Purpose is amended by deleting it entirely and replacing it with the following:

"Notwithstanding anything herein contained should the Tenant operate on the Lands and Premises in a manner so as to place the Tenant in default with the provisions of Article 7.0 hereof then, at the option of the Landlord and subject to the prior written agreement of the Tenant's Mortgagee and CMHC, this Lease may be terminated pursuant to the provision set forth in Article 18.0."

(c) Article 11.0 - Repairs and Maintenance

Subsection 11.1(e) Repairs to Conform to Codes is amended by deleting it entirely and replacing it with the following:

"All repairs, replacements maintenance or construction undertaken by the Tenant shall be done in accordance with the Development Guidelines, the Land Use Rules, UBC's Rules and Regulations and all applicable laws, codes, rules and regulations and in a good and workmanlike manner, normal wear and tear excepted."

(d) Article 12.0 - Damage or Destruction

(i) Section 12.2 - Termination is amended by deleting the first three lines and replacing them with the following:

"The Landlord or the Tenant by written notice to the other given within 120 days of the occurrence of damage to the Lands and Premises or the Campus may, subject to the written consent of the Tenant's Mortgagee, terminate this Lease:"

(ii) Section 12.3 - Reconstruction is amended by deleting it entirely and replacing it with the following:

"If this Lease is not terminated pursuant to Section 12.2, provided that the damage was caused by a hazard against which the Tenant was required to insure in accordance with the terms of this Lease and such insurance proceeds would be sufficient for rebuilding, and provided that all necessary access, egress and the supply of such services

have been provided to the Lands and Premises, or shall be prior to the completion of such rebuilding, as may be reasonably necessary to permit the Tenant and its Subtenants to occupy and use the Lands and Premises in accordance with the terms of this Lease, then the Tenant covenants to commence the reconstruction of the Premises at its sole cost within two years of the date of destruction upon plans to be approved by the Landlord as aforesaid, and to complete such reconstruction and rebuilding with all due dispatch. If the Tenant is not required to reconstruct the Premises and elects not to do so, then the Tenant, subject to the written consent of the Tenant's Mortgagee, by notice to the Landlord to that effect, may terminate this Lease; provided however, if the Tenant has not made such election and so terminated this Lease within 12 months of the occurrence of damage to the Lands and Premises, then the Landlord may terminate this Lease by notice to the Tenant to that effect, subject to the written consent of the Tenant's Mortgagee. If the Tenant decides to reconstruct the Premises even though it is not required to do so pursuant to this Section 12.3, then the Tenant shall give notice to the Landlord that it will reconstruct the Premises in accordance with the terms of this Lease, subject to any delays due to lack of access, egress, or supply of services to the Lands and Premises. Notwithstanding anything to the contrary (including without limitation Section 14.3, subsection 15.1(a)) and the foregoing provisions of this Section 12.3, if at any time the Premises are damaged or destroyed to the extent of 25% or more of their full insurable value, then the Tenant's Mortgagee may, within 60 days of its receipt of notice from the insurer or its agent that the Premises have been damaged or destroyed to the extent of 25% or more of their full insurable value and of the amount of insurance proceeds available if the Premises are not repaired, rebuilt or restored, elect to require that the insurance proceeds not be applied toward the repair or rebuilding or restoration of the Premises, and in the event of such an election the insurance proceeds shall be applied, in priority, as follows:

- (a) first, towards payment of all moneys owing on the Tenant's Mortgagee's mortgage (including without limitation, any yield maintenance fee or similar amount);
- (b) second, but only if and to the extent required by the Landlord or the Tenant,

toward clearing and restoring the Lands as nearly as possible to their condition prior to the commencement of construction;

- (c) *third, towards payment of all moneys payable to the Landlord under this Lease; and*
- (d) *fourth, in payment to the Landlord and the Tenant in accordance with their interests therein,*

and the Tenant shall not be obligated to repair or rebuild or restore"

(e) Article 15.0 - Assignment, Subletting and Mortgaging

- (i) Section 15.1 - Assignment is amended by deleting it entirely and replacing it with the following:

"(a) The Tenant shall not sell, assign or transfer or part with possession of this Lease or any portion of the Term or the Lands and Premises or any interest therein without the written consent of the Landlord, such consent not to be unreasonably withheld, (provided always the Tenant's Mortgagee, a subsequent purchaser or assignee having cured all defaults under this Lease, except for Non-Curable Defaults, pursuant to Section 16.1 of this Lease, may sell, assign or sublet without restriction, prohibition or consent) provided however the Tenant may grant Subleases pursuant to Sections 15.2, 15.3 and 15.4 and the Tenant may mortgage this Lease by sublease or assignment pursuant to Section 15.5, as amended by this Agreement.

(b) Neither this Lease nor any Sublease nor the leasehold estate of the Tenant or any Subtenant in the Land and Premises or any portion of the Lands and Premises shall be subject to involuntary assignment, transfer or sale or to assignment, transfer or sale by operation of law in any manner whatsoever (except as expressly contemplated in Article 16.0), and any such attempted or purported involuntary assignment, transfer or sale shall be ineffective as against the Landlord."

- (ii) Section 15.5 - Tenant May Mortgage is amended by deleting it entirely and replacing it with the following:

“The Tenant may assign or sublet by way of mortgage its interest in this Lease to an Approved Lender insured by CMHC without the consent of the Landlord but may not mortgage such interest to any person other than an Approved Lender insured by CMHC without the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed. The Tenant shall advise the Landlord of the Tenant’s intention to raise funds and secure the same by a mortgage of its interest in this Lease from time to time, as soon as possible after the Tenant determines to do so, and shall endeavour to give the Landlord 90 days’ notice of such new financing prior to granting a mortgage of the Tenant’s interest in this Lease.”

- (f) Article 16.0 - Rights of Tenant’s Mortgagees

Section 16.4 - Attornment is amended by deleting it entirely and replacing it with the following:

“If and when the Tenant’s Mortgagee acquires the leasehold interest of the Tenant pursuant to the Proceedings, then the Tenant’s Mortgagee may continue in possession as Tenant for the balance of the term of this Lease then remaining, provided that the Tenant’s Mortgagee first attorns as Tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of the Tenant under this Lease until the earlier of:

- (a) the expiration of the term of this Lease; or*
- (b) the date on which the Tenant’s Mortgagee assigns this Lease.”*

- (g) Article 18.0 - Default, Termination and Expiry

- (i) Subsection 18.1(a) - Default is amended by deleting it entirely and replacing it with the following:

“If the Tenant:

- (a) fails or neglects to make any payment due to the Landlord, in accordance with the terms of this Lease, within 60 days after the Landlord gives the Tenant written notice that the payment is overdue; or”*

(ii) Subsection 18.2 - Bankruptcy and Other Circumstances is amended by adding the words "and Section 20.1" after the words "subject to Article 16.0" in the full paragraph that follows Subsection 18.2(f).

(h) Article 20.0 - General Terms and Conditions

Section 20.1 Rules and Regulations is amended by adding the following sentence at the end thereof:

"It is understood and agreed that notwithstanding anything set out in this Lease to the contrary, this Lease may not be terminated as against the Tenant's Mortgagee for failure to comply with any of UBC's Rules and Regulations or the Landlord's building-specific rules and regulations that are, in either case, landlord-like in character (being rules and regulations of a type that a landlord might make under a lease) and not municipal-like in character (being rules, policies, bylaws and regulations of a type that a local government might make as such and not as landlord)."

(i) Article 25.0 - Miscellaneous:

Section 25.7 is amended by adding the following sentence at the end thereof:

"The Tenant's Mortgagee shall be given adequate notice of any arbitration under this Lease or other dispute resolution process and if the Tenant's Mortgagee considers that such proceeding or other process may affect the Tenant's Mortgagee's security, the Tenant's Mortgagee shall be given a reasonable opportunity by the Tenant and the Landlord to participate in such proceeding or process."

21. It is understood and agreed that in the event of a sale or assignment of the Tenant's leasehold interest by the Mortgagee pursuant to this Agreement, the Lease shall be deemed to have been modified as between the Landlord and the assignee as is set out in this Agreement.

22. This Agreement shall be deemed to terminate at such time as the Mortgage has been paid in full in accordance with the terms and conditions therein contained and, if the Mortgage has been registered, is discharged from the title to the Lands and Premises.

23. The Tenant hereby acknowledges and agrees that nothing contained in this Agreement shall in any way release or limit the covenants and obligations of the Tenant under the Mortgage or the Lease which shall continue as set out in the Lease without the benefit of the modifications set out in this Agreement. Upon termination of this Agreement and the discharge of the Mortgage pursuant to Section 22 of this Agreement, the Lease shall continue in full force and effect without any of the modifications set out in this Agreement.

24. The Tenant expressly consents to the exchange of notices or information between the Landlord and the Mortgagee as contemplated herein, including in particular, but without limiting the generality of the foregoing, the giving to the Landlord or Mortgagee as the case may be of a copy of any written notice to the Tenant of default.

25. The parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required by the Mortgagee in order to register this Agreement as a modification of the Lease.

26. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF this Agreement has been executed as of the date first above written.

SIGNED FOR AND ON BEHALF of)
THE UNIVERSITY OF BRITISH)
COLUMBIA by:)
))
))
_____))
Authorized Signatory)
))
_____))
Authorized Signatory)

SIGNED FOR AND ON BEHALF of)
UBC PROPERTIES INVESTMENTS LTD.)
as Trustee for UBC Properties Trust by:)
))
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_____))
Authorized Signatory)
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_____))
Authorized Signatory)

SIGNED FOR AND ON BEHALF of)
<@> by:)
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_____))
Authorized Signatory)
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_____))
Authorized Signatory)

Schedule "A"
to the Form of Tripartite With CMHC Insurance
(Paragraph 16.7 of the Lease)
Legal Description of the Lands

Those lands forming part of the Campus outlining 0.354 hectares more or less shown in bold outline on the reference plan filed in the Land Title Office under No. <@> . The entire parcel of which the Lands form a part is legally described as:

PID: 015-891-909

District Lot 3044 Group 1 NWD Except Firstly; Part on Plan 6147 Secondly; Part on Plan 9301 Thirdly; Part on Plan BCP6556 Fourthly; Part on Plan BCP23719

END OF DOCUMENT

Attachment 2

Land Title Act
FORM C
(Section 233)
Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 7 pages

1. APPLICATION:

<@>

<@>

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:

<@>

<@>

3. NATURE OF INTEREST

Description	Document Reference	Person Entitled to Interest
Statutory Right of Way	Entire Instrument	Transferee

4. TERMS:

PART 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms
- (b) Express Charge Terms
- (c) Release

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

- D.F. No.
- Annexed as Part 2
- There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S): THE UNIVERSITY OF BRITISH COLUMBIA

6. TRANSFEREE(S): (Including postal address(es) and postal code(s))
BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
333 Dunsmuir Street, Vancouver, BC V6B 5R3
(As to one Statutory Right of Way)

7. ADDITIONAL OR MODIFIED TERMS: N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s) _____

Execution Date		
Y	M	D
08		

Party(ies) Signature(s) _____

THE UNIVERSITY OF BRITISH COLUMBIA by its authorized signatories:

Print Name: _____

Print Name: _____

OFFICER CERTIFICATION:

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

File No: 452-1602.0(34)-1

Originator: BF/lmk

Date: 29 February 2008

Doc type: Attached Terms SRW (Hydro) SUE

Terms of Instrument - Part 2

STATUTORY RIGHT OF WAY AGREEMENT

BACKGROUND:

- A. B.C. Hydro wishes to obtain from the Owner a statutory right of way for certain rights on, over and under the Land.
- B. The Owner has agreed to grant B.C. Hydro a statutory right of way in respect of the Land.
- C. A statutory right of way is necessary for the operation and maintenance of the undertakings of B.C. Hydro.

AGREEMENTS:

In consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

INTERPRETATION

1.1 In this Agreement:

“**Agreement**” means the General Instrument Part 1 and these Terms of Instrument;

“**B.C. Hydro**” means British Columbia Hydro and Power Authority named in Item 6 of the General Instrument Part 1 as the Transferee;

“**General Instrument Part 1**” means Part 1 of the General Instrument as prescribed by the Land Title (Transfer Forms) Regulation, as amended or replaced;

“**Hazardous Substance**” means any substance which is defined as a hazardous substance or special waste in or by any law regulation or order of any authority having jurisdiction, and which is in the environment in excess of concentrations allowed by applicable legislation;

“**Land**” means the land described in Item 2 of the General Instrument Part 1;

“**Owner**” means the Person named in Item 5 of the General Instrument Part 1 as the Transferor;

“**Person**” means any association, society, corporation, individual, joint stock company, joint venture, partnership, trust, unincorporated organization, or any federal, provincial, regional, municipal, or other government or authorized agency, department or ministry thereof;

“**Right of Way Area**” means the Land, until such time as the Works are completed, at which point the Right of Way Area will be that portion of the Land: located within three metres of either side of the centre of the alignment of the Works, or identified on a plan prepared and filed in the Land Title Office in accordance with Section 5.1(a) hereof;

“**Underground Civil Works**” means all Works which are installed in the ground on the Right of Way Area including all ducts, conduits, transformer pads, and pull boxes, with the exception of any padmounted transformers and cables, including any primary and secondary

cables, and cables used for power, grounding and telecommunications specifically necessary to BC Hydro's electric system; and

“Works” means all things and components owned and maintained by BC Hydro, in any combination and using any type of technology or means, necessary or convenient for the purposes of transmitting and distributing electricity and for the purpose of telecommunications specifically necessary to BC Hydro's electric system, including underground lines, cables, conduits and pipes of every kind, together with access nodes, cabinets, all ancillary appliances and fittings, above ground or underground transformers, including any associated protective installations, and related works, but does not include any type of tower or pole, and, for greater certainty, the ducts, conduits and cables that run between meter rooms and individual units within a building.

- 1.2 This Agreement will be governed by, construed and enforced in accordance with the laws in force in British Columbia.
- 1.3 If the singular, masculine or neuter is used in this Agreement the same will be deemed to include reference to the plural, feminine, or body corporate or politic according to the context in which it is used.
- 1.4 The word “including” when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items but rather such general statement, term, or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

GRANT OF STATUTORY RIGHT OF WAY

- 2.1 The Owner grants to B.C. Hydro, its employees, servants, agents, permittees, invitees, licensees, contractors, workers, its successors and assigns, for so long as B.C. Hydro is providing electrical service to the Owner or a lessee or licensee of the Owner, (the "Term") the non-exclusive right, and statutory right of way to:
 - (a) excavate for, construct, install, replace, upgrade, operate, maintain, remove and repair the Works on, in, under, through, over or across the Land;
 - (b) clear the Right of Way Area and to keep it cleared (including pruning or removal) of any trees or growth;
 - (c) clear the Right of Way Area and to keep it cleared of all or any part of any obstruction, structure, building, improvement or other matter which, in the reasonable opinion of B.C. Hydro might:
 - (i) interfere with the exercise of its rights; or
 - (ii) create or increase any danger or hazard to the Works or to Persons or property in relation to the Works;
 - (d) enter, work, pass and repass on, and along the Right of Way Area;
 - (e) have exclusive use and occupation of all Underground Civil Works, whether the property of the Owner or B.C. Hydro, on the Right of Way Area that are from time to time used or installed for use by B.C. Hydro; and

- (f) do all things necessary or incidental to the undertakings of B.C. Hydro in connection with the above;

on the understanding that after B.C. Hydro has constructed the Works on the Land, the statutory right of way granted under section 2.1(a) will be confined and restricted to the Right of Way Area.

COVENANTS AND ACKNOWLEDGEMENTS OF B.C. HYDRO

3.1 B.C. Hydro covenants with the Owner that B.C. Hydro will:

- (a) if it damages any structures, buildings or improvements outside the Right of Way Area, or cuts or damages any crops or merchantable timber owned by the Owner anywhere on the Land, and such damage is not caused as a result of the Owner's breach of the terms of this Agreement or the negligence or willful act of the Owner, its contractors or those Persons for whom the Owner is responsible at law:
 - (i) compensate the Owner for such damages to structures, buildings, improvements, crops or merchantable timber; or
 - (ii) within a reasonable period of time, repair in a good and workmanlike manner any damaged structure, building or improvement, as closely as is practicable to its condition immediately prior to the damage;
- (b) take reasonable steps not to interfere unduly with the drainage of the Land in the exercise of its rights; and
- (c) indemnify the Owner against all liability incurred by the Owner out of any claim made by any Person for injury or harm to Persons or property caused by the negligence or willful act of B.C. Hydro in the exercise of its rights under this Agreement or caused by the use or placement of Hazardous Substances on the Land by B.C. Hydro, on the following conditions:
 - (i) the Owner will immediately provide written notice of the claim to B.C. Hydro and resist that claim if and to the extent required by B.C. Hydro. B.C. Hydro will reimburse the Owner for all reasonable and necessary costs incurred by the Owner in resisting such claim; and
 - (ii) B.C. Hydro will not indemnify the Owner in respect of any claim for injury or harm to Persons or property caused by the Owner's breach of this Agreement or by the negligence or willful act of the Owner, its contractors or those Persons for whom the Owner is responsible at law.

3.2 B.C. Hydro acknowledges that the Owner restricts and regulates the installation of wireless transmission facilities on campus including all rights of way due to the potentially damaging impact on research conducted by or on behalf of the Owner.

COVENANTS AND AUTHORIZATIONS OF OWNER

- 4.1 The Owner covenants with B.C. Hydro that, unless B.C. Hydro gives its prior written permission (which permission may be given subject to terms and conditions), the Owner will not do or knowingly permit to be done, any act or thing which, in the reasonable opinion of B.C. Hydro, might:
- (a) interfere with the exercise of any rights granted to B.C. Hydro;
 - (b) impair the operating efficiency of any part of the Works;
 - (c) obstruct the access of B.C. Hydro to any part of the Works; or
 - (d) create or increase any danger to the Works or to Persons or property in relation to the Works.
- 4.2 Without limiting the generality of section 4.1 the Owner covenants with B.C. Hydro that, unless B.C. Hydro gives its prior written permission (which permission may be given subject to terms and conditions), the Owner will not:
- (a) diminish or increase the ground elevation in the Right of Way Area by any method including, piling any material or creating any excavation, drain or ditch in the Right of Way Area;
 - (b) carry out blasting or logging operations on or near any portion of the Right of Way Area; or
 - (c) make, place, erect, operate, use, maintain or permit any obstruction, structure, building, or improvement on, under or over the Right of Way Area.
- 4.3 Subject to sections 4.1 and 4.2, B.C. Hydro recognizes that the Owner may otherwise enjoy the full use of the Right of Way Area.

MUTUAL COVENANTS

- 5.1 The Owner and B.C. Hydro mutually covenant and agree between them that:
- (a) the Owner will cause the Right of Way Area to be surveyed by a British Columbia Land Surveyor, at the Owner's expense. The survey plan shall, following its approval by B.C. Hydro, which approval shall not be unreasonably withheld or delayed, be deposited in the appropriate Land Title Office by B.C. Hydro. The Owner authorizes B.C. Hydro and the Registrar of the relevant Land Title Office to do all things necessary in relation to the filing of the survey plan for the Right of Way Area, including inserting the number assigned to the relevant Land Title Office to such plan;
 - (b) if B.C. Hydro elects to pay compensation rather than to repair pursuant to section 3.1(a)(i), and the Owner and B.C. Hydro cannot agree on the amount of compensation to be paid, then the matter in dispute shall be settled by arbitration by a single arbitrator under the *Arbitration Act* of British Columbia;
 - (c) nothing in this Agreement will in any way abrogate from or affect any rights, powers, exemptions or privileges, including any powers of expropriation, which:

- (i) either party may have under any private or public statutes, by-laws, orders, regulations or any other laws or any agreements which are registered against title to the Land; and
- (ii) B.C. Hydro may have under any agreements it has with the Owner;
- (d) failure to enforce any covenant or restriction contained in this Agreement for a breach or violation of any covenant or right contained in this Agreement will not in any way constitute a waiver, in whole or in part, of any of the injured party's rights or remedies;
- (e) to be effective and binding between the parties a waiver must:
 - (i) be in writing; and
 - (ii) specifically identify the affected party;
- (f) a waiver only relates to a particular violation or breach and does not extend to any further or subsequent breach or violation, notwithstanding any rule of law or equity;
- (g) the Works installed will remain the property of B.C. Hydro except to the extent specified in this Agreement;
- (h) if all or a portion of the Works are no longer required by B.C. Hydro to serve the Owner or a lessee or licensee of the Owner, then B.C. Hydro will, at its cost, within a reasonable period of time, (i) remove such Works (with the exception of Underground Civil Works) from the Land, unless the Owner otherwise agrees in writing, and after such removal the Underground Civil Works, to the extent that they are not already owned by the Owner, shall become the property of the Owner; and (ii) at the Owner's request provide to the Owner a registrable, executed discharge of this Agreement in respect to such Works as are no longer required by B.C. Hydro; and
- (i) if B.C. Hydro removes all or a portion of the Works (with the exception of Underground Civil Works) it will ensure the Right of Way Area is left in a clean and tidy condition.

RELOCATION

- 6.1 If the existing location of the Works will materially interfere with the construction and use of a building or other improvement on the Land, the Owner may request B.C. Hydro to relocate the Works or a portion thereof to another location on the Land. B.C. Hydro will agree to the relocation if :
- (a) B.C. Hydro, acting reasonably, approves the new location;
 - (b) the Owner pays all costs relating to the relocation;
 - (c) the relocation conforms with proper engineering practices and meets B.C. Hydro's standards; and

- (d) the Owner grants to B.C. Hydro a right of way on the same terms and conditions contained in this Agreement for the new location and pays B.C. Hydro's reasonable expenses incurred to prepare and register such Agreement in the Land Title Office.

NOTICE

- 7.1 Any notice required to be given hereunder shall be valid if in writing and delivered or telecopied at the address set out below or at such other address as may be designated in writing by either party and any such notices shall be effective when received.

In the case of notice to the Owner, such notice shall be delivered or telecopied to:

The University of British Columbia
6328 Memorial Road
Vancouver, B.C. V6T 1Z2
Facsimile: (604) 822-0922

Attention: Vice President, Finance, Resources and Operations

In the case of notice to B.C. Hydro, such notice shall be delivered or telecopied to:

B.C. Hydro
12th floor, 333 Dunsmuir Street
Vancouver, B.C. V6B 5R3
Facsimile: (604) 623-3951

Attention: Manager, Property Legal Services

SEVERABILITY

- 8.1 If any provision of this Agreement is declared invalid or unenforceable by a competent authority, such provision shall be deemed severed and shall not affect the validity or enforcement of the remaining provisions of this Agreement, unless such invalidity or unenforceability renders the operation of this Agreement impossible.

ARBITRATION

- 9.1 In the case of a dispute between the parties during the term or any renewal of the term of this Agreement, as to any matter arising hereunder, either party hereto will be entitled to give to the other party notice of such a dispute and failing to arrive at a mutually satisfactory agreement within a period of thirty (30) days, the dispute shall be determined by a single arbitrator who is acceptable to both parties and appointed pursuant to the *Arbitration Act*, R.S.B.C. 1996 c.55 or any successor legislation. The decision of any arbitrator shall be final and binding upon the parties and may contain an order as to the costs of arbitration. If there is no order as to the costs of the arbitration, each party shall bear its own costs and one half of the common costs of the arbitration.

GENERAL

- 10.1 The terms "Owner" and "B.C. Hydro" include their respective heirs, executors, administrators, successors and assigns.
- 10.2 If the Owner or B.C. Hydro is more than one Person, every covenant and agreement by the Owner or B.C. Hydro in this Agreement will be joint and several.

- 10.3 This Agreement will run with the Land and will run with each part into which the Land may at any time be subdivided and each parcel into which it may at any time be consolidated, and will bind all present and subsequent owners of the Land and B.C. Hydro, including their respective heirs, executors, administrators, successors, and assigns. By executing the Form C and Form D to which these Terms of Instrument are attached, the Owner and B.C. Hydro agree to be bound by this Agreement
- 10.4 In accordance with section 233 of the *Land Title Act*, these Terms of Instrument – Part 2 and the General Instrument – Part 1 to which they are attached form a single instrument.
- 10.5 The Owner and B.C. Hydro acknowledge that this Agreement is executed to evidence the agreement between them and for registration purposes and if they shall enter into another agreement relating in any way to the Right of Way Area and/or the Works, whether before or after the execution and/or registration of this Agreement, such other agreement and any amendments in writing thereto shall be binding upon the parties hereto and their respective successors and assigns and in the event of any conflict between any provisions of this Agreement and any provisions of any such other agreement or in the event of the omission from this Agreement of any other matters included in any such other agreement, such other agreement shall govern and take precedence.

**LAND TITLE ACT
FORM C**

(SECTION 233)

**Province of
British Columbia****GENERAL INSTRUMENT - PART 1***(This area for Land Title Office use)*

PAGE 1 of <@> pages

1. APPLICATION:

<@>

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:

(PID)**(LEGAL DESCRIPTION)**

<@>

3. NATURE OF INTEREST:

**DESCRIPTION
INTEREST****DOCUMENT REFERENCE****PERSON ENTITLED TO**Statutory Right of Way Over part
on SRW Plan BCP _____
containing <@> sq. metres

Entire Instrument

Transferee

4. TERMS: Part 2 of this instrument consists of (select only one)

(a) Filed Standard Charge Terms

D.F. No.

(b) Express Charge Terms

Annexed as Part 2

(c) Release

There is no Part 2 of this instrument.

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):

THE UNIVERSITY OF BRITISH COLUMBIA

6. TRANSFEREE(S):

FORTISBC ENERGY INC. <@> (Incorporation No. <@>) a company incorporated in British Columbia and having its registered office at <@>7. ADDITIONAL OR MODIFIED TERMS: **N/A**

8. EXECUTIONS(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

EXECUTION DATE

Officer Signature(s)

Y	M	D

Party(ies) Signature(s)

**THE UNIVERSITY OF BRITISH
COLUMBIA** by its authorized
signatory(ies):_____
PRINT NAME:_____
PRINT NAME:

(as to all signatures)

OFFICER CERTIFICATION:

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

1925009.1

Access SRW

TERMS OF INSTRUMENT -- PART 2

STATUTORY RIGHT OF WAY AGREEMENT

WHEREAS:

- A. "Owner" means the parties described as Transferors in Form C - Part 1, item 5 hereto.
- B. "FortisBC Energy" means the party described as Transferee in Form C - Part 1, item 6 hereto.
- C. "Land" means the land described in Form C - Part 1, item 2 hereto.
- D. "Hazardous Substance" means any substance which is defined as a hazardous substance or special waste in or by any law, regulation or order of any authority having jurisdiction, and which is in the environment in excess of concentrations allowed by applicable legislation.
- E. "Right of Way Area" means the Land.
- F. The Owner is the registered owner or is entitled to become the registered owner of the Land.
- G. It is necessary for the operation and maintenance of FortisBC Energy' undertaking to obtain a statutory right of way through, under and across the Land.
- H. The Owner has agreed to grant to FortisBC Energy a statutory right of way on the terms contained herein.

WITNESSES THAT:

1. GRANT OF RIGHTS TO FORTISBC ENERGY

The Owner, in consideration of the sum of One Dollar (\$1.00) of the lawful money of Canada now paid by FortisBC Energy to the Owner (the receipt and sufficiency of which are hereby acknowledged), grants to FortisBC Energy, for so long as FortisBC Energy is providing gas service to the Owner or a lessee or licensee of the Owner (the "Term") on lands that are adjacent to the Land, a non-exclusive statutory right of way over the Right of Way Area, for FortisBC Energy, its employees, contractors, agents, invitees and licensees at all times hereafter:

- (a) To excavate for, install, construct, operate, maintain, repair, abandon, remove and replace one or more underground pipelines of any kind or dimension with any aboveground or underground valves, structures, meters and other appliances and fittings, and devices for controlling corrosion, all for use in connection with such pipeline(s), for the distribution of gas (the "Works") upon the Right of Way Area;

- (b) To clear the Right of Way Area and keep it cleared of any trees or other vegetation, buildings, structures, foundations, pavement, improvements or obstructions which, in the reasonable opinion of FortisBC Energy, may interfere with any of the rights granted to FortisBC Energy herein, provided however; it is understood and agreed that, subject to the grant given in Section 1(a), any hard or soft landscaping, driveway or walkway surfacing materials, including pavement, (collectively the "Installations") that may be installed on the Right of Way Area by the Owner, or by the original developer of any lands adjacent to the Land, and all such repairs, maintenance, replacements and substitutions made to and for such installations from time to time, shall be allowed to remain and if they are disturbed or damaged by FortisBC Energy in its use of the Right of Way Area, they shall be restored by FortisBC Energy at its cost;
- (c) To install marking posts with warning signs attached to mark the location of the Works; and
- (d) Generally to do all acts necessary or incidental to the foregoing or to the business of FortisBC Energy.

2. DUTIES OF THE OWNER

The Owner covenants and agrees with FortisBC Energy:

- (a) Not to do or knowingly permit to be done anything which may, in the reasonable opinion of FortisBC Energy, interfere with or injure the Works or impair the operating efficiency of the Works or create any hazard. Such acts include, but are not limited to, the acts referred to in this section 2;
- (b) Not to store or use any inflammable substance or to burn or permit the burning of anything on the Right of Way Area;
- (c) Not to make, place, erect, operate, use or maintain upon the Right of Way Area any building, structure, foundation, pavement, excavation, well, culvert, swimming pool, open drain or ditch, pond, pile of material, obstruction, equipment or thing, or to plant any vegetation which, in the opinion of FortisBC Energy, may:
 - (i) interfere with or endanger the Works or the installation, construction, operation, maintenance, repair, removal, or replacement of the Works; or
 - (ii) obstruct access by FortisBC Energy's employees, contractors, agents, invitees or licensees to the Works; or
 - (iii) create any hazard by its operation, use, maintenance or existence on the Right of Way Area;except the Installations;
- (d) Subject to subparagraph 2(c), not to cultivate the Land inside the Right of Way Area to a depth of more than thirty (30) centimetres;
- (e) Not to add or remove ground cover over the Works or carry out blasting on or next to the Right of Way Area without the prior written consent of FortisBC

Energy and if such consent is granted, only in accordance with the written requirements of FortisBC Energy; and

- (f) Subject always to the proviso set out in section 1(b) above.

3. **DUTIES OF FORTISBC ENERGY**

FortisBC Energy covenants and agrees with the Owner:

- (a) to pay compensation to the Owner for any damage caused by FortisBC Energy to the Owner's Installations, any services located beneath the surface of the Land, or the Land as a result of FortisBC Energy' exercise of any of its rights under this Agreement (the "Damage"); provided that there is no negligence or wilful misconduct on the part of the Owner;
- (b) that it shall, as soon as weather and soil conditions permit and where practicable to do so, bury and maintain any underground Works so the Works do not interfere with the drainage of the Land;
- (c) indemnify the Owner against all liability incurred by the Owner out of any claim made by any person for injury or harm to persons or property caused by the negligence or wilful act of FortisBC Energy in the exercise of its rights under this Agreement or caused by the use or placement of Hazardous Substances on the Land by FortisBC Energy, on the following conditions:
 - (i) the Owner will provide written notice of the claim to FortisBC Energy; and
 - (ii) FortisBC Energy will not indemnify the Owner in respect of any claim for injury or harm to persons or property caused by the Owner's breach of this Agreement or by the negligence or wilful act of the Owner, its contractors or those persons for whom the Owner is responsible at law;
- (d) if the Works are no longer required by FortisBC Energy to serve the Owner or a lessee or licensee of the Owner, then, at its cost, within a reasonable period of time, at the Owner's request provide to the Owner a discharge of this Agreement executed in registrable form;
- (e) as soon as FortisBC Energy has constructed the Works or any of them on the Land, the rights granted pursuant to paragraph 1(a) shall thereupon and thereafter be confined and restricted to a portion of the Land three metres on either side of the Works. Upon completion of installation of the Works, FortisBC Energy will precisely set out the boundaries of the Right of Way Area in a survey made by a British Columbia Land Surveyor at the expense of the Owner. Within three months of the completion of the survey, FortisBC Energy shall deposit such survey in the appropriate Land Title Office; and
- (f) FortisBC Energy shall at its sole expense place, operate, maintain and remove the Works in compliance with all applicable laws and the applicable land use polices, rules and regulations of The University of British Columbia. Without limitation, FortisBC Energy shall secure and any comply with the appropriate permits issued by The University of British Columbia's Campus and Community Planning department.

4. **AGREEMENTS BETWEEN THE OWNER AND FORTISBC ENERGY**

The Owner and FortisBC Energy covenant and agree that:

- (a) The amount of any compensation for Damages caused by FortisBC Energy and payable under section 4 herein shall be mutually agreed upon between the Owner and FortisBC Energy but failing such agreement, shall be settled by arbitration pursuant to the Commercial Arbitration Act of British Columbia before a single arbitrator. No compensation shall be payable by FortisBC Energy to the Owner for any Damage for which compensation has already been paid;
- (b) This Agreement shall be construed as running with the Land but no part of the fee of the soil shall pass to FortisBC Energy by this Agreement;
- (c) Subject to paragraph 3(d) and notwithstanding any rule of law or equity to the contrary, the Works shall remain the property of FortisBC Energy who may remove them in whole or in part;
- (d) If FortisBC Energy abandons the Works, it may, at its option, leave the Works, or any part thereof, and FortisBC Energy shall release the rights granted by this Agreement. Upon the release of the rights granted to FortisBC Energy by this Agreement any abandoned Works shall belong to the Owner;
- (e) The provisions hereof are severable and if any of them should be found to be void or unenforceable at law, the remaining provisions shall not be affected thereby;
- (f) The expressions "Owner" and "FortisBC Energy" shall include, and this Agreement shall enure to the benefit of and be binding upon, the executors, administrators, successors and legal assigns of the Owner and FortisBC Energy;
- (g) Where the expression "Owner" includes more than one person, all of the covenants granted by the Owner in this Agreement shall be construed as being several as well as joint;
- (h) Nothing contained herein shall diminish or otherwise interfere with rights enjoyed by FortisBC Energy by statute or otherwise;
- (i) Wherever the singular or the masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or body corporate or politic where the context so requires or the parties so require; and

In witness whereof the parties acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 & 2) hereto

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 4 Pages

1. **APPLICATION:** (name, address, phone number and signature of applicant, applicant's solicitor or agent)

<@> Shaw Cablesystems SRW without plan attached

Authorized Agent

2. **PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:***

(PID)

(LEGAL DESCRIPTION)

<@>

<@>

3. **NATURE OF INTEREST:*****DESCRIPTION****DOCUMENT REFERENCE**

(page and paragraph)

PERSON ENTITLED**TO INTEREST**

Statutory Right of Way

Entire Document

Transferee

4. **TERMS:** Part 2 of this Instrument consists of (select one only)

(a) Filed Standard Charge Terms

D.F. Number

(b) Express Charge Terms

 Annexed as Part 2

(c) Release

 There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. **TRANSFEROR(S):***

The University of British Columbia

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

Shaw <@>

7. **ADDITIONAL OR MODIFIED TERMS:***

N/A

8. **EXECUTIONS:**** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Y	M	D
	>	

Party(ies) Signature(s)

The University of British Columbia,
by its authorized signatory(ies):

Print Name:

Print Name:

OFFICER CERTIFICATION:

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

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

**If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signatures(s)

(As to both signatures)

Execution Date		
Y	M	D
		>

Party(ies) Signature(s)

Shaw <@>, by its authorized signatory(ies):

Print Name:

Print Name:

OFFICER CERTIFICATION:

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

TERMS OF INSTRUMENT - PART 2

This will confirm that the Transferor (the "**Owner**") of the Property, described in item 2 of Part 1 of this General Instrument, has agreed, in consideration of the mutual covenants set out below, to give Shaw non-exclusive access to the Property to provide communication services (the "**Services**") to the occupants of the Property, and the statutory right of way herein is necessary for the operation and maintenance of Shaw's undertaking, on the following terms:

1. The Owner, by way of this Agreement, grants to Shaw the non-exclusive right to enter on or gain access over or under the Property for the purposes of: (a) providing the Services to the occupants of the Property; (b) carrying, laying, constructing, maintaining, operating, repairing or using Shaw's Network (that is, its conduits, cables, wires, communication facilities and equipment on the Property, the "**Network**"); and (c) making use of the Property for all purposes necessary or incidental to the exercise of the rights granted in this Agreement.
2. This Agreement shall continue unless and until earlier terminated in accordance with the terms herein, from the date this Agreement is executed by the Owner and Shaw for so long as Shaw is providing telecommunication services to the Owner or a lessee or licensee of the Owner.
3. The right of way area consists of the Property. As soon as Shaw has installed the Network or any of them on the Property, the rights granted pursuant to paragraph 1(a) shall thereupon and thereafter be confined and restricted to a portion of the Property (herein referred to as the "**Right of Way Area**") which will be precisely determined by a survey made by a British Columbia Land Surveyor at the expense of Shaw and within which the Network shall be placed and installed. Within three months of the completion of the survey, Shaw shall deposit such survey in the appropriate Land Title Office.
4. Shaw shall have access to the Property during all reasonable business hours except that in situations of emergency, Shaw will have access at any and all times it requires.
5. The Owner may grant access to the Property to other providers of communication services but the Owner shall ensure that such other service providers do not use, interfere with, attach any equipment or facilities to or have access to the Network without the prior written consent of Shaw.
6. Shaw will comply with all applicable orders, decisions, laws and regulations of any public authority having jurisdiction, relating to the Network located on the Property, including without limitation, those orders and decisions established by the Canadian Radio-Television and Telecommunications Commission, and the applicable land use policies, rules and regulations of The University of British Columbia. Without limitation, Shaw shall secure and any comply with the appropriate permits issued by The University of British Columbia's Campus and Community Planning department.
7. Shaw is the owner of the Network, whether the Network is installed by Shaw or by a predecessor and the Network shall not be considered a fixture to the Property despite any principle of law to the contrary. The Owner acknowledges that it does not have authority to use or permit anyone else other than Shaw to use, interfere with or have access to the Network or to create any lien or charge on any part of the Network.
8. Shaw acknowledges the Owner restricts and regulates the installation of wireless transmission facilities on campus including all rights of way due to the potentially damaging impact on research conducted by or under the auspices of the Owner. Shaw shall be solely responsible to comply with all wireless transmission restrictions and regulations of the Owner and to obtain written approval prior to installing any wireless transmission equipment. For greater clarity, the use of personal use devices such as cellular telephones and wireless modems do not require written approval.
9. Shaw will be responsible for all losses sustained by the Owner caused by any act or omission of Shaw under this Agreement. The Owner shall not interfere with the Network and will be responsible for all

losses sustained by Shaw caused by any act or omission of the Owner, its agents, employees or licensees. Neither party to this Agreement shall be responsible for any special, indirect or consequential damages, including but not limited to, economic loss or loss of profit suffered by the other as a result of this paragraph.

10. This Agreement and the rights granted to Shaw in this Agreement shall be an interest in and run with the Property. This Agreement shall not be construed as or constitute a lien or financial charge in the Property.
11. This Agreement shall be binding on and benefit the successors and assigns of Shaw and the Owner. If any provision of this Agreement is declared invalid such provision shall be deemed severed and shall not affect the remaining provisions. This Agreement is the entire agreement between the parties regarding the subject matter described in this Agreement and supersedes all prior negotiations and agreements and may only be modified in writing signed by all the parties to this Agreement. This Agreement shall be subject to the laws of the Province in which the Property is located.
12. Any notice required to be delivered under this Agreement will be in writing and sent by registered mail, facsimile or delivered personally to the Owner and to Shaw at the addresses given above.
13. The term "Shaw" as used in this Agreement includes Shaw Cablesystems Limited, its affiliates and any partnership in which Shaw Cablesystems Limited is a partner, and their respective agents and employees.
14. Shaw may without consent, assign or sublicense this Agreement to a purchaser of substantially all of its Network in the licensed area under this Agreement.
15. Shaw may, as to all or any part of the Property, discharge from title, in whole or in part, any rights granted to Shaw by this Agreement. Shaw may, at any time, abandon all or part of the Network or cease the provision of the Services to the Property using the Network provided that on the second anniversary of such abandonment, at the option of the Owner, the Owner may require Shaw within a reasonable period of time to remove all or part of the Network at Shaw's sole cost and expense, or at the Owner's option to have the ownership of the Network which have been abandoned convert to the Owner, and in either case, the right of way granted herein in respect of the area in which the abandoned or disused Network are located shall terminate and Shaw will deliver, on demand, to the Owner a registrable, executed discharge or partial discharge as the case may be, of this Agreement from all part of the Property as the case may be.
16. Upon expiration of the term or any renewal term of this Agreement at the option of the Owner, the Owner, acting reasonably, may require Shaw to: (a) remove all or part of the Network at Shaw's sole cost and expense, within a reasonable period of time and ensure that the Right of Way Area is left in the condition it was in prior to the removal of the Network; or (b) have the ownership of the Network convert to the Owner, and in either event Shaw will prepare at its cost and provide to the Owner a registrable, executed discharge of this Agreement from title to the Property.

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 10 Pages

1. **APPLICATION:** (name, address, phone number and signature of applicant, applicant's solicitor or agent)

<@> Telecommunications SRW without plan attached

<@>, Agent

2. **PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:***

(PID)

(LEGAL DESCRIPTION)

See Schedule

3. **NATURE OF INTEREST:*****DESCRIPTION****DOCUMENT REFERENCE**

(page and paragraph)

PERSON ENTITLED**TO INTEREST**

See Schedule

4. **TERMS:** Part 2 of this Instrument consists of (select one only)

(a) Filed Standard Charge Terms

D.F. Number

(b) Express Charge Terms

Annexed as Part 2

(c) Release

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. **TRANSFEROR(S):***

THE UNIVERSITY OF BRITISH COLUMBIA

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

<@> (TELUS entity)

7. **ADDITIONAL OR MODIFIED TERMS:***

See Schedule

8. **EXECUTIONS:**** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Y	M	D

Transferor Signature(s)

THE UNIVERSITY OF BRITISH
COLUMBIA by its authorized
signatory(ies):

Print Name:

Print Name:

OFFICER CERTIFICATION:

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

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

**If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signatures(s)

Execution Date		
Y	M	D

Transferee(s) Signature(s)

TELUS COMMUNICATIONS INC. <@>
by its authorized signatory(ies):

Print Name: _____

Print Name: _____

OFFICER CERTIFICATION:

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

FORM E

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

2. **PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:***

(PID)

(LEGAL DESCRIPTION)

<@>

<@>

3. **NATURE OF INTEREST:***
DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

**PERSON ENTITLED
TO INTEREST**

Statutory Right of Way

Entire Instrument

Transferee

Terms of Instrument – Part 2

WHEREAS The University of British Columbia (the "Owner") (as identified in Form C Part 1 Item 5) is the registered owner of the Lands (as identified in Form C Part 1 Item 2) and has agreed to grant Telus Communications Inc.<@> (the "Transferee") (as identified in Form C Part 1 Item 6) the statutory rights of way which are necessary for the operation and maintenance of the Transferee's telecommunications undertaking,

NOW THEREFORE in consideration of the terms and conditions set out below, the Owner and the Transferee agree as follows:

1. STATUTORY RIGHT OF WAY.

<@>Option 1: Transmission cables

The Owner grants to the Transferee, its employees, servants, agents, permittees, invitees, licensees, contractors, workers, its successors and assigns a non-exclusive statutory right of way upon the Lands to:

- (a) install, operate, maintain, repair, remove and replace telecommunications cables and related works owned and operated by the Transferee ("Transmission Facilities") within a system of underground ducts and equipment enclosures (the "Support Structure");
- (b) maintain, repair, remove and replace, and reinforce the Support Structure;
- (c) enter on foot and by vehicle, with or without machinery and equipment, for the purpose of access to and egress from the Transmission Facilities and the Support Structure; and
- (d) generally to do all acts and work reasonably necessary and reasonably incidental to the foregoing or the telecommunications business of the Transferee, its successors and assigns.

<@>Option 2: Transmission Facilities on the land and in buildings

The Owner grants to the Transferee, its successors and assigns a statutory right of way upon the Lands to:

- (a) place, construct, install, operate, maintain, repair, occupy, use, remove, modify and replace on, under and over the Lands (including any building structures situate upon and forming part of the Lands) equipment; anchoring mechanisms; cables; wiring; fibre; conduit and facilities for telecommunications data transmission, power and grounding; underground ducts (together, "Transmission Facilities"); support structures; fixtures; equipment enclosures; including all other fixtures, chattels and/or improvements placed or installed by the Transferee on or within the Lands, and any related works (collectively, the "Works"), whether within or outside of a system of underground ducts and equipment enclosures (the "Support Structure");
- (b) Transferee shall have the right to add equipment to the described rooms from time to time as needed. The room size will not be expanded by the Transferee without the express written permission of the land owner;
- (c) on not less than forty-eight (48) hours prior written notice to the Owner, remove trees or obstructions which might interfere with or create a danger to persons or the Works;

- (d) enter on foot and by vehicle, with or without machinery and equipment, for the purpose of reasonable access to and egress from the Works 24 hours per day 7 days per week as required by Transferee for operational, general maintenance and emergency repairs purposes;
- (e) unobstructed, secure access to the main terminal room, terminal rooms, equipment rooms, entrance facilities riser closets, and demarcation points;
- (f) unobstructed, secure access to all or a combination of the building's cables; wiring; fibre; conduit and facilities for telecommunications, data transmission, power and grounding; as may be required by the Transferee from time to time for the purpose of construction, installation, testing, operation, maintenance, repairs, services, upgrades, modifications, removal, replacement of the Transferee's equipment and access to the Transferee's equipment; and
- (g) generally to do all acts and work necessary and incidental to the foregoing or the business of the Transferee, its successors and assigns, including, without limitation, the right exercisable solely by the Transferee for itself or, as the case may be, on behalf of the Owner to place, maintain, operate, repair, use and replace communications conduit, cable and appurtenant equipment and facilities within and throughout the building structure situate upon and forming part of the Lands.

2. TERM.

This Agreement shall continue unless and until earlier terminated in accordance with the terms herein, from the date this Agreement is executed by the Owner and the Transferee for so long as the Transferee is providing telecommunication services to the Owner or a lessee or licensee of the Owner.

3. AREA RESTRICTION.

The Right of Way Area consists of the Lands. As soon as TELUS has constructed the Transmission Facilities or any of them on the Lands, the rights granted pursuant to paragraph 1(a) shall thereupon and thereafter be confined and restricted to a portion of the Lands three metres on either side of the Transmission Facilities (herein referred to as the "**Right of Way Area**"). Upon completion of installation of the Transmission Facilities, TELUS will precisely set out the boundaries of the Right of Way Area in a survey made by a British Columbia Land Surveyor at the expense of TELUS. Within three months of the completion of the survey, TELUS shall deposit such survey in the appropriate Land Title Office.

4. FEES.

The Transferee shall, upon receipt of a satisfactory post-index search disclosing that in the normal course of Land Title Office practice this Agreement shall be registered against title to the Lands, pay the Owner a one time lump sum fee in the amount of ONE DOLLAR (\$1.00).

5. THE TRANSFEEE RIGHTS AND OBLIGATIONS

- (a) Transmission Facilities
 - (i) The Transferee shall be solely responsible for the design, installation, operation, maintenance, repair, removal and replacement of the Transmission Facilities and all costs and expenses associated therewith throughout the duration and any renewal of the term of this Agreement.
 - (ii) The Transferee agrees that the design, installation, operation, maintenance, repair, removal and replacement of the Transmission Facilities shall be in compliance with all applicable laws and the applicable land use policies, rules and regulations of The

University of British Columbia. Without limitation, the Transferee will secure the appropriate permits from UBC Campus and Community Planning prior to exercising its rights hereunder.

- (iii) The Transmission Facilities once installed shall subject to the terms of this Agreement at all times throughout the duration and any renewal of the term of this Agreement be and remain the property of the Transferee and shall not be considered a fixture notwithstanding any rule of law or equity to the contrary.
- (b) Support Structure
- (i) The Transferee agrees that the design, installation, maintenance, repair, removal and replacement and re-enforcement of the Support Structure shall be in compliance with all applicable laws including, but not limited to, securing the appropriate permits from UBC Campus and Community Planning.
 - (ii) The Transferee is solely responsible for any costs associated with altering or modifying the Support Structure that it deems necessary from time to time to conduct its telecommunications business on the Lands provided always that such alterations and modifications shall require the prior written consent of the Owner not to be unreasonably withheld or delayed.
 - (iii) Notwithstanding the above, the Support Structure once installed shall at all times be and remain the property of the Owner and shall be considered a fixture for all purposes.

6. OWNER RIGHTS AND OBLIGATIONS

- (a) Transmission Facilities
- (i) The Owner shall have no rights nor obligations in relation to the Transmission Facilities other than the right but not the obligation to require that they comply with all laws and that they comply with the terms applicable thereto as set forth in this Agreement.
- (b) Support Structure
- (i) The Owner shall have the right acting reasonably, to review and approve the design and specifications of the Support Structure as well as any alterations or modifications to made thereto by the Transferee from time to time.
 - (ii) The Owner shall be solely responsible for the installation and any alterations or modifications to the Support Structure (it deems necessary from time to time for its purposes) and all costs and expenses associated therewith throughout the duration and any renewal of the term of this Agreement.

7. NON-INTERFERENCE BY OWNER.

Except as provided in Section 8 hereof, the Owner shall not do or permit to be done any act or thing, which may, as reasonably determined by the Transferee, damage the Transmission Facilities or the Support Structure and/or interfere with the Transferee's operation or use of the Transmission Facilities and/or the Support Structure under any rights granted to the Transferee by this Agreement.

8. NON-EXCLUSIVITY.

Except as specifically provided in this Agreement, nothing herein shall be interpreted so as to restrict or prevent the Owner from using the Right of Way Area and the Support Structure including without limitation granting further rights of way and easements as it may in its sole discretion deem appropriate and using the Support Structure for the purposes of its telecommunication and related needs, in a manner so as to cause as little interference as practicable to the operation and use of the Transmission Facilities for their intended telecommunications purpose or the unobstructed access to the Transmission Facilities and the Support Structure by the Transferee.

9. NON-INTERFERENCE BY THE TRANSFEEE.

The Transferee shall not do or permit to be done any act or thing, which may, as reasonably determined by the Owner, damage the Support Structure and/or interfere with the operation and use of the Support Structure by the Owner or its permittees for their telecommunication and related needs.

The Transferee agrees that all installation, operation, maintenance, repair, and removal and replacement of the Transmission Facilities and all maintenance, repair, removal and replacement and any re-enforcement of the Support Structure shall be conducted in such a manner so as to cause as little interference as practicable to the Owner and its use and enjoyment of the Lands and the Support Structure and to do as little injury as practicable to the surface of the Lands and the Right of Way Area and the Support Structure and all such undertakings will be conducted in such a manner and at such times so as to cause minimal noise intrusion to the Owner, its students, faculty, employees, invitees, guests and agents, and their respective use and enjoyment of the Lands.

10. WIRELESS TRANSMISSION

The Transferee acknowledges the Owner restricts and regulates the installation of wireless transmission facilities on campus including all rights of way due to the potentially damaging impact on research conducted by or on behalf of the Owner. The Transferee shall be solely responsible to comply with all wireless transmission restrictions and regulations of the Owner and to obtain written approval prior to installing any wireless transmission equipment. For greater clarity, the use of personal use devices such as cellular telephones and wireless modems do not require written approval.

11. RELOCATION.

Notwithstanding the grant by the Owner to the Transferee of the initial Right of Way, the Owner at its expense may at any time and from time to time at its sole discretion acting reasonably and upon giving notice to the Transferee, alter the location of the Right of Way Area provided that the terms and conditions of the grant of Right of Way are not changed. The Owner shall pay the Transferee's reasonable expenses incurred in relocating the Right of Way including all labour and materials required to relocate the Transmission Facilities and those associated with the preparation and registration in the Land Title Office of a new Statutory Right of Way Plan and any documentation that may be reasonably required by the Transferee to give effect to the altered Right of Way.

12. INDEMNITY.

The Transferee shall indemnify and save harmless and forever discharge the Owner from and against all manner of actions, causes of actions, claims, debts, suits, damages, demands and promises, at law or in equity whether known or unknown, including without limitation for injury to persons including death, of any person, damage to the Lands and any and all improvements thereupon, directly arising from, or attributable to, any act, omission, negligence or default of the Transferee in connection with or in consequence of this Agreement, save and except to the extent caused by any act, omission, negligence or default of the Owner.

The Owner shall indemnify and save harmless and forever discharge the Transferee from and against all manner of actions, causes of actions, claims, debts, suites, damages, demands and promises, at law and in equity whether know or unknown, including without limitation for injury to persons including death, of any person, damage to the Lands and any and all improvements thereupon, directly arising from or attributable to any act, omission, negligence or default of the Owner in connection with or in consequence of this Agreement, save and except to the extent caused by any act, omission negligence or default of the Transferee.

Notwithstanding any provision contained hereunder to the contrary, neither party shall be liable for indirect or consequential damages or losses, or damages for pure economic loss, however caused or contributed to, in connection with this Agreement.

13. INSURANCE.

Each party to this Agreement shall maintain during the term including any renewal term a minimum of \$5,000,000.00 General Liability Insurance. Such policies shall be endorsed to include the other party as an additional insured and shall not be cancelled or materially changed without 30 days prior written notice to the other party. Either party may request the other party to provide evidence of such insurance annually in the form of a certificate of insurance and if so requested the other party shall provide evidence of such insurance within 30 days of a request for same.

14. DISCHARGE - TERMINATION.

The Transferee may, as to all or any part of the Lands, discharge from title, in whole or in part, any rights granted to the Transferee by this Agreement. The Transferee may, at any time, abandon all or part of the Transmission Facilities with not less than 30 days prior written notice to the Owner provided that on the second anniversary of such abandonment at the option of the Owner, the Owner may require the Transferee within a reasonable period of time to remove all or part of the Transmission Facilities at the Transferee's sole cost and expense, or at the Owner's option to have the ownership of the Transmission Facilities which have been abandoned convert to the Owner, and in either case the Right of Way granted herein in respect of the area in which the abandoned Transmission Facilities are located shall terminate and the Transferee will deliver to the Owner a registrable, executed discharge or partial discharge as the case may be, of this Agreement from all part of the Lands as the case may be. In the event of removal, the Transferee shall leave the Right of Way Area and the Support Structure in the condition they were in prior to the removal of the Transmission Facilities, reasonable wear and tear excepted.

Upon expiration of the term or any renewal term of this Agreement at the option of the Owner, the Owner, acting reasonably, may require the Transferee to remove all or part of the Transmission Facilities at the Transferee's sole cost and expense, within a reasonable period of time and ensure that the Right of Way Area and the Support Structure are left in the condition they were in prior to the removal of the Transmission Facilities or at the Owner's option to have the ownership of the Transmission Facilities convert to the Owner, and in either event the Transferee will prepare at its cost and provide to the Owner a registrable, executed discharge of this Agreement from title to the Lands.

15. NOTICE.

Any notice required to be given hereunder shall be valid if in writing and delivered or telecopied at the address set out below or at such other address as may be designated in writing by either party and any such notice shall be effective when received.

In the case of notice to the Owner, such notice shall be delivered or telecopied to:

The University of British Columbia
6328 Memorial Road
Vancouver, B.C. V6T 1Z2
Facsimile: (604) 822-0922

Attention: Vice President, Finance, Resources and Operations

In the case of notice to the Transferee, such notice shall be delivered or telecopied to:

<@>

Attention: <@>

16. LICENCE.

The Transferee may grant licences to affiliates and/or others to use the Transmission Facilities in compliance with Canadian Radio-Television and Telecommunications Commission ("CRTC") guidelines and regulations but in any event subject to the Owner's prior written consent not to be unreasonably withheld or delayed .

17. ASSIGNMENT.

The Transferee may not assign or otherwise transfer or dispose of this Agreement without the Owner's prior written consent not to be unreasonably withheld or delayed, save and except to an affiliate as that term is defined in the Canada Business Corporations Act R.S.C. 1985, c. 44., or a party that controls, is controlled by or under common control with the Transferee or to a purchaser of all or substantially all of the Transferee's assets.

18. WAIVER.

No waiver or amendment of any provision of this Agreement shall be effective or deemed by a course of conduct, unless such waiver or amendment is in writing signed by the Owner and the Transferee and stating specifically that it is intended to amend this Agreement.

19. SEVERABILITY.

If any provision of this Agreement is declared invalid or unenforceable by competent authority, such provision shall be deemed severed and shall not affect the validity or enforceability of the remaining provisions of this Agreement, unless such invalidity or unenforceability renders the operation of this Agreement impossible.

20. BINDING EFFECT.

This Agreement will be registered at the Land Title Office and shall be binding upon and enure to the benefit of the Owner and the Transferee and their respective successors and assigns. By executing the Form C and Form D to which these Terms of Instrument are attached, the Owner and the Transferee agree to be bound by this Agreement.

21. AGREEMENT RUNS WITH LAND.

This Agreement runs with the Lands. Notwithstanding anything contained in this Agreement to the contrary, neither the Owner nor any future owner of the Lands or any portion of the Lands shall be liable under any of the covenants and agreements contained herein where such liability arises by

reason of an act or omission occurring after the Owner named herein or any future owner ceases to have a further interest in the Lands.

22. TELECOMMUNICATIONS LAW.

This Agreement and the provisions hereof are subject to the provisions (including regulations) of the Telecommunications Act S. C. 1993, c.38 and the Canadian Radio-Television and Telecommunications Commission Act R.S.C. 1985, c. 22 and their successor legislation, as well as any rulings, regulations, tariffs or other directives of the CRTC.

23. ARBITRATION.

In the case of a dispute between the parties during the term and any renewal of the term of this Agreement, as to any matter arising hereunder, either party hereto will be entitled to give to the other party notice of such a dispute and failing to arrive at a mutually satisfactory agreement within a period of thirty (30) days, the dispute, if not a matter which is governed under the exclusive jurisdiction of the CRTC, shall be determined by a single arbitrator appointed pursuant to the Commercial Arbitration Act, R.S.B.C. 1996 c.55 or any successor legislation. The decision of any arbitrator shall be final and binding upon the parties and may contain an order as to the costs of arbitration. If there is no order as to the costs of the arbitration, each party shall bear its own costs and one half of the common costs of the arbitration. In the event that the dispute consists of a matter which is governed under the exclusive jurisdiction of the CRTC either party may request that such dispute be submitted to the CRTC for resolution, and each party shall share half of the costs of submission to the CRTC.

24. OTHER AGREEMENT.

The Owner and the Transferee acknowledge that this Agreement is executed to evidence the agreement between them and for registration purposes and if they shall enter into another agreement relating in any way to the Right of Way and/or the Transmission Facilities and the Support Structure, whether before or after the execution and/or registration of this Agreement, such other agreement and any amendments in writing thereto shall be binding upon the parties hereto and their respective successors and assigns and in the event of any conflict between any provisions of this Agreement and any provisions of any such other agreement or in the event of the omission from this Agreement of any other matters included in any such other agreement, such other agreement shall govern and take precedence.

END OF DOCUMENT

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT – PART 1

(This area for Land Title Office use)

Page 1 of <@> Pages

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

<@>

<@>

Telecommunications SRW for multi-unit development
lots, without plan attached

2. **PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND***

(PID) (LEGAL DESCRIPTION)

<@>

3. **NATURE OF INTEREST***

DESCRIPTION	DOCUMENT REFERENCE (PAGE AND PARAGRAPH)	PERSON ENTITLED TO INTEREST
Statutory Right of Way	Pages <@>	Transferee

4. **TERMS:** Part 2 of this instrument consists of (select one only)

- a) Filed Standard Charge Terms D.F. No.
 b) Express Charge Terms Annexed as Part 2
 c) Release There is no Part 2 of this Instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in item 2.

5. **TRANSFEROR (S): ***

The University of British Columbia

6. **TRANSFeree (S):** name(s), occupation(s), postal address(es), postal code(s)

TELUS <@>

7. **ADDITIONAL OR MODIFIED TERMS:***

N/A

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

** If space insufficient, continue execution on additional page(s) in Form D

GENERAL INSTRUMENT – PART 1

8. **EXECUTION(S)**** *This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest (s) described in item 3 and the Transferor (s) and every other signatory agree to be bound by this instrument, and acknowledge (s) receipt of a true copy of the filed standard charge terms, if any.*

Officer Signature (s)	Execution Date			Party (ies) Signature (s)
	Y	M	D	
_____				THE UNIVERSITY OF BRITISH COLUMBIA by its authorized signatory (ies)
_____				TELUS <@> by its authorized Signatory

OFFICER CERTIFICATION:

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

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

** If space insufficient, continue execution on additional page(s) in Form D

Terms of Instrument – Part 2

WHEREAS the Owner (as identified in Form C Part 1 Item 5) is the registered owner of the Lands (as identified in Form C Part 1 Item 2) and has agreed to grant the party identified in Form C Part 1 Item 6 (“TELUS”) a statutory right of way which is necessary for the operation and maintenance of TELUS’ undertaking,

NOW THEREFORE in consideration of the terms and conditions set out below, the Owner and TELUS agree as follows:

1. **STATUTORY RIGHT OF WAY** The Owner grants to TELUS, its successors and assigns a statutory right of way upon the Lands:
 - a) to place, operate, maintain and remove on, under and over the Lands the following, all of which is owned and operated by TELUS: anchoring mechanisms, one or more cables for telecommunications, data transmission, power and grounding, underground ducts, support structures, all equipment, racks, cabinets, furniture, fixtures, equipment enclosures, walls, surface of floor and surface of ceiling, interior fittings, doors, lighting fixtures and/or interior finishes, including all other fixtures, chattels and/or improvements installed by TELUS within the Lands, access roadways, if necessary and related works (the “Works”);
 - b) to remove trees or obstructions which might interfere with or create a danger to persons or the Works;
 - c) to access to the Works 24 hours per day 7 days per week as required by TELUS for operational, general maintenance and emergency repairs purposes; this includes the right to enter on foot and by vehicle, with or without machinery and equipment, for the purpose of access to and egress from the Works; and
 - d) [ *if necessary*] for unobstructed, secure access to a dedicated “hub room” and/or entrance facility;
 - e) for unobstructed, secure access to all or a combination of the building’s riser wiring and its necessary conduit including, but not limited to, [ *to be updated, from time to time*] Fibre, Category 5E copper, Voice Frequency (VF) copper, and Power; for the purpose of construction, installation, testing, operation, maintenance, repairs, services, upgrades, modifications, removal and replacement of TELUS equipment and access to TELUS equipment; and
 - f) generally to do all acts and work necessary and incidental to the foregoing or the business of TELUS, including, without limitation, the right exercisable solely by TELUS for itself or, as the case may be, on behalf of the Owner to place, maintain, operate, repair, use and replace communications conduit, cable and appurtenant equipment and facilities within and throughout the building structure situate upon and forming part of the Lands.
2. **TERM** This Agreement shall continue unless and until earlier terminated in accordance with the terms herein, from the date this Agreement is executed by the Owner and TELUS for so long as TELUS is providing telecommunication services to the Owner or a lessee or licensee of the Owner.
3. **AREA RESTRICTION** The Right of Way Area consists of the Lands. As soon as TELUS has constructed the Works or any of them on the Lands, the rights granted pursuant to paragraph 1(a) shall thereupon and thereafter be confined and restricted to a portion of the Lands three metres on either side of the Works (herein referred to as the “**Right of Way Area**”). Upon completion of the Works, TELUS

will precisely set out the boundaries of the Right of Way Area in a survey made by a British Columbia Land Surveyor at the expense of TELUS. Within three months of the completion of the survey, TELUS shall deposit such survey in the appropriate Land Title Office.

4. **FEES** TELUS shall, upon receipt of a satisfactory post-index search disclosing that in the normal course of Land Title Office practice this Agreement shall be registered against title to the Lands, pay the Owner a lump sum fee in the amount of one (\$1.00) dollar.
5. **STRATA CONVERSION** If the Lands are subdivided by strata plan and the works are located within the common areas shown on the strata plan, TELUS shall, after receipt of a signed agreement from the appropriate strata corporation agreeing to be bound by this Agreement, discharge this Agreement from the strata lots shown on the strata plan but not from the common areas.
6. **CONSTRUCTION** TELUS shall at its sole expense place, operate, maintain and remove the Works in compliance with all applicable laws and the applicable land use polices, rules and regulations of The University of British Columbia. Without limitation, TELUS shall secure and any comply with the appropriate permits issued by The University of British Columbia's Campus and Community Planning department. The Works shall at all times remain the property of TELUS and shall not be considered a fixture notwithstanding any rule of law or equity to the contrary.
7. **NON-INTERFERENCE AND ANCILLARY RIGHTS** The Owner shall not do or permit to be done any act or thing which may, as reasonably determined by TELUS, damage the Works and or interfere with any rights granted to TELUS by this Agreement. The Owner grants to TELUS as rights ancillary to those described in Section 1 reasonable unobstructed access over the Land to and from the Right of Way Area for all purposes relating to the Works.
8. **WIRELESS TRANSMISSION** TELUS acknowledges the Owner restricts and regulates the installation of wireless transmission facilities on campus including all rights of way due to the potentially damaging impact on research conducted by or under the auspices of the Owner. TELUS shall be solely responsible to comply with all wireless transmission restrictions and regulations of the Owner and to obtain written approval prior to installing any wireless transmission equipment. For greater clarity, the use of personal use devices such as cellular telephones and wireless modems do not require written approval.
9. **INDEMNITY** TELUS shall indemnify and save harmless and forever discharge the Owner from and against all manner of actions, causes of actions, claims, debts, suits damages, demands and promises, at law or in equity whether known or unknown, including without limitation for injury to persons or property including death, of any person directly or indirectly arising from, or attributable to, any act, omission, negligence or default of TELUS in connection with or in consequence of this Agreement, save and except to the extent causes by any act, omission, negligence or default of the Owner. Notwithstanding any other provision of this Agreement, in no event shall TELUS be liable to any special, indirect, consequential or incidental damages from any cause whatsoever (even if it has been advised of possibility thereof), including without limitation, lost profits, lost revenues, failure to realize expected savings or other commercial or economic losses of any kind.
10. **ENVIRONMENTAL** TELUS shall comply at all times with all environmental laws or regulations of any public authority having jurisdiction. In addition, TELUS shall not use, store or deposit on the Lands any substance prohibited by law and shall obtain and maintain in good standing all environmental permits and approvals required with respect to the Works.

11. **ENVIRONMENTAL CONTROLS** TELUS shall be entitled to install, at its own cost, an air conditioning system in the Premises subject to the prior approval of the Owner, such approval not to be unreasonably withheld.
12. **DISCHARGE** TELUS may, as to all or any part of the Lands, discharge, in whole or in part, any rights granted to TELUS by this Agreement.

TELUS may, at any time, abandon all or part of the Works without affecting the rights granted to TELUS by this Agreement, provided that on the second anniversary of such abandonment, at the option of the Owner, the Owner may require TELUS within a reasonable period of time to remove all or part of the Works at TELUS's sole cost and expense, or at the Owner's option to have the ownership of the Works which have been abandoned convert to the Owner, and in either case the right of way granted herein in respect of the area in which the abandoned Works are located shall terminate and TELUS will deliver to the Owner a registrable, executed discharge or partial discharge as the case may be, of this Agreement from all part of the Lands as the case may be. In the event of removal, TELUS shall leave the Right of Way Area in the condition they were in prior to the removal of the Works, reasonable wear and tear excepted.

Upon expiration of the term or any renewal term of this Agreement at the option of the Owner, the Owner, acting reasonably, may require TELUS to: (a) remove all or part of the Works at TELUS's sole cost and expense, within a reasonable period of time and ensure that the Right of Way Area is left in the condition it was in prior to the removal of the Works; or (b) have the ownership of the Works convert to the Owner, and in either event TELUS will prepare at its cost and provide to the Owner a registrable, executed discharge of this Agreement from title to the Lands.

13. **NOTICE** Any notice required to be given hereunder shall be valid if in writing and delivered or telecopied at the address set out above or at such other address as may be designated in writing by either party and any such notice shall be effective when received.
14. **LICENCE** TELUS may grant licences to its Affiliates and or others to occupy and use the Works and or the Right of Way Area. For purposes of this Agreement, Affiliate means, as regards TELUS, an affiliated body corporate as defined in the Canada Business Corporations Act, as well as any partnership or other unincorporated association in which TELUS Corporation or any of its affiliated bodies corporate (as so defined) has a controlling interest.
15. **WAIVER** No waiver or amendment of any provision of this Agreement shall be effective or deemed by a course of conduct, unless such waiver or amendment is in writing signed by the Owner and TELUS and stating specifically that it is intended to amend this Agreement.
16. **SEVERABILITY** If any provision of this Agreement is declared invalid or unenforceable by competent authority, such provision shall be deemed severed and shall not affect the validity or enforceability of the remaining provisions of this Agreement, unless such invalidity or unenforceability renders the operation of this Agreement impossible.
17. **BINDING EFFECT** This Agreement will be registered at the Land Title Office and shall be binding upon and enure to the benefit of the Owner and TELUS and their respective heirs, executors, administrators, successors and assigns and shall run with the Lands, and with each part into which the Lands may at any time be subdivided and each parcel into which the Lands or any portion thereof may at any time be consolidated. By executing the Form C Part 1 Item 8, the Owner and TELUS agree to be bound by this Agreement. Any and all of the rights, licences, privileges, easements, rights of way and benefits of TELUS hereunder are assignable to and may be held, enjoyed and exercised by any affiliate of TELUS whether pursuant to, or in connection with, any corporate or other reorganization of TELUS

or otherwise. TELUS shall also have the right to assign the rights, licences, privileges, easements, rights of way and benefits hereby granted, in whole or in part, without the consent of the Owner to permit third parties to exercise the rights, licences, privileges, easements, rights of way and benefits hereby granted, in whole or in part, on their own or together with TELUS or other third parties and, in the event such permission is granted by TELUS, any reference herein to TELUS shall also apply to such third parties. For purposes of this section 13 and section 10 above, "affiliate" means any affiliated body corporate of TELUS Corporation as defined in the *Canada Business Corporations Act*, as well as any partnership or other unincorporated association in which TELUS Corporation or any of its affiliated bodies corporate (as so defined) has a direct or indirect controlling interest.

18. **AGREEMENT RUNS WITH THE LANDS** This Agreement runs with the Lands. Notwithstanding anything contained in this Agreement to the contrary, neither the Owner nor any future owner of the Lands or any portion of the Lands shall be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner named herein or any future owner ceases to have a further interest in the Lands.
19. **TELECOMMUNICATIONS REGULATION** This Agreement and the provisions thereof are subject to the provisions (including regulations) of the *Telecommunications Act* S.C. 1993, c.38 and the *Canadian Radio-Television and Telecommunications Commission Act* R.S.C 1985, c.C-22 and their successor legislation, as well as any rulings, regulations, tariffs or other directives of the Canadian Radio-Television and Telecommunications Commission.

END OF DOCUMENT