

**LEASE  
Britannia Centre Pool Building**

(this "Agreement") is made as of the 7th day of May, 2017,

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO.39 (VANCOUVER)**  
1580 West Broadway, in the City of Vancouver, in the  
Province of British Columbia V6J 5K8

(the "Owner")

**AND:**

**CITY OF VANCOUVER**, a municipal corporation with offices  
at 453 West 12th Avenue, in the City of Vancouver, in the  
Province of British Columbia V5Y 1V4

(the "Lessee")

**Premises:**

Shown as Building B on Appendix A attached hereto.

**Term:**

Ten (10) years less one day, subject to earlier surrender or termination as provided herein.

**Base Rent:**

Ten Dollars (\$10.00) for the Term.

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A. Capitalized terms used in this Agreement, are used with the respective meanings ascribed to them in Appendix B hereto, unless otherwise defined herein;

B. The Owner holds legal and beneficial title to the lands within the City of Vancouver and legally described as:

Parcel Identifier Number 007-622-104  
Block 178 District Lot 264A Plan 15722

(the "**Lands**");

C. There is constructed on the Lands a secondary school (the "**Secondary School**"), an elementary school (the "**Elementary School**" and together with the Secondary School, the "**Schools**") and the following buildings (collectively, the "**Buildings**" and individually, a "**Building**") located as shown on the diagram attached hereto as Appendix A:

- (i) a Building containing an elementary school gymnasium, a preschool area and a senior's lounge (the "**Elementary Gym Building**");
- (ii) a Building containing a library, humanities section and coffee shop (the "**Library Building**");
- (iii) a Building containing a swimming pool, locker rooms and multi-purpose room (the "**Pool Building**");
- (iv) a Building containing a secondary school gymnasium, hand ball courts and a teen lounge (the "**Gym C Building**"); and
- (v) a Building containing an information centre (the "**Info Centre Building**");

D. The Lessee wishes to Lease the Pool Building as shown as Building B on Schedule A attached hereto (the "**Premises**");

E. The Owner and the Lessee (collectively the "**Parties**" and individually, a "**Party**") have agreed that the Lessee will have the right to Lease and use the Premises for a nominal Base Rent (defined below) during the Term (defined below), on the terms and conditions set out herein, including the agreement by the Lessee to pay all operating and capital costs directly and indirectly related to the Pool Building and the Premises and the Lessee's use thereof, and to demolish and remove the Pool Building at the expiry or earlier termination of the Term;

F. The Lessee proposes to sublicense the use of the Premises in whole or in part and to sublicense certain usage rights and obligations of the Lessee, to one or more sublicensees, including the Society (each a "**Sublicensee**");

NOW THEREFORE in consideration of the Rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Owner by these presents does hereby grant to the Lessee and the Lessee hereby accepts a Lease to occupy the Premises upon and subject to the conditions set out hereunder.

## **ARTICLE 1**

### **Section 1.1 Grant and Term of Lease**

In consideration of the Rents, covenants and conditions herein on the part of the Lessee to be performed and observed, the Owner hereby Leases the Premises to the Lessee (this "**Lease**"), for and during the term of TEN (10) years less one day, commencing on May 7, 2017 (the "**Lease Commencement Date**") and expiring at 11:59 p.m. on May 5, 2027, subject to earlier surrender or termination in accordance with the provisions of this Agreement (the "**Term**"). This Lease does not contain any option to renew or right for the Lessee to extend the Term. Unless the Owner, in its absolute discretion, executes a new written lease agreement with the Lessee for the Premises prior to the end of the Term, the Tenant shall vacate the Premises at the end of the Term.

### **Section 1.2 License for Access to Premises**

The Owner hereby also grants unto the Lessee and its invitees to the Premises the right and license to use (and to sublicense the right and license to use to a Sublicensee of the Premises), in common with the Owner and invitees of the Owner, throughout the Term, to enter, go, pass, repass upon and along those parts of the Lands reasonably required and either with or without vehicle to inspect, maintain, repair, alter or remove the Pool Building including the foundations, footings, walls and all machinery, equipment and other facilities relating thereto (collectively, the "**Licensed Access Areas**").

### **Section 1.3 Base Rent**

Yielding and paying therefor in advance for the entire Term, a base Rent (the "**Base Rent**") in the sum of ten dollars (\$10.00) payable on the commencement date of this Lease. The Base Rent together with any additional amounts payable by the Lessee are referred to as "**Rents**" in this Agreement.

### **Section 1.4 Payment for Common Services and Systems**

In addition to the Base Rent, but without duplication of any amounts paid by the Society to the Owner under the TPA, the Lessee shall pay, or cause to be paid, all charges, rates and levies directly billed to the Lessee (or any Sublicensee) on account of Common Services and Systems and all other expenses and outgoings relating to the Premises when due and, if requested, shall promptly provide the Owner with receipts evidencing such payments. In addition, the Lessee shall without duplication reimburse the Owner for all direct and indirect expenses separately incurred by the Owner in connection with the operation and maintenance of the Premises that have not otherwise been paid by the Lessee or reimbursed to the Owner including, without limitation, all costs of property insurance, utilities, maintenance, repairs, painting, replacements, custodial services, security services, snow removal, landscape maintenance and pest control. Where any such costs are incurred in respect of areas within and outside of the Premises, each Party shall pay a pro rata share based on the proportion of the relevant areas within and outside of the Premises, respectively and as applicable. If there is disagreement between the Parties regarding the calculation of or payment of amounts payable pursuant to this Section, then the matter will be settled in the manner set out in Section 13.14.

### Section 1.5 Payments Generally

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

- (a) paid, or caused to be paid, to the Owner by the Lessee in lawful currency of Canada;
- (b) made when due hereunder, without prior demand therefor, to the Owner at its address specified in Section 13.1 or such other place as the Owner may designate from time to time in writing to the Lessee;
- (c) applied towards amounts then outstanding hereunder, in such manner as the Owner may see fit; and
- (d) deemed to be Rents, in partial consideration for which this Agreement has been entered into, and shall be payable and recoverable as Rents, such that the Owner shall have all rights and remedies against the Lessee for default in making any such payment which may not be expressly designated as Rents as the Owner has for default in payment of Rents.

### Section 1.6 Use of Premises

Subject always to Section 9.1, the Premises will be used by the Lessee (or Sublicensee) for the purpose of operating a swimming pool as it is currently used, and for such other uses as similar facilities are currently used by the Vancouver Board of Parks and Recreation, or as may be approved in writing by the Owner (collectively, the "Permitted Uses" and each a "Permitted Use"), provided always that any such use shall comply with Applicable Law and not unreasonably interfere with or disturb the use of either of the Schools by the Owner.

### Section 1.7 Property Taxes

- (a) Subject to paragraph (b), should the Premises or any portion thereof or any trade fixtures or chattels therein or any activities of the Lessee (or Sublicensee) therein for any reason be or become subject to any property, school, local improvement or other charges or taxes, or any charges or taxes levied under or by virtue of the *Hospital District Finance Act*, R.S.B.C. 1996, c. 203, as amended or substituted from time to time, the *Municipal Finance Authority Act*, R.S.B.C., 1996, c. 325, as amended or substituted from time to time, or any and all other statutes, laws, enactments, regulations and ordinances of the federal, provincial or municipal governments or other competent authority, or any modifications or re-enactments thereof, which are in the ordinary course lawfully imposed against the Premises or against any machinery in or about the Premises, then the Lessee shall pay all such charges and taxes promptly when due and provide proof of such payment to the Owner upon request.
- (b) Despite paragraph (a) above, the Lessee will not be liable for any such amounts that arise because the Owner has transferred the Lands or made a voluntary election under any Applicable Law.

## **Section 1.8 Goods and Services and Provincial Sales Tax**

The Lessee shall pay, or cause to be paid, when due all Goods and Services and Provincial Sales Taxes, value-added taxes, harmonized and other sales taxes, and all other consumption based taxes, rates, levies and assessments which are from time to time payable by the Lessee or the Owner as a result of or that would not be payable but for the rights and obligations contained in this Agreement, including but without derogating from the generality of the foregoing, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Lessee to the Owner. Any loss, costs, charges and expenses which relate to such taxes, rates, levies and assessments suffered by the Owner may be collected by the Owner as additional Rents with the same remedies as are reserved to the Owner in respect of Rents in arrears.

## **Section 1.9 Net Lease**

The Lessee acknowledges and agrees that it is intended that this Lease shall be a completely carefree net Lease for the Owner with respect to the Premises, and that the Owner shall not be responsible during the Term or any renewal for any taxes, costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises, except as shall be otherwise specifically provided in this Agreement. Except as shall be otherwise provided in the specific provisions contained in this Agreement, the Lessee shall pay all charges, impositions and costs of every nature and kind relating to the Premises, regardless of whether referred to herein and regardless of whether within the contemplation of the Owner or the Lessee.

## **Section 1.10 Naming Rights**

The Lessee may display signage, name and rename the Premises in any manner in which it chooses in the Lessee's sole discretion, and the Owner may name and rename the Schools from time to time in the Owner's sole discretion.

# **ARTICLE 2**

## **Section 2.1 General Principle Regarding Repair, Maintenance, Demolition and Replacement of Building Services and Systems**

The roles and responsibilities of the Parties in respect of the Pool Building shall be based on the general principle that, except as otherwise expressly provided in this Agreement, the repair, maintenance, demolition and replacement of any building service, system or other thing which services, benefits and relates only to the Premises shall be at the sole discretion and responsibility of the Lessee.

Each Party now grants the other reasonable rights of access to enable the repairs, maintenance, demolition and replacement contemplated by this Section to be undertaken in a timely manner, subject always to reasonable advance notice except in the case of emergency when no advance notice will be required. All maintenance, repairs, testing, demolition, replacement and other work on the Lands and the Building, including the Premises, will be done so as to cause as little interference as reasonably possible, to the users



thereof. Records of any such work performed or planned shall be made available to each Party for its review and analysis upon request by the other Party at no cost.

## **Section 2.2 Access Rights and Liability for Damage and Amendment to Easement**

The Lessee hereby assumes all the obligations of the Owner pursuant to Section 5 of the Easement, and the Lessee hereby irrevocably releases the Owner from any liability or claims in respect of those obligations, to the extent that those obligations apply in respect of the Pool Building during the Term.

## **Section 2.3 Renovations of Premises by Lessee**

Except to comply with a legal requirement to ensure the safety or regulatory compliance of the Premises, the Lessee shall not carry out, or permit to be carried out, any additions, renovations or alterations to the Pool Building (collectively, "**Alterations**") that exceed a total value of \$100,000 (or \$250,000 in the event of damage or destruction) in any calendar year, without the Owner's prior written consent, which may not be unreasonably withheld. All such works shall be wholly at the Lessee's expense but shall be the Owner's absolute property, subject always to Section 4.6.

By consenting to any Alterations, the Owner is not in any way stating, warranting or representing that the Alterations are permitted under the City of Vancouver Zoning and Development By-law No. 3575 and amendments thereto, the City of Vancouver Building By-law No. 6134 and amendments thereto, or any other relevant by-laws. No consent given by the Owner (and no failure to enforce this Section of this Agreement) will affect the Lessee's obligations to comply at its sole expense with all Applicable Law pursuant to this Agreement.

## **Section 2.4 Liens and Encumbrances - Premises**

In connection with all labour performed in, or materials supplied for, the making, erection, installation or alteration of any work or installations made by or for the Lessee (or Sublicensee) in the Premises, the Lessee will comply, and will cause the Sublicensee to comply, as applicable, with all the provisions of the *Builders Lien Act*, as amended or substituted from time to time, and other statutes from time to time applicable thereto, including any provision requiring or enabling the retention of any sum as a holdback.

The Lessee will not create any mortgage, security agreement or other encumbrance in respect of any improvements or trade fixtures or permit any such mortgage, security agreement or other encumbrance to attach to any of the Pool Building or the Premises.

If and whenever any builders lien or other lien for work, labour, services or materials supplied to or for the Lessee or the Sublicensee or for the cost of which the Lessee or the Sublicensee may be in any way liable, or claims therefore arise or are filed or any such mortgage, security agreement or other encumbrance attaches to the title to the Lands, the Lessee will, within thirty (30) days after receipt of notice thereof, procure, or cause to be procured, the discharge thereof, including any certificate of pending litigation or other notation or charge registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law. Provided however, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee will be entitled to defend against the same in any proceedings brought in

respect thereof after first paying into a court of competent jurisdiction the amount claimed or sufficient security therefore, and such costs as the court may direct.

Pursuant to Section 3(2) of the *Builders Lien Act*, the Owner may, but shall not be obligated to, file in the Land Title Office notice of its interest in the land on which the Premises are located to ensure that the Owner's title does not become charged with liens related to this Lease.

## **Section 2.5 Lessee not to Overload Services**

The Lessee shall not install any equipment that will exceed or overload the capacity of any of the Common Services and Systems. If, in the opinion of the Owner, any equipment installed by the Lessee shall have an impact on any of the Common Services and Systems, the same shall be installed at the Lessee's expense only in accordance with plans and specifications that have been approved in writing by the Owner in the Owner's discretion, such approval not to be unreasonably withheld, delayed or conditioned.

## **ARTICLE 3**

### **Section 3.1 Limitation of Liability - Owner**

Notwithstanding any other provision of this Agreement, the Owner and its officers, employees and agents shall not be responsible in any way for:

- (a) any replacement, repair or maintenance of improvements on the Premises, except for Common Services and Systems;
- (b) provision or interruption of any utilities or services to the Premises including, without limitation, heat, light, water, electricity, gas, air conditioning, telephone, cable or internet;
- (c) any personal injury, death or consequential damage of any nature whatsoever, however caused, that may be suffered or sustained by the Lessee or the Sublicensee in respect of its use or occupation of the Premises, or by any other Person who may be in or about the Premises; or
- (d) any loss or damage of any nature whatsoever, however caused, to the Premises or to any property belonging to the Lessee or the Sublicensee or to any other Person while such property is in or about the Premises;

whether in the course of the performance of the Owner's obligations under this Agreement or otherwise, unless, and in that case only to the extent that, such results from the negligent or wrongful act or omission of the Owner, its employees, contractors or agents.

### **Section 3.2 Owner's Indemnity**

The Lessee shall indemnify and save harmless the Owner from any and all manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature (each, a "Claim") whatsoever relating to or arising out of:

- (a) any breach, violation or non-performance of any covenant, condition or agreement in this Agreement on the part of the Lessee to be fulfilled, kept, observed and performed;
- (b) any damage to property while the property is in or about the Premises or arising out of or resulting from the granting of this Lease or the action or inaction of the Lessee or any Person for whose actions the Lessee is legally responsible; or
- (c) any injury to any Person (including death) occurring in or about the Premises or arising out of or resulting from the granting of this Lease or the action or inaction of the Lessee or any Person for whose actions the Lessee is legally responsible;

except to the extent any such Claim is reasonably attributable to the negligence or default of the Owner or of any Person for whose actions the Owner is legally responsible, and provided always that by granting this indemnity the Lessee does not assume any environmental liability for Pre-Existing Contaminants that the Lessee would not otherwise have.

## ARTICLE 4

### Section 4.1 Definitions - Environmental Clauses

In this Agreement, the following words and expressions shall have the following meanings:

- (a) **"Contaminants"** means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, lead, asbestos, asbestos-containing materials, hazardous, corrosive, or toxic substances, special waste, waste, polychlorinated biphenyls ("PCBs"), PCB-containing equipment or materials, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, which is now or hereafter prohibited, controlled, or regulated under Environmental Laws, but expressly excludes any and all such materials (**"Pre-Existing Contaminants"**) existing within the Premises as of the Effective Date; and
- (b) **"Environmental Laws"** means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits and other lawful requirements of any Governmental Authority having jurisdiction over the Premises now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity.

## Section 4.2 Lessee's Environmental Obligations and Liability

The Lessee covenants and agrees as follows:

- (a) to strictly comply, and cause any Person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises;
- (b) to promptly provide to the Owner a copy of any environmental site investigation, assessment, audit, report, or test results relating to the Premises conducted by or for the Lessee at any time;
- (c) if the Owner has reason to believe that the Lessee may have contravened Environmental Laws, at the Owner's request to obtain, from an independent environmental consultant approved by the Owner, an environmental site investigation of the Premises, as it relates to the Lessee's alleged contravention, or an environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the Owner, and shall include any additional investigations as the environmental consultant may recommend and to promptly provide such written authorizations as the Owner may require from time to time to make inquiries of any Governmental Authority regarding the Lessee;
- (d) to promptly notify the Owner in writing of any presence or release of a Contaminant in contravention of Environmental Laws, or any other occurrence or condition at the Premises or any adjacent property (including the Lands) known to the Lessee which could contaminate the Premises or such adjacent property, or subject the Owner or the Lessee to any fines, penalties, orders, investigations, or proceedings under Environmental Laws; and
- (e) on the expiry or earlier termination of this Lease, or at any time if requested by the Owner or required by any Governmental Authority under Environmental Laws, to remove from the Premises (or the Lands, in the case of Contaminants originating from the Premises, the Lessee or any Sublicensee) all Contaminants, and to remediate, by removal of any Contaminants or otherwise as reasonably required, the Premises or any adjacent property (including the Lands), if the same has been contaminated with Contaminants; PROVIDED, HOWEVER, that in either case such removal and remediation shall only be for those Contaminants on, of or released from the Premises, or brought onto, used at, or released from the Premises (or the Lands) by the Lessee or any Person for whom the Lessee is in law responsible including, without limitation, any Sublicensee and any agent, employee, officer, contractor, subcontractor or invitee of the Lessee or of any Sublicensee. The Lessee shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. The Lessee shall provide to the Owner full information with respect to any remedial work performed under this Section and shall comply with the Owner's requirements with respect to such work. The Lessee shall use a qualified environmental consultant approved by the Owner (acting reasonably) to perform the remediation. The Lessee shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment and other

applicable governmental authorities in respect of the remediation as are required under Environmental Laws or by the Owner, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry and the Owner. All such Contaminants shall remain the property of the Lessee, notwithstanding any rule of law or other provision of this Agreement to the contrary and notwithstanding the degree of their affixation to the Premises (or the Lands, if applicable).

### **Section 4.3 Suitability of the Premises**

The Lessee acknowledges and agrees that neither the Owner itself nor through any of its officers, employees or agents has made and the Lessee has not relied upon any representations or warranties from the Owner nor from any of its officers, employees or agents as to:

- (a) the state of repair of the Premises;
- (b) the suitability of the Premises for any business, activity or purpose whatever;
- (c) the suitability of the Premises for use by the Lessee;
- (d) the existence, nature or extent of any Contaminants on, of or from the Premises; or
- (e) the need to take any remedial action in relation to any Contaminants on, of or from the Premises.

### **Section 4.4 Lessee's Inspection of the Premises**

The Lessee acknowledges and agrees that it has been afforded all reasonable opportunity to inspect the Premises and all relevant documentation in respect thereof and to carry out such audits, investigations, tests and surveys as it considers reasonably necessary to ascertain:

- (a) the state of repair of the Premises;
- (b) the suitability of the Premises for use by the Lessee;
- (c) the existence, nature or extent of any Contaminants on the Premises; and
- (d) the need to take any remedial action in relation to any Contaminants on or of the Premises;

and the Lessee has independently made all such inspections, audits, investigations, tests and surveys as it regards as being necessary for the above purposes. It is understood and agreed that the Premises are being Leased to the Lessee on an "as is" basis, except by entering into this Lease the Lessee is not assuming any environmental liability for Pre-Existing Contaminants that the Lessee would not otherwise have.

#### **Section 4.5 Enquiries Pertaining to Contaminants**

The Lessee hereby authorizes the Owner to make enquiries from time to time of any government or governmental agency with respect to the Lessee's compliance with any and all Applicable Law pertaining to the Lessee, the Lessee's activities on the Premises, and the Premises including without Environmental Laws; and the Lessee covenants and agrees that the Lessee will from time to time provide to the Owner such written authorization as the Owner may require in order to facilitate the obtaining of such information.

#### **Section 4.6 Ownership Remains With Lessee**

If any Contaminants are at any time upon or released from the Premises or if the conduct of the Lessee's or the Sublicensee's activities shall cause there to be any Contaminants upon or released from the Premises then, notwithstanding any rule of law or equity to the contrary, such Contaminants shall be and remain the sole and exclusive property of the Lessee and shall not become the property of the Owner and notwithstanding the degree of affixation of the Contaminants or the goods containing the Contaminants to the Premises and notwithstanding the expiry or earlier termination of this Lease.

#### **Section 4.7 Environmental Covenants Survive Termination**

The obligations of the Lessee in this Article 4 shall survive the expiry or earlier termination of this Lease save only that, to the extent that the performance of those obligations requires access to or entry upon the Premises or any part thereof, the Lessee shall have such entry and access only at such times and upon such terms and conditions as the Owner may (acting reasonably) from time to time specify; and the Owner may, at the Lessee's cost and expense (but only where the Lessee is in material default of its obligations hereunder), undertake the performance of any necessary work in order to complete such obligations of the Lessee; but having commenced such work, the Owner shall have no obligation to the Lessee to complete such work.

### **ARTICLE 5**

#### **Section 5.1 Insurance**

Throughout the Term:

- (a) The Lessee and the Owner shall maintain at their expense comprehensive public liability insurance insuring the Lessee, the Owner, the Society and their officers, employees and volunteer workers against claims for loss, damage, injury or death to any Person or Persons and for loss or damage to any property caused by any act or omission on the part of the Lessee, the Owner, the Society and the officers, employees, agents, volunteer workers and independent contractors, or any of them, of the Lessee, the Owner or the Society. The limit of such insurance shall be to the satisfaction of the Lessee and the Owner.

- (b) The Lessee shall maintain at the Lessee's expense a fire insurance policy insuring the Pool Building and other property of the Lessee within the Pool Building or in which the Lessee has an insurable interest, which is from time to time used in connection with the operation of the Pool Building for the perils of fire, lightning, explosion, malfunction and non-function of boiler pipes and accessories in or upon the Pool Building and the perils defined in a standard fire insurance additional perils supplementary contract customarily in use from time to time for similar property in the City of Vancouver for the full insurable value thereof or replacement cost thereof, whichever is greater, and such other risks against which the Lessee may determine it is advisable to insure, subject to a deductible as may be determined from time to time by the Lessee. The policy shall contain a waiver of subrogation with respect to any claim against the Society.
- (c) The Lessee shall cause the Society to maintain an all risks insurance policy insuring the property of the Society or in which the Society has an insurable interest which is from time to time used in connection with the operation of the Pool Building for the perils of fire, lightning and explosion in or upon the Pool Building and the perils defined in a standard fire insurance additional perils supplementary contract customarily in use from time to time for similar property in the City of Vancouver for the full insurable value thereof or replacement cost, whichever is greater, and such other risks against which the Lessee and the Owner may agree it is advisable for the Society to insure.
- (d) The Lessee shall cause the Society to enter into a fidelity bond with a surety company authorized to carry on business in the Province of British Columbia and in a form and for a sum satisfactory to the Director of Legal Services for the Lessee and the Society, indemnifying the Lessee, the Owner and the Society against all loss, costs and expenses which the Lessee, the Owner or the Society may suffer, pay or be put to by reason of any act, theft, embezzlement, mismanagement, neglect or default by any employee of the Society engaged in the operation of the Pool Building.

## ARTICLE 6

### Section 6.1 Damage or Destruction

If the Premises are substantially damaged or destroyed to the extent that the Premises or a substantial area of the Premises are rendered unusable by the Lessee (or the Sublicensee), then:

- (a) if the Premises can be repaired to a lawful, safe and usable condition at a cost of less than \$250,000, as determined by agreement between the Owner and the Lessee or by arbitration failing such agreement, then the Lessee may at its option proceed with the repairs at its own risk and expense, subject always to the Lessee's compliance with the provisions of this Agreement and all Applicable Law;

- (b) if the Premises can be repaired to a lawful, safe and usable condition at a cost of less than \$250,000, as determined by agreement between the Owner and the Lessee or by arbitration failing such agreement, and if the Lessee does not within 180 days after such damage or destruction commence and thereafter diligently proceed with those repairs, then the Lessee shall be deemed to have abandoned the Premises, but that shall not terminate the Lease or relieve the Lessee of any liability arising from such damage or destruction, or entitle the Lessee to any compensation; and
- (c) if the Premises cannot be repaired to a lawful, safe and usable condition at a cost of less than \$250,000, as determined by agreement between the Owner and the Lessee or by arbitration failing such agreement, then the Owner may at its option elect not to permit the Lessee to proceed with the repairs, and upon such election the Lessee shall be deemed to have abandoned the Premises, but that shall not terminate the Lease or relieve the Lessee of any liability arising from such damage or destruction, or entitle the Lessee to any compensation.

## **Section 6.2 Surrender of Lease**

The Lessee is entitled to elect to surrender this Lease at any time on written notice to the Owner, to be effective upon delivery of such notice or at such later date as the Lessee may specify in the notice.

## **Section 6.3 Termination on Completion of Land Exchange**

The Lease shall terminate automatically upon completion of a land exchange pursuant to the Land Exchange Agreement that results in the Lessee becoming the legal and beneficial owner of a portion of the Lands that includes the Premises.

# **ARTICLE 7**

## **Section 7.1 Assignment**

The Lessee shall not assign this Lease or its interest herein, save and except upon the written consent of the Owner, which consent the Owner may withhold in the Owner's discretion.

## **Section 7.2 Sublicensing**

The Owner consents to the Lessee granting a sublicense to use the Premises, including the Licensed Access Areas, to the Society or to another Sublicensee, provided that neither such consent, nor such sublicense (collectively, the "Sublicense"), shall release the Lessee or in any way reduce the Lessee's obligations pursuant to this Agreement.

## **Section 7.3 Mortgage of Lease**

Under no circumstances whatever may this Lease be mortgaged or otherwise encumbered by way of mortgage, charge, pledge, assignment or otherwise.



#### Section 7.4 No Registration

The Lessee shall not in any circumstances be entitled to register this Lease, and hereby covenants and agrees with the Owner not to file or to apply for registration of this Lease or any caveat, certificate of pending litigation or any other claim whatsoever against title to the Lands.

### ARTICLE 8

#### Section 8.1 Statutes and By-laws

The Lessee shall promptly and faithfully observe and comply with all Applicable Law now or hereafter in force and effect which touch and concern the Pool Building, the Premises or activities thereon and therein, including, without limitation, any applicable Environmental Laws, and any amendments thereto.

Without limiting the foregoing, the Lessee further:

- (a) acknowledges that the *Tobacco Control Act* prohibits the use of tobacco and smoking (the "**Smoking Ban**"), and the Owner prohibits the consumption of alcohol (the "**Drinking Ban**"), in all school district buildings and on all school district lands, and the Lessee agrees that during the Term and while the Lessee (or any Sublicensee, as applicable) remains in occupancy of the Premises, the Lessee will comply with, and cause to be complied with, the Smoking Ban and the Drinking Ban and will use its best efforts to enforce the Smoking Ban and the Drinking Ban in and about the Premises; and
- (b) agrees, that the Lessee (and all Sublicensees, as applicable) shall obtain all approvals or permits necessary for its use or occupation of the Premises and for any work to be done on the Premises, and acknowledges that the Owner makes no representation or warranty that the uses allowed by this Lease are permitted by Applicable Law.

### ARTICLE 9

#### Section 9.1 Breach of Covenants by Lessee

If and whenever:

- (a) the Lessee defaults in performing or observing any of the provisions of this Agreement and such default continues for a period of ninety (90) days after notice thereof to the Lessee, excepting a default which to be cured with all due diligence would require a longer period, then after such longer period, or if the Lessee fails to proceed promptly and diligently and continuously after the service of such notice to cure same, and further excepting circumstances where the Parties are endeavouring in good faith to resolve the default, then until they cease to do so; or

- (b) the Premises are vacated or unoccupied for twelve (12) or more consecutive months while the Premises can be used for a Permitted Use, without the consent of the Owner; or
- (c) the Premises are abandoned by the Lessee;

then and in every such case, it shall be lawful for the Owner at any time thereafter to limit the Lessee's right to use the Premises by notice in writing to the Lessee delivered in accordance with Section 13.1 specifying that the Lessee may only occupy the Premises for security, maintenance, cleaning and demolition purposes, and not for any other purpose. Delivery of such notice shall not terminate the Lease or relieve the Lessee of any liability arising from any default under this Lease, and the Owner shall not be liable to pay the Lessee any compensation or damages whatsoever in respect of such notice or reduction in permitted use. This provision shall not be construed so as to delay or supersede any other specific remedy to which the Owner may have recourse in this Agreement.

## **Section 9.2 Remedies Generally**

Mention in this Agreement of any particular right or remedy of either Party in respect of the default by the other Party shall not preclude the non-defaulting Party from any other right or remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No right or remedy shall be exclusive or dependent upon any one or more of such rights or remedies independently or in combination, such rights or remedies being cumulative and not alternative. The Parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either Party against the other on any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of the Owner and the Lessee created hereby, the Lessee's use or occupancy of the Premises or any claim for any injury. In the event of any breach or threatened breach by either Party of any of the terms and provisions of this Agreement, the other Party shall have the right to injunctive relief as if no other remedies were provided herein for such breach. Each Party hereby expressly waives any right to assert a defence based on merger and agrees that neither the commencement of any action or proceeding, nor the settlement thereof, nor the entry of judgment therein shall bar the other Party from bringing any subsequent action or proceeding from time to time.

## **ARTICLE 10**

### **Section 10.1 Vacant Occupancy**

Upon surrender, expiry or termination of the Term, the Lessee shall deliver up vacant occupancy of the Premises to the Owner, subject always to any rights conferred on the Lessee under the Land Exchange Agreement and subject to the Lessee's obligations pursuant to Section 10.2 of this Agreement.

## **Section 10.2 Condition of Premises upon Surrender, Expiry or Termination**

Upon surrender, expiry or termination of the Term of this Lease, unless the Lessee has become the registered owner of lands that include the Pool Building pursuant to the terms of the Land Exchange Agreement:

- (a) if the Lessee has elected to demolish the Pool Building, then within ninety (90) days after surrender, termination or expiry of the Lease, the Lessee shall at its own risk and expense completely, safely and lawfully demolish the Pool Building and remove from the Premises all construction and demolition materials, and deliver the Premises to the Owner in reasonable condition, free and clear of all nuisance, debris, rubbish and encumbrances, and without the Owner being obligated to indemnify or compensate the Lessee or any other Person for any reason whatsoever; or
- (b) if the Lessee has elected not to demolish the Pool Building, then Section 10.2(a) shall not apply, and the Lessee shall leave the Pool Building in a lawful, sanitary, neat, tidy, safe and empty condition free from all nuisance, debris, rubbish and stock-in-trade and, subject to Section 4.6, in that event all property of the Lessee or of any Sublicensee that remains in the Pool Building after termination or expiry of the Lease shall become the property of the Owner without compensation to the Lessee or any other Person.

## **ARTICLE 11 RIGHT OF ENTRY**

### **Section 11.1 For Inspection**

The Owner or its agents have the right to enter the Premises at any reasonable time (and upon such advance written notice as the Lessee or the Sublicensee, as applicable, may reasonably require) for any purpose including, without limitation, to inspect their condition and investigate whether the Premises are being used safely, lawfully, only for the Permitted Uses and otherwise in accordance with the terms of this Agreement.

### **Section 11.2 Emergency Access**

If and when for any reason an emergency will exist or be contemplated, the Owner or its agents may enter the Premises by a master key, or may forcibly enter them, provided reasonable care is exercised, without rendering the Owner or such agent liable, and without in any manner affecting the Lessee's obligations under this Agreement.

### **Section 11.3 Owner's Development and Operating Rights**

Subject to anything to the contrary contained in this Agreement, the Owner shall have the right at all times and from time to time, to:

- (a) exercise all the rights and powers of the Owner as owner of the Lands;
- (b) construct, maintain and operate the Schools on the Lands other than the Premises;

- (c) make structural changes to the Schools, and expand, reduce or replace either or both of the Schools, provided same does not materially adversely affect the Lessee's rights to use and enjoy the Pool Building during the Term;
- (d) make minor changes in the configuration of the Premises, or the size, location or configuration of the Licensed Access Areas, subject to the prior consent of the Lessee (and the Sublicensee, if applicable), such consent not to be unreasonably withheld, conditioned or delayed;
- (e) subject to Section 2.1, interrupt or suspend the supply of electricity, heat, water or other utilities and services when necessary and until the said approved additions, improvements, installations or repairs shall have been completed, subject to the prior consent of the Lessee (and the Sublicensee, if applicable), such consent not to be unreasonably withheld, conditioned or delayed; and
- (f) temporarily obstruct or close off the Premises or any parts thereof, or any of the Licensed Access Areas, for the purpose of maintenance, repair or construction or for any other reasonable purpose, subject to the prior consent of the Lessee (and the Sublicensee, if applicable), such consent not to be unreasonably withheld, conditioned or delayed.

Without limiting the generality of the foregoing, the Lessee acknowledges that the Lessee shall not have any right to object to nor any right to any claim of damages or any reduction or abatement in Rents in respect of any exercise of the Owner's rights under this section. The exercise by the Owner of its rights set forth in this section shall not be deemed to be a default under or a constructive or actual termination of the Lease, nor a breach of any other covenant contained in this Agreement.

## **ARTICLE 12**

### **Section 12.1 Owner Released**

In the event of the sale or lease by the Owner of the Lands and the Pool Building or the assignment by the Owner of its interest in this Lease, the Owner will, upon the transferee or assignee of the Owner's interest first entering into an assignment and assumption agreement with the Lessee and the Owner, on terms and conditions satisfactory to the Lessee, be released and relieved of and from its unaccrued liabilities and obligations under this Agreement.

## **Section 12.2 Lessee's Covenant**

If the Owner lawfully sells, transfers or otherwise disposes of the Premises, or any portion of the Premises, to any Person, then upon the conveyance to such Person of the Premises or any portion of them, subject to the Owner's compliance with Section 12.1, the Lessee will attorn to and become the Lessee of such Person under the terms of this Agreement and the Lessee will provide such Person with an acknowledgment in writing binding upon the Lessee that it will perform the obligations and satisfy the liabilities of the Lessee, on the same terms as any existing agreement with the Owner.

## **Section 12.3 Status Statement**

The Lessee will provide within sixty (60) days of the request of the Owner a status statement for the Owner, addressed to the Owner and any other Person designated by the Owner, binding upon the Lessee, confirming:

- (a) that the Lessee is occupying the Premises;
- (b) whether or not the Owner has carried out all of its obligations pursuant to this Agreement;
- (c) that this Agreement constitutes the whole of the agreement between the Parties (or setting out such other agreements);
- (d) that this Agreement is in full force and effect and that there are no defences or set offs which the Lessee claims against the Owner (or setting out any such claims); and
- (e) such other matters as may be reasonably required by the Owner.

## **ARTICLE 13**

### **Section 13.1 Delivery of Notices**

Any notice required to be given hereunder must be in writing and the sender must deliver it by personal delivery or by e-mail to the Party to which it is to be given, as follows:

- (a) to the Lessee:

City of Vancouver  
453 West 12th Avenue  
Vancouver, British Columbia  
V5Y 1V4

Attention: Director of Legal Services;  
E-mail address:

with a copy addressed: Attention: Director of Real Estate Services  
E-mail address:

and

(b) to the Owner:

The Board of Education of School District No.39 (Vancouver)  
1580 West Broadway  
Vancouver, British Columbia  
V6J 5K8

Attention: Secretary-Treasurer  
E-mail address:

or to such address or e-mail address as the Party may designate and will be deemed to have been received on the day of personal delivery or e-mail transmission if within business hours on a business day except that if the recipient's e-mail address is sending an "out-of-office" or similar notice then such e-mail will only be deemed to be delivered when the recipient acknowledges receipt by e-mail reply.

### **Section 13.2 Administration of Lease**

Where this Agreement requires or permits on the part of a Party any authority, reservation, discretion, disallowance, approval or other act of supervision or the giving of any notice, such act or action shall be well and truly performed:

- (a) on the part of the Owner when performed by the Owner's Secretary Treasurer or his or her nominee; and
- (b) on the part of the Lessee when performed by the Lessee's Director of Real Estate Services or his or her nominee.

### **Section 13.3 Covenants Survive Termination**

Except to the extent expressly stated to be merged by the Land Exchange Agreement, the covenants herein on the part of the Owner and the Lessee which, as of termination of this Lease or the end of the Term whether by passage of time or otherwise, remain unfulfilled, undischarged or otherwise outstanding shall nevertheless survive such termination and remain in full force and effect and be binding upon the Parties and their respective successors and assigns so long as there is any liability or indebtedness by either Party to the other or so long as any such covenant remains unfulfilled, undischarged or otherwise outstanding, whether in whole or in part, notwithstanding anything herein to the contrary.

### **Section 13.4 Time is of the Essence**

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

### **Section 13.5 Captions and Headings**

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

### **Section 13.6 Interpretation**

Words herein importing the singular number or the masculine gender only shall include more Persons, parties or things of the same kind than one, and females or corporations as well as males, and the converse whenever the context requires; these presents shall extend to, be binding upon and enure to the benefit of the Owner and the Lessee and the successors and permitted assigns of the Owner and the Lessee.

### **Section 13.7 Joint and Several**

Any covenant, agreement, condition or proviso made by two (2) or more Persons shall be construed as several as well as joint.

### **Section 13.8 Waiver**

No waiver of or neglect to enforce this Agreement upon a default by a Party will be deemed to be a waiver of any such right upon any subsequent similar default. Without limiting the generality of this Section 13.8, the acceptance by the Owner of part payment of any sums, including Rent, required to be paid under this Agreement will not constitute a waiver or release of the Owner's right to payment in full of such sums.

### **Section 13.9 Entire Agreement**

The Parties acknowledge that there are no covenants, representations, warranties, agreements, terms or conditions expressed or implied relating to this Agreement or the Premises except as expressly set out in this Agreement, the TPA and the Easement, and that this Agreement may not be modified except by an agreement in writing executed by both the Owner and the Lessee.

### **Section 13.10 Governing Law**

This Agreement will be governed by and interpreted in accordance with the laws of British Columbia and the Parties irrevocably attorn to the jurisdiction of the courts of British Columbia.

### **Section 13.11 Severability**

If any provision or provisions of this Agreement are determined by a court to be illegal or not enforceable, it or they shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in full force and be binding upon the Parties.

### **Section 13.12 Relationship between Owner and Lessee**

Except as expressly provided in Section 2.2, nothing contained in this Agreement nor any acts of the Owner or the Lessee will be deemed to create or modify any interest in land on the part of the Lessee, or any partnership, joint venture, agency or other relationship between the Owner and the Lessee, other than a contractual relationship between a lessor and a lessee.

### **Section 13.13 Force Majeure**

Despite anything contained in this Agreement to the contrary, if the Owner or the Lessee is, in good faith, delayed or prevented from doing anything required by this Agreement because of a strike, labour trouble, inability to get materials or services, power failure, restrictive governmental laws or regulations, riot, insurrection, sabotage, rebellion, war, act of God, or any other similar reason, that is not the fault of the Party delayed or of its officers, employees or agents, the doing of the thing is excused for the period of the delay and the Party delayed will promptly do what was delayed or prevented within the appropriate period after the delay. The preceding sentence does not excuse the Lessee from payment of Rents that it is required to pay, in the amounts and at the times specified in this Agreement.

### **Section 13.14 Dispute Resolution**

If a dispute arises as to the meaning or application of any provision of this Agreement, the rights or obligations of the Owner and the Lessee hereunder, or whether a default has occurred or has been remedied, and the Parties are unable to resolve such dispute, then the matter in dispute shall be referred in the first instance to the City Manager of the Lessee and the Secretary-Treasurer of the Owner, or their respective delegates, for resolution by mutual agreement. Either Party may refer any issue that is not resolved by that process to a single arbitrator appointed pursuant to the British Columbia *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 and the costs of any audit, appraisal, remediation or other activity required by the arbitrator. Notwithstanding this Section 13.14, either Party may at any time apply to court for and a court may grant any equitable remedy including without limitation an injunction or an order for specific performance, regardless of whether arbitration proceedings have been commenced.



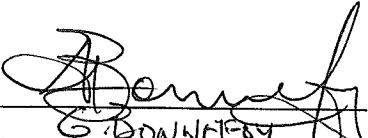
IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO.39 (VANCOUVER),  
by its authorized signatory(ies)

per:

Name:

Title:

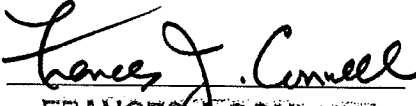
  
S. DOWNIE  
INTERIM SECRETARY-TREASURER

CITY OF VANCOUVER,  
by its authorized signatory(ies)

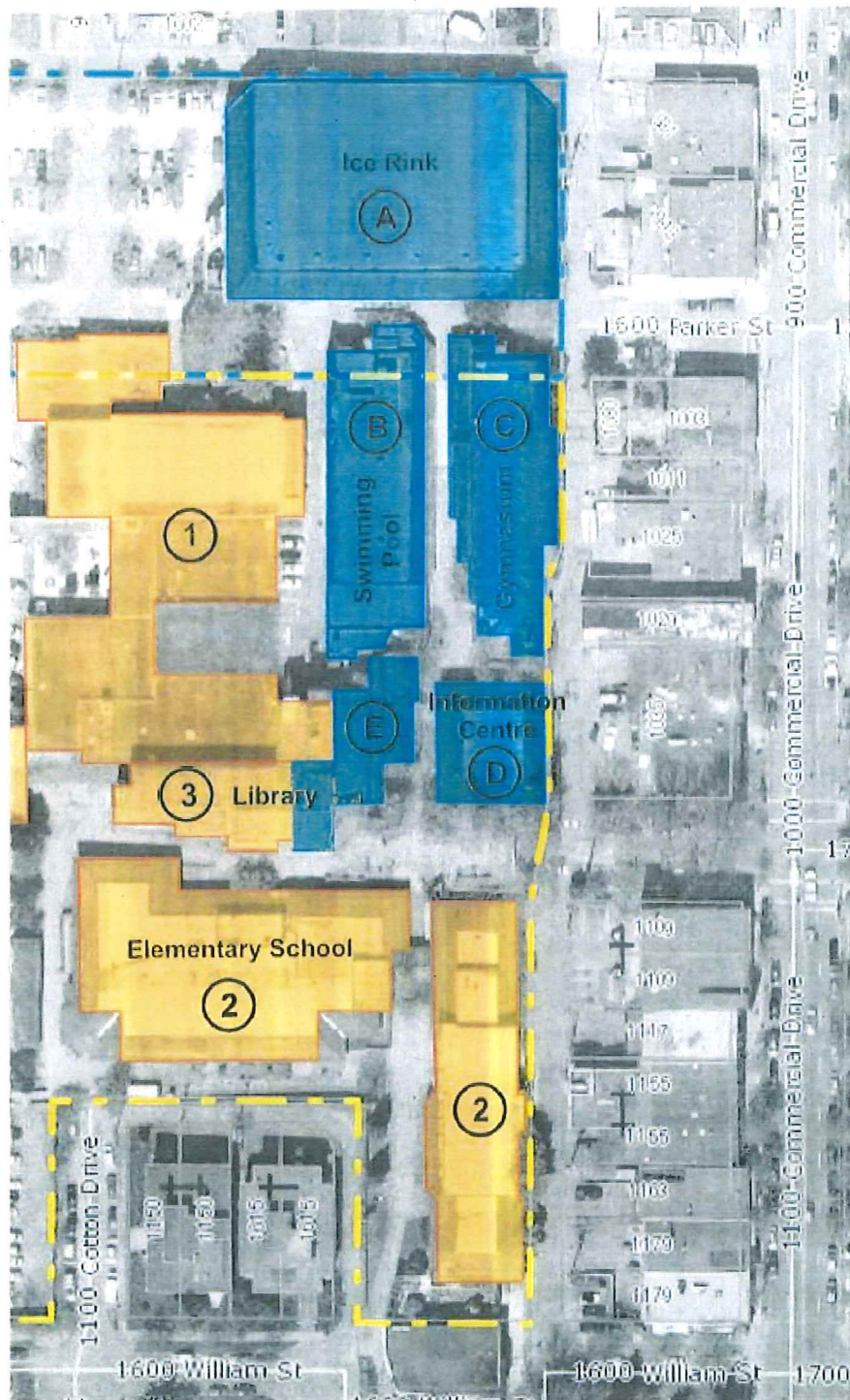
Per:

Name:

Title:

  
FRANCES J. CONNELL  
Director of Legal Services

**APPENDIX A**  
**PLAN OF LEASED PREMISES**  
**BUILDING B - SWIMMING POOL BUILDING**



## APPENDIX B DEFINITIONS

The defined terms in this Agreement include:

- (a) **"Agreement"** means this Lease agreement, including its Appendices;
- (b) **"Alterations"** is defined in Section 2.3;
- (c) **"Applicable Law"** means all applicable federal, provincial or municipal laws, by-laws, regulations and orders of any Governmental Authority or court having jurisdiction;
- (d) **"Base Rent"** is defined in Section 1.3;
- (e) **"Block 177"** means the lands owned by the Lessee and legally described as Parcel Identifier: 007-622-074 Block 177 District Lot 264A Plan 15722;
- (f) **"Building"** and **"Buildings"** are defined in Recital C;
- (g) **"Common Services and Systems"** means, from time to time, all machinery, equipment, display and control panels, pipes, conduits, wires, cables, chutes, lines, stacks, shafts, meters, ducts, vents, intake and exhaust shafts, commercial grease traps and ducts, mechanical shafts, roof, foundations and structure, common building envelope waterproofing systems, lighting fixtures, heating, ventilating and air conditioning equipment, pumps, transformers, cooling condensers, generators, and other devices and systems and all areas (whether or not enclosed) used in connection therewith which may be reasonably required for and in connection with the provision and supply of goods, services, systems and utilities to, from and for the benefit of any of the Schools or Buildings in common with the Pool Building, and all equipment and systems provided for the supply or removal of water, sewage, sanitary and storm drainage, gas, oil, electricity and other power sources, emergency power and lighting, steam, air intake, air exhaust, mechanical ventilation and exhaust, energy conveyance, emergency alarms, firefighting, life safety systems and fire protection and warning equipment and systems, elevators, security systems, sprinkler and stand pipe systems, stairs, internet, telephone, radio and television, and all equipment and systems used in connection therewith, which may be reasonably required for and in connection with the Lands, the Schools or any of the Buildings, in common with the Pool Building;
- (h) **"Business Day"** means a weekday (Monday to Friday) that is not a "holiday" as defined in the *Interpretation Act* (British Columbia);
- (i) **"Contaminants"** is defined in Section 4.1(a);
- (j) **"Easement"** means the instrument registered as a legal notation on title to the Lands and registered as a charge against title to Block 177 under registration number H7394;
- (k) **"Elementary School"** is defined in Recital C;
- (l) **"Environmental Laws"** is defined in Section 4.1(b);

- (m) **"Governmental Authority"** means, with respect to any Person, entity, or property, any national, federal, provincial, local, city (including the City and its approving officer), or other political subdivision that exercises jurisdiction over such Person, entity, or property, and any court, agency, department, commission, board, bureau, or instrumentality, whether civil or military, of any of them;
- (n) **"Land Exchange Agreement"** means a proposed written land exchange agreement pursuant to which the Lessee and the Owner would agree to subdivide the Lands and Block 177, and the Lessee would transfer to the Owner a portion of Block 177 in exchange for the Owner transferring to the Lessee a portion of the Lands that includes the Pool Building;
- (o) **"Lands"** is defined in Recital B;
- (p) **"Lease"** means the Lease to occupy the Premises, and the license to use the Licensed Access Areas, granted to the Lessee as set forth in this Agreement;
- (q) **"Lease Commencement Date"** is defined in Section 1.1;
- (r) **"Lessee"** means the City of Vancouver;
- (s) **"Licensed Access Areas"** is defined in Section 1.2;
- (t) **"Owner"** means The Board of Education of School District No. 39 (Vancouver);
- (u) **"Permitted Use"** and **"Permitted Uses"** are defined in Section 1.6;
- (v) **"Person"** means any individual, corporation, society, partnership, limited partnership, trust, joint venture or other legal or contractual entity;
- (w) **"Pre-Existing Contaminants"** is defined in Section 4.1(a);
- (x) **"Premises"** is defined in Recital D;
- (y) **"Rents"** is defined in Section 1.3;
- (z) **"Secondary School"** is defined in Recital C;
- (aa) **"Society"** means the Britannia Community Services Centre Society;
- (bb) **"Sublicense"** is defined in Section 7.2;
- (cc) **"Sublicensee"** is defined in Recital F;
- (dd) **"Term"** is defined in Section 1.1; and
- (ee) **"TPA"** means the Letter Agreement dated January 1, 1981 between the Owner, the Lessee and the Britannia Community Services Centre Society, as amended from time to time.