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CITY OF KELOWNA

MEMORANDUM

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**Date:** October 20, 2008  
**File No.:** 2380-20  
**To:** City Manager  
**From:** Development Manager, Recreation Parks and Cultural Services  
**Subject:** Aquatic Centre Concession Lease in Mission Recreation Park

Report Prepared by: Ron Forbes – Property Manager

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**RECOMMENDATION:**

**THAT** Council approve a five year lease with two two-year options to renew, based on the attached criteria, in the City standard format with "Jugo Juice Canada Inc." for the lease of the concession at the Aquatic Centre in Mission Recreation Park, as attached to the report from the Development Manager dated October 20, 2008;

**AND THAT** the Mayor and City Clerk be authorized to execute the lease.

**BACKGROUND:**

The City issued a Request for Proposal # T08-029 for a concession services lease at the Aquatic Centre in Mission Recreation Park. One proposal was received was from Jugo Juice Canada Inc. The proposal meets all the basic requirements set out in the RFP including compliance with guidelines as approved by Council for the Healthy Food and Beverage Sales Implementation Plan in City recreation facilities.

Base terms of the Lease Agreement for Jugo Juice Canada Inc. for the Aquatic Centre Concession are:

<b>Term:</b>	5 years (April 1, 2009 – March 31, 2014)
<b>Renewal:</b>	Two two-year renewal options at the tenants request and the City's discretion.
<b>Rate:</b>	\$30,000 per year or 10% of gross annual sales whichever is greater for the first five year term. \$31,500 per year or 10% of gross annual sales whichever is greater for the first two year renewal term. \$33,075 per year or 10% of gross annual sales whichever is greater for the second two year renewal term.
<b>Tenant Improvements:</b>	By tenant



The proponent currently successfully operates 75 Jugo Juice outlets across Canada, 8 in the USA, and 2 in the Philippines since 1998, many of which are located in recreation complexes and universities. There is also a Jugo Juice outlet in Kelowna's Central Park Shopping Center.

**FINANCIAL/BUDGETARY CONSIDERATIONS:**

The 2009 Provisional Financial Plan will include the necessary supplemental information on the above noted revenues for the new Aquatic Centre budget. Also, Jugo Juice will provide an additional 2% of total annual sales to be directed to a charity of City's choice.

**INTERNAL CIRCULATION TO:**

Director of Recreation Parks and Cultural Services  
City Clerks Office  
Risk Manager  
Property Manager

**LEGAL/STATUTORY AUTHORITY:**

Jugo Juice Canada Inc.'s proposal met the basic requirements as outlined in the RFP.

**LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:**

The Community Charter requires publication of a Disposition of Asset Notice in accordance with Section 26.

Considerations that were not applicable to this report:

Existing Policy:

Personnel Implications:

Technical Requirements:

External Agency/Public Comments:

Alternate Recommendation:

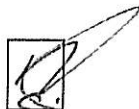
Submitted by:



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JWR Oddleifson  
Development Manager, Recreation Parks and Cultural Services

Approved for Inclusion:



cc: Director of Recreation Parks and Cultural Services  
Property Manager

Attachment

DOCUMENT APPROVAL			
Facility Lease - Master			
Cir.	Dept.	Date	Int.
	R,P & CS	2008/10/17	RJ
	Risk Mgmt.	08/10/22	SK
	City Clerk	08/19/21	ScF

BETWEEN:

The City of Kelowna, a municipal corporation having  
Offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "City")

OF THE FIRST PART

AND:

Jugo Juice Canada Inc., a corporation have Offices at  
A8 416 Meridian Road SE Calgary AB T2A 1X2

(the "Tenant")

OF THE SECOND PART

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THIS LEASE, dated the 01 day of October, 2008, is made and entered into by the City and the Tenant named herein who, in consideration of the covenants herein contained, agree as follows:

# **1. BASIC TERMS, SCHEDULES, AND DEFINITIONS**

## **Basic Terms:**

- (a) City: CITY OF KELOWNA  
Address of City: City Hall, 1435 Water Street  
Kelowna, B.C. V1Y 1J4
- (b) Tenant: Jugo Juice Canada Inc.  
Address of Tenant: A8 416 Meridian Road SE  
Calgary AB T2A 1X2
- (c) Premises: Thirty four (34) square meters within the Mission  
Recreation Park Aquatic Centre.  
PID: 026-563-355  
Lot 2 District Lot 168 and Section 2 Township 26  
ODYD Plan KAP80134  
(see Schedule A)
- (d) Non Exclusive Use License Area: Lobby  
(see Schedule A)
- (e) Initial Term: five (5) years  
Possession Date  
(Construction Start Date) February 1<sup>st</sup>, 2009 rent free period until  
Commencement Date  
April 1, 2009
- (f) Renewal Term (if any): two (2) – two (2) year terms
- (g) Annual Base Rent: \$30,000 per year or 10% of gross sales  
whichever is greater
- (h) Permitted Use: The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth. Tenant to use the Premises for the sale of smoothies made with real fruit juice or yogurt, fresh squeezed juices, wheat grass juice, wraps, salads, panini sandwiches, sandwiches, soups, pastries, power bars, energy bars, nutritional bars and non-alcoholic beverages including soft drinks, milk, bottled beverages, coffee, cider, teas and herbal teas and other healthy foods. In addition the Tenant may sell promotional items including but not limited to Jugo Juice branded cups, t-shirts gift baskets, coupons, gift certificates, books or literature related to nutrition

or health, home juicers and blenders. The tenant shall not allow sale of tobacco products in the premises

## 1.2 Schedules

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

SCHEDULE	SUBJECT
A	Site Plan of Premises and License Area
B	Definitions
C	Sample Menu
D	Schedule of Defined Dates
E	Health Food and Beverage Awareness Program

## 1.3 Definitions

In this Lease, the words, phrases and expressions set forth in Schedule B are used with the meanings defined therein.

## 2. PREMISES AND LICENSE AREA

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed, and performed, the City hereby demises and leases to the Tenant, and the Tenant leases from the City, the Premises.

The City furthermore grants a non-exclusive use license (the "License") to the Tenant to use the Lobby outlined as the License Area in Schedule A, for purposes necessarily related to the permitted use of the Premises.

## 3. TERM

### 3.1 Term

The Term of this Lease, and the related License, shall be for the initial term of five (5) years, beginning on the Commencement Date, and subject to earlier termination or renewal on the terms and conditions as set out herein.

### 3.2 Option to Renew

#### First Renewal

The City covenants with the Tenant that if:

- (a) the Tenant gives notice to the City that the Tenant wishes to obtain renewal of this Lease, such notice to be given not later than 12 months prior to the expiration of the initial Term of five (5) years; and
- (b) at the time of giving such notice, the Tenant is not in breach of any covenant or condition herein contained and which has not been remedied within the time provided for in this Lease; and
- (c) the Tenant has duly and regularly throughout the initial Term of five (5) years observed and performed the covenants and conditions herein contained

then the City shall grant to the Tenant at the Tenant's expense a renewal lease of the Premises and License Area for the Renewal Term(s) of two (2) years upon the same terms and conditions. Annual Base Rent of \$31,500 or 10% of gross sales whichever is greater plus any Additional Rent

#### Second Renewal

The City covenants with the Tenant that if:

- (d) the Tenant gives notice to the City that the Tenant wishes to obtain renewal of this Lease, such notice to be given not later than 12 months prior to the expiration of the renewal Term of two (2) years; and
- (e) at the time of giving such notice, the Tenant is not in breach of any covenant or condition herein contained and which has not been remedied within the time provided for in this Lease; and
- (f) the Tenant has duly and regularly throughout the renewal Term of two (2) years observed and performed the covenants and conditions herein contained

then the City shall grant to the Tenant at the Tenant's expense a renewal lease of the Premises and License Area for the Renewal Term(s) of two (2) years upon the same terms and conditions. Annual Base Rent of \$33,075 or 10% of gross sales whichever is greater plus any Additional Rent. There shall be no options to renew after the completion of the second renewal.

## 4. RENT

### 4.1 Rent

The Tenant shall yield and pay to the City, in the manner outlined in clause 4.2, at the office of the City's accounts payable division, or at such other place as the City may direct in writing, during the Term in lawful money of Canada without any set-off, abatement, compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in sub-clauses (a) and (b) below:

#### (a) Annual Base Rent

Annual Base Rent in the amount per annum set out in sub-clause 1.1(g) for each respective Lease Year.

#### (b) Additional Rent

In addition, but subject to any operating costs the City expressly agrees to pay for its own account, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises and License Area including all applicable taxes and other charges including but not limited to property taxes.

### 4.2 Payment of Rent

The Rent provided for in this Article shall be paid by the Tenant as follows:

#### (a) Annual Base Rent

The Annual Base Rent shall be paid in equal consecutive monthly instalments, in the amounts set out in sub-clause 1.1(g), in advance on the first day of each and every month during the Term. The first monthly instalment of the Annual Base Rent shall be paid by the Tenant on the Commencement Date. Where the

Commencement Date is the first day of a month such instalment shall be in respect of such month; where the Commencement Date is not the first day of a calendar month, the Annual Base Rent for the period from the Commencement Date to the first day of the next ensuing calendar month shall be pro-rated on a per diem basis and paid on the Commencement Date and the first regular instalment of the Annual Base Rent shall be paid on the first day of the first full calendar month of the Term. Thereafter, subsequent monthly instalments shall each be paid in advance on the first day of each ensuing calendar month during the Term.

(b) Additional Rent Payments

In addition, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises and License Area including all applicable real estate taxes and other charges.

(c) Payment Format

The Tenant agrees to pay the Annual Base rent via Bank Transfer on a monthly basis.

4.3 Rent for Irregular Periods

All Rent reserved herein shall be deemed to accrue from day-to-day, and if for any reason it shall become necessary to calculate the Annual Base Rent for irregular periods of less than one year an appropriate pro-rata adjustment shall be made on a daily basis in order to compute the Annual Base Rent for such irregular period.

4.4 Waiver of Offset

The Tenant hereby waives and renounces any and all existing and future claims, offsets, and compensation against any Rent and agrees to pay such Rent regardless of any claim, offset, or compensation which may be asserted by the Tenant or on its behalf.

4.5 Application of Payments

All payments by the Tenant to the City under this Lease shall be applied toward such amounts then outstanding hereunder as the City determines and the City may subsequently alter the application of any such payment.

4.6 Net Lease

The Tenant Acknowledges and agrees that; it is intended that this Lease shall be a completely net lease for the City except as shall be otherwise provided in the specific provisions contained in this Lease; and that the City shall not be responsible during the Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the specific provisions contained in this Lease; and shall pay all charges, impositions, and costs of every nature and kind relating to the Premises and License Area whether or not referred to herein and whether or not within the contemplation of the City or the Tenant, and the Tenant covenants with the City accordingly.

4.7 Interest on Overdue Rent

Overdue Rent payments shall be interest at the current Bank of Canada lending rate effective from the date the amount is due.

## 5. TENANT'S COVENANTS

### 5.1 Tenant's Covenants

The Tenant covenants with the City as follows:

- (a) Facility Operator  
To recognize the Facility Operator as the group or organization responsible for the day to day operation of the Facility.
- (b) Rent  
To pay the Rent on the days and in the manner provided herein and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the City or to others under this Lease.
- (c) Occupancy and Permitted Use  
To take possession of and occupy the Premises and License Area and commence to carry on business in all or substantially all of the Premises and License Area no later than 30 days after the Commencement Date, to use the Premises and License Area only for the purpose set out herein and not for any other purpose.
- (d) Waste and Nuisance  
Not to commit or permit: any waste or injury to the Premises or License Area including the Leasehold Improvements and the trade fixtures therein; any overloading of the floors thereof; any conduct which impedes or, in the opinion of the City acting reasonably, could constitute a nuisance to the City or anyone else; any other use or manner of use which, in the opinion of the City acting reasonably, may have an adverse impact on the reputation of the Premises.
- (e) Insurance Risks  
Not to do, omit to do, or permit to be done or omitted to be done upon the Premises and License Area anything which would cause the City's cost of insurance to be increased (and, without waiving the foregoing prohibition, the City may demand, and the Tenant shall pay to the City upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation.
- (f) Cleanliness  
Not to permit the Premises or License Area to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Premises and License Area in a clean and neat condition, to the satisfaction of the City. To supply, clean and maintain trash / garbage cans, tray holders. To empty garbage into the Facility Operators garbage and recycling bins.
- (g) Compliance with Laws  
To comply at its own expense with all municipal, provincial, and federal laws, bylaws, regulations, and requirements pertaining to the operation and use of the Premises and License Area, the condition of the Leasehold Improvements, trade

fixtures and equipment installed therein, and the making by the Tenant of any repairs, changes or improvements therein. The Tenant shall be responsible for servicing of the fire extinguishers in the Premises.

(h) Installations

To permit the City during the Term, at the Tenant's cost, to install any equipment in or make alterations to the Premises or License Area necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in sub-clause 5.1(f) and imposed after completion of the City's original construction of the Premises and Licensed Area.

(i) Overholding

That if the Tenant shall continue to occupy the Premises and License Area after the expiration of this Lease without any further written agreement and without objection by the City, the Tenant shall be a monthly tenant at a monthly base rent equal to 125% of the Annual Base Rent payable by the Tenant as set forth in Article 4 during the last month of the Term. The monthly tenancy shall be (except as to the length of tenancy) subject to the provisions and conditions herein set out.

(j) Signs

Not to display, place, or affix any sign except in accordance with the regulations of the City. Any request for signage must first be approved in writing by the City Manager or his designate and conform to the appropriate sign bylaw.

(k) Inspection and Access

To permit the City at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the and License Area for the purpose of inspection or making repairs, alterations, or improvements to the Premises or License Area as the City may deem necessary or desirable, or as the City may be required to make by law. The City shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations or improvements are being made by reason of interruption of the business of the Tenant. The City shall exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operation.

(l) Showing Premises and License Area

To permit the City and its authorized agents and employees to show the Premises and License Area to prospective tenants during the normal business hours of the last three months of the Term.

(m) Customer Seating

To provide seating and table settings for fifty (50) people in the lobby area and twenty-four (24) people in the viewing deck area. The tables and chairs must be movable, not fixed in place. The seating will be for public use and not dedicated to concession patrons only. The tables and chairs to be used are to be a high quality and are subject to approval by the City.

(n) Operating Hours

The Facility will be open three hundred and sixty five days a year and subject to closure on selected statutory holidays and maintenance periods. The Premises are to be open during all hours the Facility is open as per the Facility Operators published schedule unless otherwise agreed to in writing by the City.

Typical Facility hours of operation will be 6 am – 11 pm Weekdays and 8 am – 9 pm weekends. Typical Premises hours of operation will be 7 am – 10 pm Weekdays and 8 am – 8 pm Weekends and holidays.

The Tenant may apply to the City for approval to change their hours of operation. Such approval will not be unreasonably withheld.

(o) Financial Records

To provide to the City within 45 days of the Anniversary Date an income statement for the previous 12 months detailing the gross sales..

(p) Annual Rent Calculations

To provide to the City within 45 days of the Anniversary Date any additional rent if the gross sales exceed \$300,000 per annum

(q) Charitable Donation

To provide to the charity of the City's choosing within 45 days of the Anniversary Date a cheque for 2% of the gross sales.

(r) Cooperative Marketing

To use reasonable efforts to cooperate with the Facility Operator in marketing healthy lifestyles.

(s) Product Delivery

To coordinate the delivery of goods with the Facility Operator in order to reduce or eliminate interference or conflict with the customer's or Facility Operator's use of the facility.

(t) Staffing

To provide adequate trained staff to meet or exceed the customer service expectations and standards set by the Facility Operator

(u) Service Continuity

To provide continuity of service regardless of whether the Premises has been sub-let.

(v) Vending Machines

The City reserves the right to place vending machines in the appropriate locations in the Facility. The City will consult with the Tenant prior to such installing any vending machines.

(w) Health Food and Beverage Awareness Program

The City has implemented a Healthy Food and Beverage Awareness Program. The Tenant is required to follow this program and display the marketing materials as defined in the Awareness program documentation (Schedule E)

**6. CITY'S COVENANTS**

**6.1 City's Covenants**

The City covenants with the Tenant as follows:

(a) Quiet Enjoyment

Provided the Tenant pays the Rent hereby reserved and performs its other covenants herein contained, the Tenant shall and may peaceably possess and enjoy the Premises and License Area for the Term hereby granted, without any interruption or disturbance from the City or any other person or persons lawfully, claiming by, from, through, or under the City.

(b) Exclusive Use

No other tenant, in the facility shall have the right to sell smoothies, food or beverages, excluding the Pepsi beverage vending. The Facility Operator or renters shall have the right to have their programs or events catered by the Tenant or a third party caterer at their sole discretion.

**7. REPAIR, DAMAGE, AND DESTRUCTION**

**7.1 City's Repairs**

The City covenants with the Tenant that the major building components are in a good and reasonable state of repair, consistent with the general standards of structures of similar age and character in Kelowna. This includes the main structure, roof and mechanical systems. The City will maintain and repair any HVAC systems and problems in a timely manner.

**7.2 Tenant's Repairs**

The Tenant covenants with the City:

- (a) subject to sub-clause 7.1 and 7.3(b) to keep in a good and reasonable state of repair subject to reasonable wear and tear, the Premises and License Area including all Leasehold Improvements and all trade fixtures therein and all glass including all glass portions of exterior walls;
- (b) that the City may enter and view the state of repair (without having any obligation to do so), and that the Tenant will repair according to notice in writing, and that the Tenant will leave the Premises and License Area in a good and reasonable state of repair, allowing for reasonable wear and tear.

**7.3 Abatement and Termination**

It is agreed between the City and the Tenant that in the event of damage to the Premise or License Area:

- (a) if the damage is such that the Premises or License Area or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of 10 days, then:
- (i) unless the damage was caused by the fault of negligence of the Tenant or its employees, invitees, or others under its control and the damage is not covered by insurance, from and after the date of occurrence of the damage and until the Premises or License Area are again reasonably capable of use and occupancy as aforesaid, Rent shall abate from time to time in proportion to the part or parts of the Premises or License Area not reasonably capable of use and occupancy; and
  - (ii) unless this Lease is terminated as hereinafter provided, the City or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with all reasonable diligence, but to the extent that any part of the Premises or License Area is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of Rent to which the Tenant is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the City, repairs by the Tenant ought to have been completed with reasonable diligence; and
- (b) if the Premises or License Area are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the City they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, then either the City or Tenant may at its option, exercisable by written notice to the Tenant or City, given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the City nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Premises and License Area to the City with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under sub-clause 7.3(a) by reason of the Premises or License Area having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the City or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

#### 7.4 Service Interruptions

The Tenant acknowledges to the City that the operation of systems and the availability of facilities for which the City is responsible under clause 7.1 may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the City.

## 8. TAXES AND OTHER COSTS

### Tenant Tax Obligation

The Tenant covenants with the City:

- (a) to pay when due, all Taxes, business Taxes, business license fees, and other Taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Leased Premises by the City, the business or businesses carried on therein, or the equipment, machinery, or fixtures brought therein by or belonging to the Tenant, or to anyone occupying the Leased Premises with the Tenant's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, and to pay the City upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Premises that is attributable to any equipment, machinery, or fixtures on the Premises which are not the property of the City or which may be removed by the Tenant;
- (b) to pay promptly to the City when demanded or otherwise due hereunder all Taxes in respect of all Leasehold Improvements in the Premises; and

### Goods and Services Tax

In accordance with the applicable legislation the Goods and Services Tax applies to this Lease.

## 9. UTILITIES AND ADDITIONAL SERVICES

### 9.1 Utilities

The Tenant shall be responsible for all aspects of, including payment of costs related to, telephone and internet services of whatever nature or kind required in connection with the Premises and License Area and the conduct by the Tenant of the Tenant's business as described herein. Electricity, water, sewer and garbage costs are deemed to be included in the base rent. Natural gas is not provided to the Premises.

## 10. LICENSES, ASSIGNMENTS, AND SUBLETTING

### 10.1 General

Provided the Tenant is Jugo Juice Canada, Inc. then, without charge by the City and without the necessity of obtaining the City's prior consent, Jugo Juice Canada Inc. has the right to assign the Lease and / or to sublet the Premises to:

- (i) a parent, subsidiary, affiliate and associate (as defined in the Canada Business Corporation Act) of Jugo Juice Canada Inc.;
- (ii) a corporation formed as a result of a merger, arrangement, reorganization, re-structuring or amalgamation (as those terms are defined in the Canada Business Corporations Act), of Jugo Juice Canada Inc.;
- (iii) a purchaser who is simultaneously purchasing not less than 75% of all the Tenant's stores operating under the same trade name in the Province in which the Facility is located;
- (iv) a purchaser who is simultaneously purchasing not less than 85% of all the Tenant's stores operating under the same trade name in Canada; or
- (v) the acquirer of substantially all of the Jugo Juice Canada, Inc.'s franchise system and trademarks in the Province in which the Facility; or
- (vi) the bona fide Licensed Franchisee of Jugo Juice Canada, Inc.

In the event Jugo Juice Canada, inc. assigns or sublets to a party other than those noted above, such assignment or subletting will be subject to the City's consent with regards to the assignee's or sub-tenant's financial strength and business expertise, not to be unreasonably withheld.

For the purposes of this Section, "Licensed Franchisee" shall mean any corporation or person, licensed as a franchisee of Jugo Juice Canada Inc. or an affiliated company of Jugo Juice Canada, Inc. (hereinafter referred to as the "Franchisor") under a bona fide written franchise agreement or contract whereby the Franchisor grants to any corporation or person the right to make use, in the whole of the Premises, of the Franchisor's or an affiliated company's trade marks and trade names and the Franchisor's comprehensive system of operation (the "Contract") operating solely as "Jugo Juice" or such other operating name as the Franchisor in its sole opinion shall use the majority of its similar operations in the Province in which the Facility is located.

Jugo Juice Canada, Inc. shall not be released off covenant.

For the purposes of the Lease, any sale or transfer of capital stock including redemption or issuance of additional stock of any class will not be deemed an assignment, subletting or Transfer of the Lease or Premises.

## **11. FIXTURES AND IMPROVEMENTS**

### **11.1 Installation of Fixtures and Improvements**

The Tenant will not make, erect, install, or alter any Leasehold Improvements in the Premises or License Area, any safe or special lock in the Premises, or any apparatus for illumination, air conditioning, cooling, heating, refrigerating, or ventilating the Premises, in any case without having requested and obtained the City's prior written approval, which the City shall not unreasonably withhold. In making, erecting, installing, or altering any Leasehold Improvements the Tenant shall comply with the tenant construction guidelines as established by the City from time to time, and shall obtain all required building and occupancy permits and comply with all laws of all authorities having jurisdiction. The Tenant's request for any approval hereunder shall be in writing and be accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications. All work to be performed in the Premises or License Area shall be performed by competent contractors and subcontractors and shall be performed and completed in a good and workmanlike manner.

### **11.2 Liens and Encumbrances on Fixtures and Improvements**

In connection with the making, erection, installation, or alteration of Leasehold Improvements and trade fixtures, and all other work or installations made by or for the Tenant in the Premises or License Area, the Tenant shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the City to take all steps to enable the City to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Tenant shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and amendments thereto, or other encumbrance in respect of its Leasehold Improvements or trade fixtures, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Premise.

### 11.3 Discharge of Liens and Encumbrances

If and when any builders' or other lien for work, labour, service, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefore shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Tenant shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the City may in addition to all other remedies hereunder avail itself of its remedy under clause 14.1 and may make any payments required to procure the discharge of any such liens or encumbrances, and shall be entitled to be reimbursed by the Tenant as provided in clause 14.1, and its right to reimbursement shall not be affected or impaired if the Tenant shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off, or defence.

### 11.4 Removal of Fixtures and Improvements

**All Leasehold Improvements in or upon the Premises and License Area shall immediately upon affixation be and become the City's property without compensation therefore to the Tenant.** Except to the extent otherwise expressly agreed by the City in writing, no Leasehold Improvements shall be removed by the Tenant from the Premises or License Area either during or at the expiration or sooner termination of the Term, except that:

- (a) the Tenant may at the end of the Term remove its trade fixtures;
- (b) the Tenant shall at the end of the Term remove such of the Leasehold Improvements and trade fixtures as the City shall require to be removed; and
- (c) the Tenant shall remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting therefore new furniture and equipment.
- (d) all Leasehold Improvements shall be insured by the Tenant as described in section 12.2 (b) unless otherwise agreed in writing by the City.

The Tenant shall, in the case of every removal either during or at the end of the Term, immediately make good any damage caused to the Premises or License Area by the installation and removal.

### 11.5 Alterations by City

The City reserves the right from time to time to make alterations and additions to the Premises, provided that in exercising any such rights, the City will take reasonable steps to minimize any interference cause to the Tenant's operations in the Premises and License Area, but by exercising any such rights, the City shall not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease, nor shall the Tenant be entitled to any abatement of Rent or other compensation from the City.

## 12. INSURANCE AND LIABILITY

### 12.1 City's Insurance

The City shall be deemed to have insured (for which purpose it shall be a co-insurer, if and to the extent that it shall not have insured) the Premises and all improvements and installations made by the City in the Premises or License Area, except to the extent hereinafter specified, in respect

of perils and to amounts and on terms and conditions which from time to time are insurable at a reasonable premium and which are normally insured by reasonably prudent owners of properties similar to the Premises, as from time to time determined at reasonable intervals (but which need not be determined more often than annually) by insurance advisors selected by the City, and whose written opinion shall be conclusive. Upon the request of the Tenant from time to time the City will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Premises. The City may maintain such other insurance in such amounts and upon such Terms as would normally be carried by a prudent owner.

## 12.2 Tenant's Insurance

The Tenant shall take out and keep in force during the Term:

- (a) comprehensive general liability (including bodily injury, death and property damage) insurance on an occurrence basis with respect to the business carried on, in, or from the Premises or the License Area and the Tenant's use and occupancy thereof, of not less than \$2,000,000 per occurrence, which insurance shall include the City as a named insured and shall protect the City in respect of claims by the Tenant as if the City were separately insured, shall include a cross liability clause and have a deductible of not more than \$5,000 per occurrence or claim; and
- (b) insurance in such amounts **as may be reasonably required by the City** in respect of fire and other such perils, including sprinkler leakage, as are from time to time defined in the usual extended coverage endorsement covering the Tenant's trade fixtures and the furniture and equipment of the Tenant and (except as to Insured Damage) all Leasehold Improvements in the Premises, and which insurance shall include the City as a named insured as the City's interest may appear with respect to the insured Leasehold Improvements and provided that any proceeds recoverable in the event of loss to Leasehold Improvements;

and if the City shall require the same from time to time, then also:

- (c) tenant's fire legal liability insurance in an amount not less than the actual cash value of the Premises; and
- (d) insurance upon all plate glass in or which forms a boundary of the Premises in an amount sufficient to replace all such glass; and
- (e) motor vehicle insurance for all motor vehicles used by the Tenant in the conduct of its business shall have a minimum public liability and third party property damage insurance coverage of at least \$2,000,000.

All insurance required to be maintained by the Tenant hereunder shall be on terms and with insurers to which the City has no reasonable objection and shall provide that such insurers shall provide to the City 30 days' prior written notice of cancellation or material alteration of such terms.

The Tenant shall furnish to the City certificates or other evidence acceptable to the City as to the insurance within 14 days of the execution of this agreement. Failure to provide such documents shall constitute default resulting in termination of this agreement. The Tenant shall also furnish to the City certificates of other evidence acceptable to the City as to the insurance from time to time required to be effected by the Tenant and its renewal or continuation in force, either by means of a certified copy of the policy or policies which, in the case of comprehensive general liability insurance, shall provide such information as the City reasonably requires. If the Tenant shall fail to take out, renew and keep in force such insurance the City may do so as the agent of the Tenant and the Tenant shall repay to the City any amounts paid by the City as premiums forthwith upon demand.

### 12.3 Limitation of City's Liability

The Tenant agrees that:

- (a) the City shall not be liable for any bodily injury to or death of, or loss or damage to any property belonging to, the Tenant or its employees, invitees, or licensees or any other person in, on, or about the Premises, or for any interruption of any business carried on in the Premises, and, without limiting the generality of the foregoing, in no event shall the City be liable:
  - (vii) for any damage other than Insured Damage or for bodily injury or death of anyone which results from fire, explosion, earthquake, flood, falling plaster, steam, gas, electricity, water, rain, snow, dampness, or leaks from any part of the Premises or from the pipes, appliances, electrical system, plumbing works, roof, sub-surface, or other part or parts of the Premises of property, or from the streets, lanes, and other properties adjacent thereto;
  - (viii) for any damage, injury, or death caused by anything done or omitted by the Tenant or any of its servants or agents or by any other person;
  - (ix) for the non-observance or the violation of any provision of any of the rules and regulations of the City in effect from time to time or of any lease by another tenant or premises in the same building or on the same property or any concessionaire, employee, licensee, agent, customer, officer, contractor, or other invitee of any of them, or by anyone else;
  - (x) for any act or omission (including theft, malfeasance, or negligence) on the part of any agent, contractor, or person from time to time employed by it to perform janitorial services, security services, supervision, or any other work in or about the Premises or the property;
  - (xi) for the failure to do anything required to be done by the City.
- (b) The Tenant releases and discharges the City from any and all action, causes of action, claims, damages, demands, expenses, and liabilities which the Tenant now or hereafter may have, suffer, or incur which arise from any matter for which the City is not liable under sub-clause 11.3(a), notwithstanding that negligence or other conduct of the City or anyone for whose conduct the City is responsible may have caused or contributed to such matter.

### 12.4 Indemnity of City

The Tenant agrees to indemnify and save harmless the City in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Tenant or any sub-tenant, agent, employee, contractor, invitee, or licensee of the Tenant, and in respect of all costs, expenses, and liabilities incurred by the City in connection with or arising out of all such claims including the expenses of any action or proceeding pertaining thereto, and in respect of any loss, costs, expense, or damage suffered or incurred by the City arising from any breach by the Tenant of any of its covenants and obligations under this Lease. This indemnity shall survive the expiry or termination of this Lease.

## 13. ENVIRONMENTAL MATTERS

- (a) Definitions. For the purposes of this Section and Agreement, the following terms shall have the following meanings:

- (i) **"Contaminants"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
  - (ii) **"Environment"** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, ground water and surface water);
  - (iii) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Premises now or hereafter in force with respect in any way to the Environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and
  - (iv) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.
- (b) Tenant's Representations and Warranties. The Tenant represents and warrants to the City, and acknowledges that the City is relying on such representations and warranties in entering into this Agreement, that as of the date of this Agreement:
- (i) except as disclosed to the City in writing, the Tenant is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other or proceeding under any Environmental Laws; and
  - (ii) except as disclosed to and approved in writing by the City, the Tenant's business at the Premises does not involve the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with any Contaminants.
- If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Agreement by the Tenant and shall be subject to the provisions of Section 6.01 of this Agreement.
- (c) Condition of Premises. The Tenant acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Premises and is leasing the Premises to the Tenant under this Agreement on an "as is, where is" basis with respect to their environmental condition. Prior to taking possession of the Premises under this Agreement, the Tenant has performed such investigations of the Premises as it considered appropriate and is satisfied as to their environmental condition.
- (d) Use of Contaminants. The Tenant shall not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with, any

Contaminants, without the prior written consent of the City, which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Tenant shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises, or any adjacent property to become a contaminated site under Environmental Laws.

- (e) Compliance with Environmental Laws. The Tenant shall promptly and 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 under or pursuant to this Agreement, including without limitation obtaining all required permits or other authorizations.
- (f) Evidence of Compliance. The Tenant shall promptly provide to the City a copy of any environmental site investigation, assessment, audit or report relating to the Premises conducted by or for the Tenant at any time before, during or after the Term (or any renewal thereof). The Tenant shall, at its own cost at the City's request from time to time, obtain from an independent environmental consultant approved by the City an environmental site investigation of the Premises or an environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the City and shall include any additional investigations that the environmental consultant may recommend. The Tenant shall, at the City's request from time to time, provide the City with a certificate of a senior officer of the Tenant certifying that the Tenant is in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Premises, other than as disclosed in writing to the City.
- (g) Confidentiality of Environmental Reports. The Tenant shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need to know basis or with the prior written consent of the City, which consent may be unreasonably withheld.
- (h) Records. The Tenant shall maintain at the Premises all environmental and operating documents and records, including permits, licences, orders, approvals, certificates, authorizations, registrations and other such records, relating to the operations at the Premises, which may be reviewed by the City at any time during the Term on twenty-four (24) hours' prior written notice, except in the case of an emergency, when no prior notice shall be required.
- (i) Access by City. Without relieving the Tenant of any of its obligations under this Agreement, the Tenant shall, at such reasonable times as the City requires, permit the City to enter and inspect the Premises and the operations conducted at the Premises, to conduct tests and environmental investigations, to remove samples from the Premises, to examine and make copies of any documents or records relating to the Premises, to interview the Tenant's employees and to take such steps as the City deems necessary for the safety and preservation of the Premises.
- (j) Authorizations. The Tenant shall promptly provide to the City on request such written authorizations as the City may require from time to time to make inquiries of any governmental authorities regarding the Tenant's compliance with Environmental Laws.
- (k) Notices. The Tenant shall promptly notify the City in writing of:

- (i) any Release of a Contaminant or any other occurrence or condition at the Premises, or any adjacent property which could subject the Tenant, the City or the Premises to any fines, penalties, orders or proceedings under Environmental Laws;
- (ii) any charge, order, investigation or notice of violation or non-compliance issued against the Tenant or relating to the operations at the Premises under any Environmental Laws; and
- (iii) any notice, claim, action or other proceeding by any third party against the Tenant or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.

The Tenant shall notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Premises in accordance with Environmental Laws and failure by the Tenant to do so shall authorize, but not obligate, the City to notify the regulatory authorities.

- (l) Removal of Contaminants. Prior to the expiry or earlier termination of this Agreement or at any time if requested by the City or required by any governmental authority pursuant to Environmental Laws, the Tenant shall, promptly at its own cost and in accordance with Environmental Laws, remove from the Premises any and all Contaminants, and remediate any contamination of the Premises, or any adjacent property resulting from Contaminants, in either case brought onto, used at or Released from the Premises by the Tenant or any person for whom it is in law responsible. [For greater certainty, the foregoing obligations of the Tenant shall include, without limitation, the treatment of water (including surface and ground water) and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation by the applicable governmental authority, being with respect to soils, the standard applicable to property used for [commercial/industrial] purposes and with respect to water, as determined by the governmental authority given the character and use of water in the area of the Premises. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence.] The Tenant shall provide to the City full information with respect to any remedial work performed pursuant to this section and shall comply with the City's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the City to perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the City, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. The Tenant agrees that if the City reasonably determines that the City, its property, its reputation or the Premises is placed in any jeopardy by the requirement for any such remedial work, the City may, but shall be under no obligation to, undertake itself such work or any part thereof at the cost of the Tenant.
- (m) Ownership of Contaminants. Notwithstanding any rule of law to the contrary, any Contaminants or leasehold improvements or goods containing Contaminants brought onto, used at, or Released from, the Premises by the Tenant or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the City, notwithstanding the degree of their affixation to the Premises and notwithstanding the expiry or earlier termination of this Agreement. This section supersedes any other provision of this Agreement to the contrary.

- (n) Indemnity. The Tenant shall indemnify and save harmless the City and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including without limitation, the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Premises, and any adjacent property) which may be paid by, incurred by or asserted against the City or its directors, officers, shareholders, employees, agents, successors or assigns, during or after the Term (or any renewal thereof), arising from or in connection with any breach of or non-compliance with the provisions of this Section by the Tenant or arising from or in connection with:

- (i) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including without limitation any governmental authority, against any one or more of them pursuant to or under Environmental Laws; or
- (ii) any Release or alleged Release of any contaminants at or from the Premises into the Environment,

related to or as a result of the use and occupation of the Premises by the Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any person for whom it is in law responsible.

- (o) Survival of Tenant's Obligations. The obligations of the Tenant under this Section (including, without limitation, the Tenant's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement. The obligations of the Tenant under this Section are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Agreement.

#### 14. SUBORDINATION, ATTORNMEN, REGISTRATION, AND CERTIFICATES

##### 14.1 Tenant's Covenants

The Tenant agrees with the City that:

- (a) Sale or Financing of Building

The Tenant acknowledges and agrees the City may assign, sell, transfer, mortgage, subdivide and otherwise deal with its interest in the Land or the Facility or any portion thereof without the consent of the Tenant. Should the City decide to exercise its rights under this clause, the City will provide the Tenant 180 days notice of its intent.

- (b) Registration

The Tenant agrees that the City shall not be obliged to deliver this Lease in form registrable under the *Land Title Act*, R.S.B.C. 1996, c. 250 and covenants and agrees with the City not to register this Lease. If the Tenant desires to register under the *Land Title Act*, then all costs of preparing and registering all documents in connection therewith are to be borne by the Tenant.

- (c) Certificates

The Tenant agrees with the City that the Tenant shall promptly whenever requested by the City from time to time execute and deliver to the City and, if

required by the City, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the City) a certificate in writing as to the status of this Lease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the City and Tenant, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the City shall request a certificate. If the Tenant fails to do so within seven days after the Tenant receives the form of certificate, the Tenant hereby irrevocably and conclusively authorizes the City to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Tenant.

(d) Assignment by City

In the event of the sale by the City of the Premises or the assignment by the City of this Lease or any interest of the City hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the City hereunder, the City shall, without further written agreement, be freed and relieved of liability upon such covenants and obligations.

## **15. OCCURRENCE OF DEFAULT**

### **15.1 Unavoidable Delay**

Except as herein otherwise expressly provided, if and whenever and to the extent that either the City or the Tenant shall be prevented, delayed, or restricted in the fulfilment of any obligations hereunder in respect of the supply or provision of any service or utility, the making any repair, the doing of any work or any other thing (other than the payment of Rent) by reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfilment thereof, and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall Rent abate; but nevertheless the City will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises and License Area.

### **15.2 No Admission**

The acceptance of any Rent from or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the City of any right, title, or interest of such person as a sub-tenant, assignee, transferee, or otherwise in the place and stead of the Tenant.

### **15.3 Part Payment**

The acceptance by the City of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the City to payment in full of such sums.

## **16. TENANT'S DEFAULT, REMEDIES OF CITY, AND SURRENDER**

### **16.1 Remedying by City, Non-payment, and Interest**

In addition to all the rights and remedies of the City available to it in the event of any default hereunder by the Tenant, either by any other provision of this Lease or by statute or the general

law, and the event of default is not remedied within the respective time period for doing so, the City:

- (a) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Premises and License Area to do any work or other things therein, and in such event all expenses of the City in remedying or attempting to remedy such default together with an administrative charge equal to 15% of the total of such expenses shall be payable by the Tenant to the City forthwith upon demand;
- (b) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent; and
- (c) shall be entitled to be reimbursed by the Tenant, and the Tenant shall forthwith pay the City, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the City in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies, to which the City is or may be entitled hereunder.

#### 16.2 Remedies Cumulative

The City and the Tenant may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant or the City, as the case may be, either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the City or the Tenant, as the case may be, by statute or the general law.

#### 16.3 Right of Re-entry on Default

Provided and it is expressly agreed that:

- (a) if and whenever the Rent hereby reserved or other moneys payable by the Tenant or any part thereof, whether lawfully demanded or not, are unpaid and the Tenant shall have failed to pay such Rent or other moneys within five days after the City has given to the Tenant notice requiring such payment; or
- (b) if the Tenant shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, regulations or other obligations on the part of the Tenant to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the City has given the Tenant notice thereof; or
- (c) if without the written consent of the City the Premises and License Area shall be used by any other persons than the Tenant or its permitted sub-tenants or for any purpose other than that for which the Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or
- (d) if the Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or
- (e) if any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment; or

- (f) if a receiver or receiver-manager is appointed of the business or property of the Tenant, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or
- (g) if any policy of insurance upon the Premises from time to time effected by the City shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises or License Area by the Tenant or any sub-tenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Premises or License Area and the Tenant after receipt of notice in writing from the City shall have failed to take such immediate steps in respect of such use or occupation as shall enable the City to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or
- (h) if the City shall have become entitled to Terminate this Lease or to re-enter the Premises or License Area under any provision hereof;

then and in every such case it shall be lawful for the City thereafter to enter into and upon the Premises and License Area or any part thereof in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease to the contrary notwithstanding. The City may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises and License Area, and the Tenant hereby releases the City from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith.

#### 16.4 Termination and Re-entry

If and whenever the City becomes entitled to re-enter upon the Premises and License Area under any provision of this Lease, the City, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Tenant or by leaving upon the Premises notice in writing of such termination. Thereupon, this Lease and the term shall terminate, and the Tenant shall immediately deliver up possession of the Premises and License Area to the City in accordance with clause 16.9.

#### 16.5 Right of Termination – No Default

In the event that the City requires the use of the Premises for whatever reason, the City shall have the right to terminate this Lease after giving the Tenant 90 (ninety) days notice of the City's intention to terminate. In the event that the City terminates this agreement without cause the Tenant shall have the right to claim a proportionate share of the initial Tenant Improvements prorated over the five years of this agreement. (Example: At the end of year one if the City terminates this agreement without cause, the Tenant can claim up to 80% of the Tenant Improvements from the City, Year 2 – 60%, Year 3, 40%, Year 4 – 20% end of Year 5 – 0%

#### 16.6 Certain Consequences of Termination and Re-entry

If the City re-enters the Premises and License Area or if this Lease is terminated by reason of any event set out in clause 16.3 or 16.5, then without prejudice to the City's other rights and remedies:

- (a) the provisions of this Lease which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;

- (b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and
- (c) the Tenant or person then controlling the affairs of the Tenant shall pay to the City on demand such reasonable expenses as the City has incurred, and a reasonable estimate of the City of expenses the City expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Premises and License Area in good order, and the expenses of repairing the Premises and preparing them for re-letting.

#### 16.7 Waiver of Distress and Bankruptcy

The Tenant waives the benefit of any present or future statute taking away or limiting the City's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears. The Tenant will not sell, dispose of, or remove any other fixtures, goods, or chattels of the Tenant from or out of the Premises during the Term without the consent of the City, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Tenant's purposes; and the Tenant will be the owner or lessee of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Tenant agrees that it will not, without the City's consent, repudiate or disclaim this Lease in any bankruptcy, insolvency, re-organization, or other proceeding or court application, and if required by the City, waives in favour of the City the benefit of s. 65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, and any provision of similar import.

#### 16.8 Re-letting and Sale of Personalty

Whenever the City becomes entitled to re-enter upon the Premises under any provision of this Lease, the City, in addition to its other rights, shall have the right as agent of the Tenant to enter the Premises and License Area and re-let them (for a term or terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the Rent therefore, and as the agent of the Tenant to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Premises and License Area upon account of the Rent due and to become due under this Lease, and the Tenant shall be liable to the City for the deficiency, if any.

#### 16.9 Surrender on Termination

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Premises and License Area in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Premises and License Area, but subject to the Tenant's rights and obligations in respect of removal in accordance with clause 11.3, and subject to reasonable wear and tear. At the same time the Tenant shall surrender to the City at the place then fixed for the payment of Rent all keys and other devices which provide access to the Premises and License Area, or any part thereof and shall inform the City of all combinations to locks, safes, and vaults, if any, in the Premises.

## 17. MISCELLANEOUS

### 17.1 Notices

Any notice required or contemplated by any provision of this Lease shall be given in writing, and if to the City, either delivered to the City Clerk or delivered or mailed (by prepaid registered mail) to the City at the address set out in sub-clause 1.1(a), or if the City has given the Tenant notice of another address in Canada to which notices to the City under this Lease are to be given, then to the last such address of which the Tenant has been given notice; and if to the Tenant, either delivered to the Tenant personally (or to a partner or officer of the Tenant if the Tenant is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Tenant at the Premises. Every such notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered.

### 17.2 Extraneous Agreements

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease, the Premises or License Area save as expressly set out in this Lease and in any agreement to lease in writing between the City and the Tenant pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may not be modified except by an agreement in writing executed by the City and the Tenant, and no verbal agreements or conversations with any officer, agent, or employee of the City, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.

### 17.3 Time of Essence

Time shall be of the essence in this Lease.

### 17.4 15.4 Enurement

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the City and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Tenant.

### 17.5 References to Tenant

References to the Tenant shall be read with such changes in gender as may be appropriate, depending upon whether the Tenant is a male or female person or a firm or corporation. If the Tenant is comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Tenant herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

### 17.6 Frustration

Notwithstanding the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue which, but for this clause, would frustrate or void this Lease, and notwithstanding any statutory provision to the contrary, the obligations and liability of the Tenant hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

#### 17.7 Waiver

No condoning, excusing, or overlooking by the City or Tenant of any default, breach, or non-observance by the Tenant or the City at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the City's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the City or the Tenant herein in respect of any such continuing or subsequent default or breach, and no acceptance of Rent by the City subsequent to a default by the Tenant (whether or not the City knows of the default) shall operate as a waiver by the City, and no waiver shall be inferred from or implied by anything done or omitted by the City or the Tenant save only express waiver in writing.

#### 17.8 Governing Law and Severability

This Lease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Lease shall be Kelowna, British Columbia as long as such venue is permitted by law, and the Tenant shall consent to any application by the City to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The City and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

#### 17.9 Captions

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

#### 17.10 Acceptance

The Tenant accepts this Lease, to be held by it as tenant, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Premises and License Area shall be conclusive evidence as against the Tenant that at the Commencement Date of the Term the City had duly completed all work required to be completed by the City prior to the Commencement Date of the Term and the Premises and License Area were in good order and satisfactory condition for the commencement of the work and business of the Tenant.

#### 17.11 Deposit

If the City is holding any deposit in connection with this Lease, then unless the City agreed in writing to different arrangements at the time the City received the deposit, the deposit shall be held by the City on a non-interest bearing basis to be applied to the Annual Base Rent for that month of the Term during which Annual Base Rent is first payable hereunder.

#### 17.12 Expropriation

If at any time during the Term the interest of the Tenant under this Lease or the whole or any part of the Premises shall be taken by any lawful power or authority by the right of expropriation, the City may at its option give notice to the Tenant terminating this Lease on the date when the Tenant or City is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Tenant shall immediately surrender the Premises and License Area and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Tenant shall forthwith pay to the City the

apportioned Rent and all other amounts which may be due to the City up to the date of termination, and clause 14.8 shall apply. The Tenant shall have no claim upon the City for the value of its property or the unexpired Term of this Lease, but the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Premises, and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the City specifically includes an award to the Tenant, the City shall account therefore to the Tenant. In this clause the word "expropriation" shall include a sale by the City to an authority with powers of expropriation, in lieu of or under threat of expropriation.

#### 17.13 Statutory Functions

Nothing contained herein shall impair or affect in any way the exercise by the City of its functions and authority under any enactment, constating document, law, bylaw, resolution or other source of authority.

IN WITNESS WHEREOF the parties have executed this Lease.

SIGNED, SEALED AND DELIVERED by the City in the presence of:

The City of Kelowna, by its Authorized  
Signatories: )

\_\_\_\_\_  
Mayor )

\_\_\_\_\_  
City Clerk )

\_\_\_\_\_  
Witness )

\_\_\_\_\_  
Address )

\_\_\_\_\_  
Occupation )

Jugo Juice Canada Inc., by its Authorized  
Signatories: )

x Inna Umansky )

\_\_\_\_\_  
Witness )

272 Cowpark Rise NE )

\_\_\_\_\_  
Address )

Controller )

\_\_\_\_\_  
Occupation )

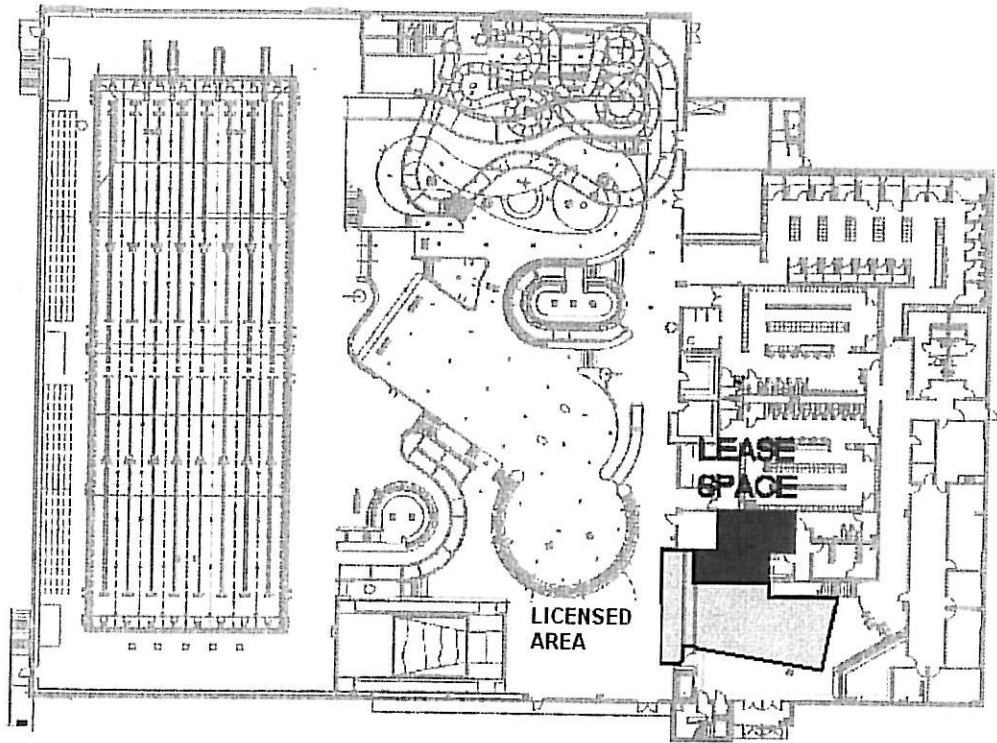
**Jason Paul Cunningham**  
AB - 416 Meridian Road SE  
Print Name Calgary, Alberta  
T2A 1X2  
(403) 207-5850  
Commissioner for Oaths  
Appointee #0711798

\_\_\_\_\_  
Print Name

## SCHEDULE A

## MISSION RECREATION PARK AQUATIC CENTRE

## LEASED SPACE AND LICENSED AREA



**SCHEDULE B****DEFINITIONS**

In this Lease the following expressions shall have the following meanings:

"Additional Rent" means all sums of money to be paid by the Tenant, whether to the City or otherwise under this Lease, except for Annual Base Rent and Goods and Services Tax payable by the Tenant.

"Anniversary Date" means the day and month one year and subsequent annual period following the Commencement date on which the Premises were opened for sales to the public.

"Annual Base Rent" means the annual Rent set out in sub-clause 1.1(g) and payable by the Tenant as set forth in clause 4.2.

"Basic Terms" means those terms set out in clause 1.1.

"Commencement Date" means the date the term commences as set forth in or determined under sub-clause 1.1(e) and subject to clause 3.2.

"Facility" – means the Mission Recreation Park Aquatic Centre located at PID: 026-563-355 Lot 2 District Lot 168 and Section 2 Township 26 ODYD Plan KAP80134

"Facility Operator" – means the group or organization operating the Mission Recreation Parks Aquatic Centre on behalf of the City. The City may at its sole discretion delegate the responsibility and authority to administer the day to day supervision of this lease.

"Goods and Services Tax" or "GST" means and includes any and all Goods and Services Taxes, sales Taxes, value added Taxes, business transfer Taxes, or any other Taxes imposed on the City or the Tenant from time to time in respect of the Rent payable by the Tenant to the City under this Lease or the Rental of the Premises or the provision of any goods, services, or utilities whatsoever by the City to the Tenant under this Lease, whether characterized as a Goods and Services Tax, sales Tax, value added Tax, business transfer Tax, or otherwise.

"Insured Damage" means that part of any damage occurring to any portion of the Premises for which the City is responsible, of which the entire cost of repair is actually recoverable by the City under a policy of insurance in respect of fire and other perils from time to time effected by the City, or, if and to the extent that the City has not insured and is deemed to be a co-insurer or self-insurer under clause 11.1, would have been recoverable had the City effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured.

"Land" means that parcel of land on Gordon Drive in the City of Kelowna, British Columbia, more particularly described as PID: 026-563-355 Lot 2 District Lot 168 and Section 2 of Township 26 ODYD Plan KAP80134.

"Lease Year" means, in the case of the first Lease Year, the period beginning on the Commencement Date and terminating 12 months from the last day of the calendar month in which the Commencement Date occurs (except that if the Commencement Date occurs on the first day of a calendar month, the first Lease Year shall terminate on the day prior to the first anniversary of the Commencement Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year.

"Leasehold Improvements" means all fixtures, improvements, installations, alterations, and additions now and from time to time hereafter made, erected or installed, whether by the Tenant, and the City or anyone else, in the Premises, including all partitions however fixed (including movable partitions) and all wall-to-wall carpeting with the exception of such carpeting where laid

over vinyl tile or other finished floor and affixed so as to be readily removable without damage, but excluding trade fixtures and unattached free-standing furniture and equipment.

"License Area" means the Mission Recreation Park Aquatic Centre Lobby area adjacent to the Premises, as set out in sub-clause 1.1(c) and shown on Schedule A.

"Premises" means that portion of the Mission District Park Aquatic Centre commonly known as the concession at 4015 Gordon Drive as set out in sub-clause 1.1(c) and shown on Schedule A.

"Prime Rate" means the rate of interest declared from time to time by the main branch, Bank of Montreal, Kelowna, British Columbia, to the City as the annual rate of interest.

"Rent" means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the City under this Lease except for Goods and Services Tax payable by the Tenant.

"Taxes" means all Taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, which are levied, imposed, or assessed against or in respect of the Premises, the Land, which are from time to time levied, imposed or assessed in the future in addition or in lieu thereof, including, without limitation, those levied, imposed, or assessed for education, schools and local improvements.

"Tax Cost" for any calendar year means an amount equal to the aggregate, without duplication, of all Taxes in respect of such calendar year.

"Tenant's Share" means the proportion of Taxes attributed to the Premises.

"Term" means the Term of this Lease set forth in sub-clause 1.1(e) and any renewal or extension thereof and any period of permitted overholding.

Sample Menu

**SCHEDULE C**

**SCHEDULE D****Defined Dates**

October 13, 2008	Jugo Juice signs agreement
October 20, 2008	Agreement brought to City Council for consideration
If Kelowna City Council approves the agreement	
December 01, 2008	Jugo Juice to provide detailed design drawings for City staff approval
January 7, 2009	Deadline for the City staff to approve the detailed design drawings
February 1, 2009 *	Jugo Juice gains access to space and begins tenant improvements
February 1, 2009 *	Jugo Juice begins rent free period
April 1, 2009 *	Commencement date The Facility is scheduled to open to the public.
April 1, 2009 **	Commencement date Jugo Juice is scheduled to will be ready for operation and start of rent payments.

\* Scheduled dates are subject to change due to unanticipated construction delays.

\*\* Scheduled date is subject to change due to unanticipated construction delays.

## SCHEDULE E

## Health Food and Beverage Awareness Program



## HEALTHY FOOD AND BEVERAGE CHECKMARK SYSTEM FOR SPORT AND RECREATION CONCESSION OUTLETS

The program incorporates the Checkmark System which classifies foods and beverages offered for sale into four categories; Choose Most, Choose Sometimes, Choose Least and Not Recommended. Utilization of this system provides the consumer with the knowledge and option to select healthier food and beverages.

- Choose Most foods will be symbolized by two checkmarks
- Choose Sometimes foods by one checkmark
- No symbol is allowed for the 'Choose Least' and 'Not Recommended' categories.

Choose Most ✓✓	Choose Sometimes ✓	Choose Least	Not Recommended
These items, including whole grain breads and fresh vegetables, tend to be the highest in nutrients, the lowest in unhealthy components, and the least processed.	These items, including such things as fruit canned in light syrup, represent choices that are moderately salted, sweetened or processed,	These items, including such things as fries, tend to be low in key nutrients such as iron and calcium and highly salted, sweetened or processed.	These items, including candies and drinks where sugar is the first ingredient, or the second ingredient after water, tend to be highly processed, or have very high amounts of sweeteners, salt, fat, trans fat or calories relative to their nutritional value.

City of Kelowna current concessionaires are to achieve the following product proportions **for packages products** as minimum standards by 2010. Percentages are based on BC School Guidelines for Healthy Food and Beverages and the Vancouver Coastal Health Policy.

- Within the category of beverages, at least **50%** of product choices will be from the Choose Most and Choose Sometimes categories. And up to **50%** of products choices may be from the Choose Least or Not Recommended categories.
- Within the category of foods, at least **70%** of product choices will be from the Choose Most and Choose Sometimes categories, with no more than **35%** of products coming from the Choose Sometimes category. And up to **30%** of product choices may be from the Choose Least or Not Recommended categories, with no more than **15%** from the Not Recommended category.

City of Kelowna staff will work with current concessionaires to ensure that healthy choices are provided **for prepared foods** and that there is consistent availability from the Choose Most and Choose Sometimes categories.

- City concession operation will phase out food products that are manufactured or processed using trans fats.
- Deep fryers will be removed from all City concessions where applicable.



## Guidelines for Food and Beverage Concessions

These guidelines can be used to provide the public with the foods and fluids they need to perform their best.

### FLUIDS

Water (best thirst quencher and hydrator for most sports)  
 Milk (plain or flavoured)\* Hot chocolate (made with milk)  
 Yogurt-based drinks\* Fruit smoothies (yogurt, juice, fruit)\*  
 Sport drinks (for events lasting > 1 hour) 100% fruit or vegetable juice



### Grain Products

Whole grain - bagels, buns, muffins, crackers, pitas, loaves, cookies or baked snacks

Cereal (1<sup>st</sup> ingredient shouldn't be sugar, less than 16 g sugar/serving)

Fig filled bars and cookies (1<sup>st</sup> ingredient shouldn't be sugar)

Granola or cereal bars (1<sup>st</sup> ingredient shouldn't be sugar, avoid trans or hydrogenated fat)

### *Vegetables & Fruit*

Fresh fruit and vegetables (e.g. fruit kabobs) cups

100% dried fruit shouldn't be sugar)

Some small bags of fruit chips or potato/vegetable chips (baked, lightly salted)



Applesauce, fruit packs, or fruit

Frozen fruit bars (1<sup>st</sup> ingredient

See



### *Milk Products*

fluids (above)\*

Yogurt\*

Frozen yogurt, some ice creams (1<sup>st</sup> ingredient should be a milk ingredient)\*

Most puddings, custards (1<sup>st</sup> ingredient should be a milk ingredient)

Small servings of cheese or light cheese (20% MF or less)\*

### Meat & Alternatives

Lean meats, fish, poultry\*

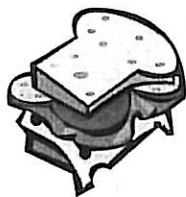
Lean - wieners, pepperoni, chicken sticks, jerky\*

Legumes (beans, peas lentils), dal, falafel, refried beans, tofu

Nuts/seed bars and mixes with nuts/seeds as 1<sup>st</sup> ingredient

Eggs, some egg salads\*





### *Mixed Foods*

Most – sandwiches (made with lean, roasted meats/poultry), sushi, pasta with sauce (vegetable or lean meat), pizzas (made with veggies & ½ the amount of cheese), lean burgers\*

Some soups (low-sodium, not instant soups), Chili\*

Energy bars made with whole grains, nuts seeds, fruit (1<sup>st</sup> ingredient shouldn't be sugar)

\*Refrigerator or freezer required

Visit the Ministry of Education website [www.bced.gov.bc.ca](http://www.bced.gov.bc.ca) for a more thorough guide to healthy foods and beverages.

April 2008

