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CITY OF KELOWNA

MEMORANDUM

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**Date:** October 31, 2008  
**File No.:** 2380-20  
**To:** City Manager  
**From:** Property Manager  
**Subject:** **Guisachan House Restaurant Lease**

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**RECOMMENDATION:**

**THAT** City Council approve the Guisachan House Lease Agreement as attached to the report from the Property Manager, Civic Properties Department, dated October 31, 2008;

**AND THAT** the Mayor and City Clerk be authorized to execute the legal agreements on behalf of the City of Kelowna;

**AND THAT** an alternative approval process opportunity open to all electors within the City of Kelowna be initiated subject to the report of the Property Manager, Civic Properties Department, dated October 31, 2008;

**AND FURTHER THAT** 4:00 p.m. January 6, 2009 be set as the deadline for receipt of elector responses in the form attached to the report of the Property Manager, Civic Properties Department, as Schedule "A" in relation to the City of Kelowna proceeding with an operating agreement between the City of Kelowna and Strongwave Investment and Business Consulting Ltd. for a period of 5 years with a three-year option and a two-year option to renew, as outlined in the report of the Property Manager, Civic Properties Department, dated October 31, 2008.

**BACKGROUND:**

The City entered into a five-year lease of the Guisachan House in August 2006. In September 2006 a fire rendered the building unusable. At this time the tenants rent obligations were cancelled. It is projected that the building will be usable in February 2009. The Tenant has expressed a desire to re-negotiate a lease with a longer term. An extended lease period give the Tenant an opportunity to rebuild the business after a 30 month interruption of operations. Although the lease terms allowed the City or the Tenant to dissolve the contract when the building remained unusable for more than 270 days, both parties have remained committed to re-establishing the contract.

Base Terms of the provided lease agreement with Strongwave Investment and Business Consulting Ltd. for the Guisachan House Restaurant are

**Term:** 5 years (February 1, 2009 – January 31, 2014)  
**Renewal:** Two renewal options the first for three years followed by an additional two years at the tenants request and the City's discretion.  
**Rate:** \$35,912.80 per year for five years. Renewal options to be charged market rent as determined by an independent market appraisal  
**Tenant Improvements:** By tenant



**FINANCIAL/BUDGETARY CONSIDERATIONS:**

The 2009 Financial plan will be adjusted to reflect the reinstated revenue source.

**INTERNAL CIRCULATION TO:**

City Clerks Office  
Projects Manager, Civic Properties

**LEGAL/STATUTORY AUTHORITY:**

Sections 84, 86 and 175 of the *Community Charter*

**LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:**

Pursuant to section 86 of the *Community Charter*, Council is required to approve the elector response form for an alternative approval process, and must establish the deadline for receipt of elector responses, which must be at least thirty days after the second publication of the alternative approval process notice. Notice requirements are set by section 94 of the *Community Charter*.

Advertisement of the alternative approval process will be posted on the public notice board at City Hall, will run in the Kelowna Daily Courier and the Kelowna Capital News on Friday, November 14 and 21, 2008; and will be posted on the City's website. Approval of the electors will be obtained if the number of elector responses received by the end of the alternative approval process is less than 10% of the number of electors (8,550).

Considerations that were not applicable to this report:

**EXISTING POLICY:**

**PERSONNEL IMPLICATIONS:**

**TECHNICAL REQUIREMENTS:**

**EXTERNAL AGENCY/PUBLIC COMMENTS:**

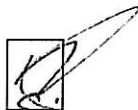
**ALTERNATE RECOMMENDATION:**

Submitted by:



R. Forbes – Property Manager

Approved for Inclusion:



cc: Director of Financial Services  
Civic Properties Manager

## Schedule "A"

### Guisachan House Lease Agreement

#### ALTERNATIVE APPROVAL PROCESS ELECTOR RESPONSE FORM

I am **OPPOSED** to the City of Kelowna proceeding with the Guisachan House Lease Agreement. The Lease Agreement is between the City of Kelowna and Strongwave Investment and Business Consulting Ltd. for a period of 5 years with a three-year option and a two-year option to renew. The Agreement is to lease the Guisachan House, located at 1060 Cameron Avenue, to be operated as a restaurant. For more information or a copy of the Agreement, please contact Ron Forbes, Property Manager, Civic Properties Department, at 250-469-8669 or Victoria Leung, Acting Legislative Coordinator, City Clerk's Department, at 250-469-8653.

I, the undersigned, hereby certify that:

- I am eighteen years of age or older; and
- I am a Canadian citizen; and
- I have resided in British Columbia for at least six months; and
- I have resided in, OR have been the registered owner of real property (and have been designated as the elector in regard to that property) in, the City of Kelowna for at least thirty days; and
- I am not disqualified by the *Local Government Act* or any other enactment or otherwise disqualified by law from voting in local elections; and
- I am entitled to sign this alternative approval process elector response form and have not previously signed an alternative approval process elector response form for the proposed Agreement.

**All alternative approval process elector response forms must be received by the City Clerk, 3<sup>rd</sup> Floor, City Hall, 1435 Water St., Kelowna, B.C., V1Y 1J4 on or before 4:00 p.m. on Tuesday, January 6, 2009.**

<b>ELECTOR'S <u>FULL</u> NAME</b> (Print – NO initials)	<b>RESIDENTIAL ADDRESS</b> (or address of real property in Kelowna owned by elector if not resident)	<b>SIGNATURE OF ELECTOR</b>

NOTE: A person must not sign any alternative approval process elector response form more than once and may not withdraw his or her name from the alternative approval process elector response form after the deadline for submission of the petitions has passed.

**The number of electors of the City of Kelowna is estimated to be 85,550. If 10% (8,550) of the estimated number of electors of the City of Kelowna sign an alternative approval process elector response form opposing the noted transactions, City Council will not be able to proceed without then receiving the assent of the electors by referendum.**

Cir.	Department	Date	Init.
	Civic Prop.		
	Finance		
	Engineer		
	City Clerk		

# **GUISACHAN HOUSE RESTAURANT COMMERCIAL LEASE**

THIS AGREEMENT made the 30th day of October 2008.

BETWEEN:

CITY OF KELOWNA  
a municipal corporation  
1435 Water Street  
Kelowna, B.C. V1Y 1J4

(the "Lessor")

OF THE FIRST PART

AND:

Strongwave Investment and Business Consulting Ltd.  
a business corporation having a mailing address at  
Station "A", Box 1055,  
Kelowna, B.C. V1Y 7P7

(the "Lessee")

OF THE SECOND PART



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THIS LEASE, dated the first day of November, 2008 is made and entered into by the Lessor and Lessee named herein who, in consideration of the covenants herein contained, agree as follows:

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

**1.1 Basic Terms**

- (a) Lessor: CITY OF KELOWNA  
Address of Lessor: City Hall, 1435 Water Street  
Kelowna, B.C. V1Y 1J4
- (b) Lessee: Strongwave Investment and Business  
Consulting Ltd.  
Address of Lessee: Station "A", Box 1055  
Kelowna, B.C. V1Y 7P7
- (c) Premises: Guisachan House Restaurant  
1060 Cameron Avenue  
Kelowna, B.C. V1Y 8V3  
As that portion of land indicated as "Park" on Plan  
37018, O.D.Y.D.  
(see Schedule "A")
- (d) Term: 5 years (February 1 2009 – January 31, 2014)  
Commencement Date: February 1, 2009
- (e) Renewal Term 3 years. (February 1 2014 – January 31, 2017)  
2 years (February 1 2017 – January 31, 2019)
- (e) Annual Base Rent: \$35,912.80 per annum. Payable in monthly instalments in the amount of \$2,992.73 plus applicable GST, in advance on the first day of each month during the Term of this Lease commencing on April 1, 2009.

- (f) Permitted Use: For the operation of a restaurant and on site catering service and related activities, or such other activity or use as may be properly authorized in writing by the Lessor so long as any such service or related activity does not interfere with the Lessee's ability to meet its obligations under this lease, and to operate in accordance with the conditions or requirements of this lease.
- (g) Parking Entitlement: The Lessor covenants to provide parking as set out on the overall plan shown on Schedule "A", such parking to be available to the customers of the Lessee and the members of the public visiting the Guisachan Heritage Park on a first-come, first-served basis. The Lessor reserves the right to restrict parking to the designated parking areas and to remove vehicles which violate such restrictions. The Lessee shall ensure that staff other than the Lessee shall park at the rear of the premises if such parking is available and otherwise outside of the boundary of the lands and premises forming the Guisachan Heritage Park. The Lessor shall use its best efforts to maintain reasonable parking space at the rear of the Premises.

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.

## 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		CLAUSE
A	Site Plan of Premises	1.1(c)
B	Definitions	1.3
C	Annual Schedule of Garden Events	5.1(k)
D	Minimum Hours of Operation	5.1(i - iii)

## 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

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 Lessor hereby demises and leases to the Lessee, and the Lessee leases from the Lessor, the Premises.

## 3. TERM

### 3.1 Term

The Term of this Lease shall be for the period set out in sub-clause 1.1(d), beginning on the Commencement Date of February 1, 2009

### 3.2 Option to Renew

The Landlord covenants with the Tenant that if:

(First Option to renew)

the Tenant gives notice to the Landlord 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 years; and

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

the Tenant has duly and regularly throughout the initial Term of five years observed and performed the covenants and conditions herein contained

then the Landlord 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 three years, upon the same terms and conditions, including Annual Base Rent and Additional Rent as are herein contained.

(Second option to renew)

the Tenant gives notice to the Landlord 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 years; and

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

the Tenant has duly and regularly throughout the initial Term of five years observed and performed the covenants and conditions herein contained

then the Landlord shall grant to the Tenant at the Tenant's expense a second renewal lease of the Premises and License Area for the Renewal Term(s) of two years, upon the same terms and conditions, including Annual Base Rent and Additional Rent as are herein contained.

### 3.2 Overholding.

If the Lessee shall continue to occupy the Premises after the expiration of the Term hereby granted and the Lessor shall accept rent, the new tenancy thereby created shall be deemed to be a monthly tenancy and shall be subject to the covenants and conditions contained in this agreement insofar as the same are applicable to a tenancy from month to month save and except that the rent payable shall be as determined by the Lessor.

### 3.3 First Refusal on Further Lease

Should the Lessor decide to offer up a new lease or other tenancy arrangement in relation to the Premises, following the termination of this Lease whether at the conclusion of the Term or earlier, then the Lessee shall be offered a first right of refusal against that new lease or arrangement. For clarification, the Lessor shall incur no obligation nor liability under this Lease beyond the Term and any subsequent renewal terms.

#### **4. RENT**

##### **4.1 Rent**

The Lessee shall yield and pay to the Lessor, in the manner outlined in clause 4.2, at the office of the Lessor's accounts payable division, or at such other place as the Lessor 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(e) for each respective Lease Year, subject to the adjustment provisions of sub-clause 4.2(c); and

**(b) Additional Rent Payments**

In addition the Lessee is responsible for all operating costs of whatever nature or kind in connection with the Premises including all property taxes insurance, utilities and other charges.

##### **4.2 Payment of Rent**

The Rent provided for in this Article 4 shall be paid by the Lessee 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(e), 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 Lessee 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**

The Lessee agrees to pay all taxes, utilities, and other expenses or charges of whatever nature of kind as and when they become due.

**(c) Basis of Determining Rent**

The Lessee acknowledges that the Annual Base Rent is calculated on the basis of the Rentable Area of the Premises and at the rate set out in sub-clause 1.1(e) for each square foot of Rentable Area. The Lessee agrees that the Lessor may adjust the Annual Base Rent and the Additional Rent in the event that the Rentable Area of the Premises is found to be different from the Rentable Area

stated above. The Lessee acknowledges that the Lessor shall prior to any renewal commission a study of the market rent. The rent for the premises shall be adjusted accordingly.

(d) Post-Dated Cheques

If requested by the Lessor from time to time, the Lessee will provide to the Lessor without prejudice to any other right or remedy of the Lessor a series of cheques, post-dated to the respective due dates of payments, for the amounts of the Rent and estimates on account thereof which are periodically payable under this Lease.

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

4.5 Application of Payments

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

4.6 Net Lease

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

4.7 Interest on Overdue Rent

Overdue Rent payments shall bear interest at the rate of 2 percent per month or any portion thereof compounded monthly (26.82% per annum) effective from the date the amount is due.

**5. LESSEE'S COVENANTS**

5.1 Lessee's Covenants

The Lessee covenants with the Lessor as follows:

(a) 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 Lessee to the Lessor or to others under this Lease.

(b) Occupancy and Permitted Use

To take possession of and occupy the Premises and commence to carry on business in all or substantially all of the Premises no later than 30 days after the Commencement Date, and to use the Premises only for the purpose set out herein and not for any other purpose.

(c) Waste and Nuisance

Not to commit or permit any waste or injury to the Building or the Premises 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 Lessor acting reasonably, could constitute a nuisance to, the Lessor or anyone else; or any other use or manner of use which, in the opinion of the Lessor acting reasonably, may have an adverse impact on the reputation of the Building. The lessee shall be responsible to maintain and pay for commercial waste disposal.

(d) Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Premises anything which would cause the Lessor's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Lessor may demand, and the Lessee shall pay to the Lessor 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.

(e) Cleanliness

Not to permit the Premises 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 in a neat and tidy condition. The Lessee shall ensure the Premises receives, and shall be responsible for, regular provision of appropriate janitorial services including window cleaning.

(f) 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, the condition of the Leasehold Improvements, trade fixtures, furniture, and equipment installed therein, and the making by the Lessee of any repairs, changes or improvements therein.

(g) Installations

To permit the Lessor during the Term, at the Lessee's cost, to install any equipment in or make alterations to the Premises 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 Lessor's original construction of the Building.

(h) Signs

Not to display, place, or affix any sign except in accordance with regulations of the Lessor.

(i) Inspection and Access

To permit the Lessor at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Premises for the purpose of inspection or making repairs, alterations, or improvements to the Building, or to have access to utilities and services or to determine the electric light and power consumption by the Lessee in the Premises, and the Lessee shall provide free and unimpeded access for the purpose, and shall not be entitled to compensation for any inconvenience, nuisance, or discomfort caused thereby, but the Lessor in exercising its rights hereunder shall proceed to the extent reasonably possible so as to minimize interference with the Lessee's use and enjoyment of the Leased Premises.

(j) Showing Premises

To permit the Lessor and its authorized agents and employees to show the Premises to prospective Lessees during the Normal Business Hours of the last three months of the Term.

(k) Bookings And Use Of Grounds Surrounding the Premises

To co-ordinate bookings for the restaurant and adjacent garden area. This shall not restrict the Okanagan Historical Society (OHS) from using the grounds surrounding the restaurant for their annual Garden and Art Exhibit events. Such events shall be scheduled as per Schedule "C" to this Lease. The OHS may hold other events on the grounds surrounding the restaurant at times which are mutually agreeable to the OHS and Lessee, provided the number and scope of such events do not substantially impact the Lessee's business. As much as is reasonable the OHS shall not restrict or limit the public's access to the Lessee's business during any of the OHS's events held on the grounds. The Lessee shall have the right to use the grounds adjacent to the restaurant during the term of the lease and any renewals, for wedding receptions and other events ancillary to the Lessee's business.

(l) Conduct Of Business

Recognising that it is in the best interests of the Lessor and the Lessee that the Lessee should have exclusive use of the Premises, the Lessee agrees with the Lessor as follows:

- (i) To use its best efforts to operate an attractive and efficient restaurant and catering service within the Premises which will reflect positively upon the heritage image of the Premises and the surrounding lands and buildings;
- (ii) To hire at the Lessee's expense a security guard when any functions extend past 11:00 p.m. The security guard/company will be of the Lessor choosing and shall report directly to the Lessor. The security guard shall



be employed to uphold the municipal bylaws and to protect the civic property

- (iii) To maintain minimum hours of operation as set out in Schedule "D": hereto or such other hours as may be allowed by the City of Kelowna save and except, at the option of the Lessee, statutory holidays, and to provide on its restaurant menu during these hours reasonably priced lunches and teas.
  - (iv) Outdoor portion of any wedding ceremonies to be concluded by 7:30 pm.
  - (v) To only play amplified music outdoors immediately before, during and after wedding ceremonies.
  - (vi) To not have any organized outdoor assembly after 9:00 pm
  - (vii) To keep guests leaving the restaurant after 10:00 pm from exiting to the parking lot by the "Butterfly Walkway."
- (m) Security  
To provide and pay for security for the building consistent with security used by other commercial restaurants.

## **6. LESSOR'S COVENANTS**

### **6.1 Lessor's Covenants**

The Lessor covenants with the Lessee as follows:

#### **(a) Quiet Enjoyment**

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

#### **(b) Base Building Repairs**

The Lessor shall maintain, repair and/or replace structural systems, exterior cladding (excepting glass), roof coverings, electrical systems and site services consistent with general standards of structures of similar age and character in Kelowna, and as required from time to time by authorities having jurisdiction.

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

### **7.1 Lessor's Repairs**

The Lessor covenants with the Lessee 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, mechanical systems and electrical systems.

## 7.2 Lessee's Repairs

The Lessee covenants with the Lessor:

- (a) to keep in a good and reasonable state of repair and consistent with the general standards applicable to buildings of similar age and location in Kelowna, the Premises including all Leasehold Improvements and all trade and electrical fixtures and appurtenances therein and all glass including all glass portions of exterior walls, HVAC, plumbing, flooring and window coverings, fire suppression system, heat and smoke detectors; and
- (b) the lessee shall not at any time overload the electrical system; and
- (c) that the Lessor may enter and view the state of repair without having any obligation to do so, and that the Lessee will repair according to notice in writing, and that the Lessee will leave the Premises in a good and reasonable state of repair assuming reasonable wear and tear.

## 7.3 Abatement and termination

It is agreed between the Lessor and the Lessee that in the event of damage to the Premises or to the Building:

- (a) if the damage is such that the Premises or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Lessee 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 or negligence of the Lessee or its employees, invitees, or others under its control, from and after the date of occurrence of the damage and until the Premises 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 not reasonably capable of use and occupancy; and
  - (ii) unless this Lease is terminated as hereinafter provided, the Lessor or the Lessee, 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 is not reasonably capable of such use and occupancy by reason of damage which the Lessee is obligated to repair hereunder, any abatement of Rent to which the Lessee is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Lessor, repairs by the Lessee ought to have been completed with reasonable diligence; and
- (b) if the Premises are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Lessor 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 the Lessor or the Lessee may at their option, exercisable by written notice to the Lessee given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Lessor nor the Lessee shall be bound to repair as provided in clauses 7.1 and 7.2, and the Lessee shall instead deliver up

possession of the Premises to the Lessor 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 Lessee may be entitled under sub-clause 7.3(a) by reason of the Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Lessor or the Lessee 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 Lessee acknowledges to the Lessor that the operation of systems and the availability of facilities 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 Lessor.

### **8. TAXES AND OTHER COSTS**

#### **8.1 Lessees Tax Obligations**

The Lessee covenants with the Lessor:

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

#### **8.2 Goods and Services Tax**

The Lessee shall pay to the Lessor Goods and Services Tax in accordance with the applicable legislation at the same time as the amounts to which such Goods and Services Tax apply are payable to the Lessor under the Terms of this Lease or upon demand at such other time or times as the Lessor from time to time determines. The Lessor will provide the Lessee with its Goods and Services Tax registration number. Notwithstanding any other section of this Lease, the amount payable by the Lessee under this clause shall be deemed not to be Rent, but the Lessor shall have the same remedies for and rights of recovery of such amount as it has for recovery of Rent under this Lease.

#### **8.3 Lessee's Tax Cost**

After the commencement of the Term of this Lease and prior to the commencement of each fiscal period determined by the Lessor thereafter which commences during the Term, the Lessor may estimate the Tax Cost, or any instalment on account thereof, to become due on any date during the ensuing fiscal period or (if applicable) portion thereof, as the case may be,

and the amount thereof which will be payable to the Lessee, and notify the Lessee in writing of such estimate. If the Lessee has overpaid such Tax Cost, the Lessor shall refund any excess paid, but if any balance remains unpaid, the Lessor shall fix monthly instalments for the then remaining balance of such fiscal period or portion thereof such that, after giving credit for instalments paid by the Lessee hereunder in respect of such calendar year, the entire Lessee's Share of Tax Cost will be fully payable prior to the time the Lessor is obligated to pay the Taxes in respect of which the Lessee's Share of Tax Cost is payable. If for any reason the Tax Cost is not finally deterred within such fiscal period or portion thereof, the parties shall make the appropriate re-adjustment when such Tax Cost becomes finally deterred. The Lessor and the Lessee acknowledge that Taxes in respect of the Building may be payable during the course of the year as pre-payment for the Taxes accruing due in respect of such year, and if the Term ends during a year, then the appropriate adjustment will be made under clause 4.3. Any report of the Lessors's accountant as to the Tax Cost shall be conclusive as to the amount thereof for any period to which such report relates.

#### **8.4 Receipts for Payment**

Whenever requested by the Lessor, the Lessee will deliver to it receipts for payment of all Taxes, rates, duties, levies, and assessments payable by the Lessee under sub-clauses 8.1(a) and (b) and furnish such other information in connection therewith as the Lessor may reasonably require.

### **9. UTILITIES AND ADDITIONAL SERVICES**

#### **9.1 Utilities**

The Lessee shall be responsible for all utilities and services of whatever nature or kind required in connection with the Premises and the conduct by the Lessee of the Lessee's business as described herein including without limitation, water, telephone, sewer, hydro, power, garbage disposal, snow clearing from the parking lot to the restaurant including all stairs and ramps, heat, light, ventilating, air conditioning, electricity.

#### **9.2 Energy Conservation**

The Lessee covenants with the Lessor:

- (a) that the Lessee will co-operate with the Lessor in the conservation of all forms of energy in the Building, including without limitation the Premises;
- (b) that the Lessee will comply with all laws, bylaws, regulations, and orders relating to the conservation of energy and affecting the Premises or the Building; and
- (c) that the Lessee will at its own cost and expense comply with all reasonable requests and demands of the Lessor made with a view to such energy conservation;

### **10. LICENSES, ASSIGNMENTS AND SUBLETTINGS**

#### **10.1 General**

It is understood and agreed that the Lessee may not assign this lease or sublease the Premises to another party, without the written consent of the Lessor. The Lessee agrees that for any written consent of the Lessor required after the Commencement Date for any sublease, assignment or occupation by persons other than the Lessee, the Lessor shall be entitled to

compensation for each requested consent for all costs incurred by the City, including staff time and reasonable legal costs, in considering such consent in an amount of not less than \$500.00.

#### 10.2 Licenses, Franchises, and Concessions

The Lessee shall not suffer or permit any part of the Premises to be used or occupied by any persons other than the Lessee, any sub-Lessees permitted under this Article, and the employees of the Lessee, and any such permitted sub-Lessee, or suffer or permit any part of the Premises to be used or occupied by any licensee, franchisee, or concessionaire, or suffer or permit any persons to be upon the Premises other than the Lessee, such permitted sub-Lessees, and their respective employees, customers, and others having lawful business with them.

#### 10.3 Assignment and Subletting

The Lessee shall not, without first obtaining the written consent of the Lessor, assign this Lease or sublet the whole or any part of the Premises, unless:

- (a) it shall have received or procured a bona fide written offer to take an assignment or sub-lease which is not inconsistent with, and the acceptance of which would not breach any provision of, this Lease if this clause is complied with, and which the Lessee has determined to accept subject to this section being complied with; and
- (a) it shall have first requested and obtained the consent in writing of the Lessor thereto.

#### 10.4 Request for Consent

Any request for such consent shall be in writing and accompanied by a true copy of such offer, and the Lessee shall furnish to the Lessor all information available to the Lessee and requested by the Lessor as to the responsibility, reputation, financial standing, and business of the proposed assignee or sub-Lessee. Within 30 days after the receipt by the Lessor of such request for consent and of all information which the Lessor shall have requested hereunder (and if no such information has been requested, within 30 days after receipt of such request for consent) the Lessor shall have the right upon written notice to the Lessee to:

- (a) in the case of a proposed sub-lease, either sublet from the Lessee any portion of the Premises proposed to be sublet for the Term for which such portion is proposed to be sublet but at the same Annual Base Rent and Additional Rent per square foot of Rentable Area of such portion as the Lessee is required to pay to the Lessor under this Lease for such portion or, if the proposed sub-lease is for all or substantially all of the remainder of the Term, terminate this Lease as it pertains to the portion of the Premises so proposed by the Lessee to be sublet; or
- (b) in the case of a proposed assignment, terminate this Lease.

#### 10.5 If Lessor Terminates

If the Lessor terminates this Lease in accordance with clause 10.4 with respect to all or a portion of the Premises, such termination shall be effective on the date stipulated in the notice of termination, which shall not be less than 60 days or more than 90 days following the giving of such notice, and the Lessee shall surrender the whole or part, as the case may be, of the Premises in accordance with such notice, and Rent shall be apportioned and paid to the date of



surrender and, if a part only of the Premises is surrendered, Rent payable under clause 4.1 shall thereafter abate proportionately.

#### 10.6 If Lessor Consents

If the Lessor consents to any proposed assignment or subletting, the Lessee shall assign or sublet, as the case may be, only upon the terms set out in the offer submitted to the Lessor as aforesaid and not otherwise. As a condition of the Lessor's consent, the assignee or sub-Lessee, as the case may be, shall agree (and will be deemed to have agreed) with the Lessor to observe the obligations of the Lessee under this Lease as the same relate to the space assigned or sublet (except, in the case of a sub-lease, the Lessee's covenant to pay Rent) by entering into an assumption agreement with the Lessor and the Lessee, in the Lessor's then-standard form, and shall pay the Lessor's then-current processing charge and solicitor's fees and disbursements for preparing such agreement. The Lessee further agrees that if the Lessor consents to any such assignment or subletting, the Lessee shall be responsible for and shall hold the Lessor harmless from any and all capital costs for Leasehold Improvements and all other expenses, costs, and charges with respect to or arising out of any such assignment or subletting. Notwithstanding any such consent being given by the Lessor and such assignment or subletting being effected, the Lessee shall remain bound to the Lessor for the fulfilment of all the terms, covenants, conditions, and agreements herein contained. Any consent by the Lessor to any assignment or subletting shall not constitute a waiver of the requirement for consent by the Lessor to any subsequent assignment or subletting by either the Lessee or any assignee or sub-Lessee.

#### 10.7 Lessor Not to Unreasonably Withhold Consent

If the Lessee complies with clauses 10.3 and 10.4 and the Lessor does not exercise an option provided to the Lessor under clause 10.4, then the Lessor's consent to a proposed assignment or sublet shall not be unreasonably withheld. The Lessee acknowledges that the Lessor shall not be liable to the Lessee in damages, where, in giving good faith consideration to any request of the Lessee hereunder, it withholds its consent to a proposed assignment or sublease.

#### 10.8 Terms of Consent

If the Lessor consents in writing to an assignment or sub-lease as contemplated herein, the Lessee may complete such assignment or sub-lease subject to the following covenants and conditions:

- (a) no assignment or sub-lease shall be valid and no assignee or sub-Lessee shall take possession of the Premises or any part thereof until an executed duplicate original of such assignment or sub-lease has been delivered to the Lessor; and
- (b) all "Excess Rent", as hereinafter defined, derived from such assignment or sub-lease shall be payable to the Lessor. The Excess Rent shall be deemed to be and shall be paid by the Lessee to the Lessor as Rent. The Lessee shall pay the Excess Rent to the Lessor immediately as and when such Excess Rent is receivable by the Lessee.

As used herein, "Excess Rent" means the amount by which the total money and other economic consideration to be paid by the assignee or sub-Lessee as a result of an assignment or sub-lease, whether denominated as Rent or otherwise, exceeds, in the aggregate, the total amount of Annual Base Rent and Additional Rent which the Lessee is obligated to pay to the Lessor under this Lease, pro-rated for the portion of the Premises being assigned or sublet, less the reasonable costs paid by the Lessee for additional improvements installed in the portion of the Premises subject to such assignment or sub-lease by the Lessee at the Lessee's

sole cost and expense for the specific assignee or sub-Lessee in question, reasonable leasing costs (such as brokers' commissions and the fees payable to the Lessor under clause 10.1) paid by the Lessee in connection with such assignment or sub-lease, and the amount of Annual Base Rent and Additional Rent the Lessee is obligated to pay the Lessor under this Lease, pro-rated for the portion of the Premises being assigned or sublet that is not occupied or used by the Lessee, until the date of such assignment or sub-lease. In determining the amounts to be deducted from Excess Rent in each monthly payment period in respect of the Lessee's costs of assigning or sub-leasing, such costs shall be amortized without interest over the Term (in the case of an assignment) or term of the sub-lease (in the case of a sub-lease) on a straight line basis.

## **11. FIXTURES AND IMPROVEMENTS**

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

The Lessee will not make, erect, install, or alter any Leasehold Improvements or trade fixtures in the Premises, any safe or special lock in the Leased Premises, or any apparatus for illumination, air conditioning, cooling, heating, refrigerating, or ventilating the Premises, in any case without having requested and obtained the Lessor's prior written approval, which the Lessor shall not unreasonably withhold. Prior to approving the proposed Leasehold Improvements the Lessor shall ensure that proposed Leasehold Improvements maintain the heritage character of the building and may if necessary consult with the Central Okanagan Heritage Society in making that determination. In making, erecting, installing, or altering any Leasehold Improvements or trade fixtures, the Lessee shall comply with the Lessee construction guidelines as established by the Lessor from time to time, and shall obtain all required building and occupancy permits and comply with all laws of all authorities having jurisdiction. The Lessee'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 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 Lessee in the Premises, the Lessee 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 Lessor to take all steps to enable the Lessor 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 Lessee 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, or other encumbrance to attach to the Premises.

### **11.3 Lien Discharge**

If and when any builders' or other lien for work, labour, services, or materials supplied to or for the Lessee or for the cost of which the Lessee may be in any way liable or claims therefor 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 Lessee 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 Lessor 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 Lessee as provided in clause 14.1, and its right to reimbursement shall not be affected or impaired if the Lessee 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 shall immediately upon affixation be and become the Lessor's property without compensation therefor to the Lessee. Except to the extent otherwise expressly agreed by the Lessor in writing, no Leasehold Improvements, trade fixtures, furniture, or equipment shall be removed by the Lessee from the Premises either during or at the expiration or sooner termination of the Term, except that:

- (a) the Lessee may at the end of the Term remove its trade fixtures;
- (b) the Lessee shall at the end of the Term remove such of the Leasehold Improvements and trade fixtures as the Lessor shall require to be removed; and
- (c) the Lessee 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 Lessee's purposes or the Lessee is substituting therefor new furniture and equipment.

The Lessee 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 by the installation and removal.

#### 11.5 Alterations by Lessor

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

### 12. INSURANCE AND LIABILITY

#### 12.1 Lessor's Insurance

The Lessor 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 Building and all improvements and installations made by the Lessor in the Premises, 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 Building, 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 Lessor, and whose written opinion shall be conclusive. Upon the request of the Lessee from time to time the Lessor will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Building. The Lessor may maintain such other insurance in such amounts and upon such Terms as would normally be carried by a prudent owner.



## 12.2 Lessee's Insurance

The Lessee 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 and the Lessee's use and occupancy thereof, of not less than \$2,000,000 per occurrence, which insurance shall include the Lessor as a named insured and shall protect the Lessor in respect of claims by the Lessee as if the Lessor 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 Lessor in respect of fire and such other perils, including sprinkler leakage, as are from time to time defined in the usual extended coverage endorsement covering the Lessee's trade fixtures and the furniture and equipment of the Lessee and (except as to Insured Damage) all Leasehold Improvements in the Premises, and which insurance shall include the Lessor as a named insured as the Lessor'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 Lessor shall require the same from time to time, then also:

- (c) Lessee'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.
- (e) motor vehicle insurance for all motor vehicles used by the Lessee 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 per claim.

All insurance required to be maintained by the Lessee hereunder shall be on Terms and with insurers to which the Lessor has no reasonable objection and shall provide that such insurers shall provide to the Lessor 30 days' prior written notice of cancellation or material alteration of such Terms. The Lessee shall furnish to the Lessor certificates or other evidence acceptable to the Lessor as to the insurance from time to time required to be effected by the Lessee and its renewal or continuation in force, either by means of a certified copy of the policy or policies of insurance with all amendments and endorsements or a certificate from the Lessee's insurer which, in the case of comprehensive general liability insurance, shall provide such information as the Lessor reasonably requires. If the Lessee shall fail to take out, renew, and keep in force such insurance the Lessor may do so as the agent of the Lessee and the Lessee shall repay to the Lessor any amounts paid by the Lessor as premiums forthwith upon demand.

## 12.3 Limitation of Lessor's Liability

The Lessee agrees that:

- (a) the Lessor shall not be liable for any bodily injury to or death of, or loss or damage to any property belonging to, the Lessee or its employees, invitees, or licensees or any other person in, on, or about the Building or the Land, 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 Lessor be liable:

- (i) 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 Building or Land or from the streets, lanes, and other properties adjacent thereto;
- (ii) for any damage, injury, or death caused by anything done or omitted by the Lessee or any of its servants or agents or by any other Lessee or person in the Building;
- (iii) for the non-observance or the violation of any provision of any of the rules and regulations of the Lessor in effect from time to time or of any lease by another Lessee of premises in the Building or any concessionaire, employee, licensee, agent, customer, officer, contractor, or other invitee of any of them, or by anyone else;
- (iv) for loss or damage, however caused, to money, securities, negotiable instruments, papers, or other valuables of the Lessee or any of its servants or agents; or
- (v) for the failure to do anything required to be done by the Lessor by reason or any cause outside of the Lessor's reasonable control.

#### 12.4 Indemnity of Lessor

The Lessee agrees to indemnify and save harmless the Lessor 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 Lessee or any assignee, sub-Lessee, agent, employee, contractor, invitee, or licensee of the Lessee, and in respect of all costs, expenses, and liabilities incurred by the Lessor 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 Lessor arising from any breach by the Lessee of any of its covenants and obligations under this Lease. This indemnity shall survive the expiry or termination of this Lease.

### 13. SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES

#### 13.1 Lessee's Covenants

The Lessee agrees with the Lessor that:

- (a) Sale or Financing of Building

The rights of the Lessor under this Lease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the Lessor under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Building or the Premises, the Lessee agrees to attorn to and become the Lessee

of such purchaser or purchasers, mortgagee, or trustee under the Terms of this Lease.

(b) Subordination and Attornment

If required by any mortgagee or the holder of any trust deed or trust indenture, this Lease and all rights of the Lessee hereunder shall be subject and subordinate to all mortgages, trust deeds, or trust indentures now or hereafter existing which may now or hereafter affect the Building and to all renewals, modifications, consolidations, replacements, and extensions thereof; provided that the Lessee, whenever required by any mortgagee (including any trustee under a trust deed or trust indenture), shall attorn to such mortgagee as the Lessee upon all of the terms of this Lease. The Lessee agrees to execute and deliver promptly whenever requested by the Lessor or by such mortgagee an instrument of subordination or attornment, as the case may be, as may be required of it, and if the Lessee fails to do so within seven days after receiving the instrument, the Lessee hereby irrevocably and conclusively authorizes the Lessor to complete, execute, and deliver the instrument for, on behalf of, in the name of, and as agent of, the Lessee.

(c) Registration

The Lessee agrees that the Lessor 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 Lessor not to register this Lease.

(d) Certificates

The Lessee agrees with the Lessor that the Lessee shall promptly whenever requested by the Lessor from time to time execute and deliver to the Lessor and, if required by the Lessor, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Lessor) 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 Lessor and Lessee, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the Lessor shall request a certificate. If the Lessee fails to do so within seven days after the Lessee receives the form of certificate, the Lessee hereby irrevocably and conclusively authorizes the Lessor to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Lessee.

(e) Assignment by Lessor

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

**14. OCCURRENCE OF DEFAULT**

**14.1 Unavoidable Delay**

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Lessor or the Lessee shall be prevented, delayed, or restricted in the fulfillment of any obligations hereunder in respect of the supply or provision of any service or utility, the making of 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 fulfil such obligation or by reason of any statute, law, or regulation of or inability to obtain any permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfillment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfillment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfillment 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 Lessor will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises.

#### 14.2 No Admission

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

#### 14.3 Part Payment

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

### 15. LESSEE'S DEFAULT, REMEDIES OF LESSOR, AND SURRENDER

#### 15.1 Remedying by Lessor, Non-payment, and Interest

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

- (a) shall have the right at all times to remedy or attempt to remedy any default of the Lessee, and in so doing may make any payments due or alleged to be due by the Lessee to third parties and may enter upon the Premises to do any work or other things therein, and in such event all expenses of the Lessor 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 Lessee to the Lessor forthwith upon demand;
- (b) shall have the same rights and remedies in the event of any non-payment by the Lessee of any amounts payable by the Lessee under any provision of this Lease as in the case of non-payment of Rent;
- (c) if the Lessee shall fail to pay any Rent promptly when due, shall be entitled, if it shall demand it, to interest thereon at a rate of 2 percent per month or any portion thereof compounded monthly (26.82% per annum) effective from the date the amount is due; and
- (d) shall be entitled to be reimbursed by the Lessee, and the Lessee shall forthwith pay the Lessor, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the Lessor

in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies, to which the Lessor is or may be entitled hereunder.

#### 15.2 Remedies Cumulative

The Lessor 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 Lessee, 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 Lessor by statute or the general law.

#### 15.3 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 Lessee or any part thereof, whether lawfully demanded or not, are unpaid and the Lessee shall have failed to pay such Rent or other moneys within five days after the Lessor has given to the Lessee notice requiring such payment; or
- (b) if the Lessee shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, or regulations and other obligations on the part of the Lessee to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Lessor has given the Lessee notice thereof; or
- (c) if without the written consent of the Lessor the Premises shall be used by any other persons than the Lessee or its permitted assigns or permitted sub-Lessees 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 the Term or any of the goods and chattels of the Lessee 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 Lessee; or if the Lessee 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 Building from time to time effected by the Lessor shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises by the Lessee or any assignee, sub-Lessee or licensee of the Lessee or anyone permitted by the Lessee to be upon the Premises and the Lessee after receipt of notice in writing from the Lessor shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Lessor to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or



- (h) if the Lessor shall have become entitled to terminate this Lease or to re-enter the Leased Premises under any provision hereof;

then and in every such case it shall be lawful for the Lessor thereafter to enter into and upon the Premises 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 Lessor may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises, and the Lessee hereby releases the Lessor 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.

#### 15.4 Termination and Re-entry

If and whenever the Lessor becomes entitled to re-enter upon the Premises under any provision of this Lease, the Lessor, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Lessee or by leaving upon the Premises notice in writing of such termination. Thereupon, this Lease and the term shall terminate, and the Lessee shall immediately deliver up possession of the Premises to the Lessor in accordance with clause 15.8.

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

If the Lessor re-enters the Premises or if this Lease is terminated by reason of any event set out in clause 15.3, then without prejudice to the Lessor'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 Lessee of Rent and other payments for which the Lessee 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 Lessee or the person then controlling the Lessee's affairs; and
- (c) the Lessee or person then controlling the affairs of the Lessee shall pay to the Lessor on demand such reasonable expenses as the Lessor has incurred, and a reasonable estimate of the Lessor of expenses the Lessor expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Lessee, 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 in good order, and the expenses of repairing the Premises and preparing them for re-letting.

#### 15.6 Waiver of Distress and Bankruptcy

The Lessee waives the benefit of any present or future statute taking away or limiting the Lessor's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Lessee on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears. The Lessee will not sell, dispose of, or remove any of the fixtures, goods, or chattels of the Lessee from or out of the Premises during the Term without the consent of the Lessor, unless the Lessee is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become

excess for the Lessee's purposes; and the Lessee will be the owner of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Lessee agrees that it will not, without the Lessor's consent, repudiate or disclaim or attempt to repudiate or disclaim or seek any order to permit it to repudiate or disclaim this Lease in any bankruptcy, insolvency, re-organization, or other proceeding or court application, and, if required by the Lessor, waives in favour of the Lessor 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.

#### 15.7 Re-letting and Sale of Personality

Whenever the Lessor becomes entitled to re-enter upon the Premises under any provision of this Lease, the Lessor, in addition to its other rights, shall have the right as agent of the Lessee to enter the Premises 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 therefor, and as the agent of the Lessee 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 upon account of the Rent due and to become due under this Lease, and the Lessee shall be liable to the Lessor for the deficiency, if any.

#### 15.8 Surrender on Termination

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Lessee shall vacate and deliver up possession of the Premises in a neat and tidy state and in good and substantial repair in accordance with the Lessee's obligation under this Lease to repair the Premises, but subject to the Lessee's rights and obligations in respect of removal in accordance with clause 11.4. At the same time the Lessee shall surrender to the Lessor at the place then fixed for the payment of Rent all keys and other devices which provide access to the Premises or any part thereof and shall inform the Lessor of all combinations to locks, safes, and vaults, if any, in the Premises.

### 16. MISCELLANEOUS

#### 16.1 Notices

Any notice required or contemplated by any provision of this Lease shall be given in writing, and if to the Lessor, either delivered to an executive officer of the Lessor or delivered or mailed (by prepaid registered mail) to the Lessor at the address set out in sub-clause 1.1(a), or if the Lessor has given the Lessee notice of another address in Canada to which notices to the Lessor under this Lease are to be given, then to the last such address of which the Lessee has been given notice; and if to the Lessee, either delivered to the Lessee personally (or to a partner or officer of the Lessee if the Lessee is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Lessee 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.

#### 16.2 Extraneous Agreements

The Lessee acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease or the Premises save as expressly set out in this Lease and in any agreement to lease in writing between the Lessor and

the Lessee 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 Lessor and the Lessee.

#### 16.3 Time of Essence

Time shall be of the essence of this Lease.

#### 16.4 Successors and Assigns

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Lessor and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Lessee. References to the Lessee shall be read with such changes in gender as may be appropriate, depending upon whether the Lessee is a male or female person or a firm or corporation. If the Lessee 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 Lessee 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.

#### 16.5 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 liabilities of the Lessee hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

#### 16.6 Waiver

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

#### 16.7 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 Lessee shall consent to any application by the Lessor to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The Lessor and the Lessee 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.



#### 16.8 Captions

The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in now way define, limit, or enlarge the scope or meaning of this Lease or of any provision thereof.

#### 16.9 Acceptance

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

#### 16.10 Deposit

If the Lessor is holding any deposit in connection with this Lease, then unless the Lessor agreed in writing to different arrangements at the time the Lessor received the deposit, the deposit shall be held by the Lessor 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.

#### 16.11 Expropriation

If at any time during the Term the interest of the Lessee 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 Lessor may at its option give notice to the Lessee terminating this Lease on the date when the Lessee or Lessor 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 Lessee shall immediately surrender the Premises and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Lessee shall forthwith pay to the Lessor the apportioned Rent and all other amounts which may be due to the Lessor up to the date of termination, and clause 15.8 shall apply. The Lessee shall have no claim upon the Lessor 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 Lessor specifically includes an award for the Lessee, the Lessor shall account therefor to the Lessee. In this clause the word "expropriation" shall include a sale by the Lessor to an authority with powers of expropriation, in lieu of or under threat of expropriation.

#### 16.12 Statutory Functions

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

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IN WITNESS WHEREOF the parties hereto have hereunto affixed their signatures on the day and year first above written.

**CITY OF KELOWNA** by its authorized signatories:

\_\_\_\_\_  
Authorized Signatory

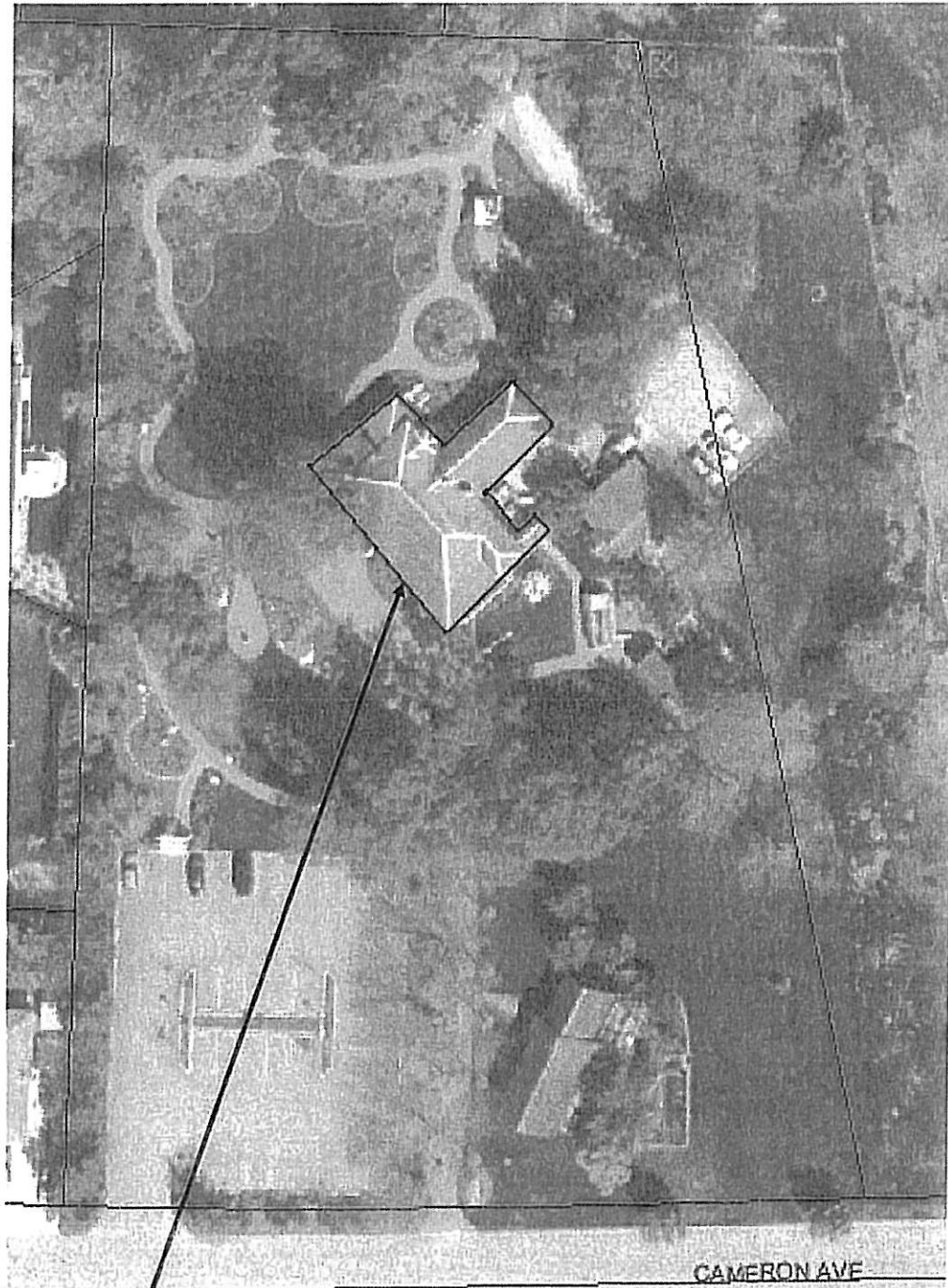
\_\_\_\_\_  
Authorized Signatory

**Strongwave Investment and  
Business Consulting Ltd.** by its  
authorized signatory

  
\_\_\_\_\_  
Authorized Signatory

SCHEDULE A

FLOOR PLAN(S) OF THE PREMISES



Premises

## 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 Lessee, whether to the Lessor or otherwise under this Lease, except for Annual Base Rent and Goods and Services Tax payable by the Lessee.

"Annual Base Rent" means the annual Rent set out in sub-clause 1.1(f) and payable by the Lessee as set forth in sub-clause 4.1(a).

"Basic Terms" means those Terms set out in clause 1.1, some of which are more particularly defined in this Schedule B.

"Building" means the Guisachan House Restaurant located at 1060 Cameron Avenue in the City of Kelowna, Province of British Columbia on lands legally described as "Park" on Plan 37018, O.D.Y.D.

"Commencement Date" means the date the Term commences as set forth in or determined under sub-clause 1.1(e).

"Goods and Services Tax" 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 Lessor or the Lessee from time to time in respect of the Rent payable by the Lessee to the Lessor under this Lease or the Rental of the Leased Premises or the provision of any goods, services, or utilities whatsoever by the Lessor to the Lessee 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 Lessor is responsible, of which the entire cost of repair is actually recoverable by the Lessor under a policy of insurance in respect of fire and other perils from time to time effected by the Lessor, or, if and to the extent that the Lessor has not insured and is deemed to be a co-insurer or self-insurer under clause 11.1, would have been recoverable had the Lessor 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 Cameron Avenue in the City of Kelowna, Province of British Columbia, more particularly described as "Park" on Plan 37018, ODYD.

"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 or from time to time hereafter made, erected, or installed, whether by the Lessee, the Lessor or anyone else, in the Premises with the exception of trade fixtures and furniture and equipment not of the nature of fixtures, but includes all partitions however fixed (including movable partitions) and includes 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.

" Premises" means the "Guisachan House Restaurant" as set out in sub-clause 1.1(c).

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

"Rent" means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Lessee to the Lessor under this Lease including Goods and Services Tax payable by the Lessee.

"Rentable Area", whether in the case of a whole floor of the Building or in the case of premises comprising part of a floor of the Building, shall be determined by the Lessor's architect or Land surveyor according to the American National Standard Method for Measuring Floor Areas in Office Building ANSI 565.1 - 1980 (re-affirmed 1989), as published by the Building Owners and Managers Association International and in effect as at the Commencement Date.

"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 Building, 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.

"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.

SCHEDULE "C"

Annual Schedule of Garden Events

The following are the dates for the annual garden show hosted by the OHS.

2009 – July 3 – 5

2010 – July 2 – 4

2011 – July 8 – 10

2012 – July 6 – 8

## SCHEDULE 'D'

### Hours of Operation

The minimum hours of operation of the Lessee's business on the Premises shall be between the hours of 11:00 a.m. and 2:00 p.m. six days per week including Saturdays, Sundays

During the evenings, the Premises may be operated at the discretion of the Lessee as a restaurant or for catered functions six evenings per week including Saturdays and Sundays, save and except at the option of the Lessee, statutory holidays. Provided that the Premises shall be open not later than 1:00 a.m. or later than such hour as may be absolutely determined by the City of Kelowna.