

## LEASE AGREEMENT

THIS LEASE made as of the 15<sup>th</sup> day of January, 2013.

B E T W E E N

**CITY OF HAMILTON**  
(hereinafter called the "Lessor")

Of The First Part,

- and -

**HAMILTON-WENTWORTH GREEN VENTURE**  
(hereinafter called the "Lessee")

Of The Second Part,

**WHEREAS** the Lessor is the owner of the lands known as Lot 72 and Part of Lot 73, Veevers Estates No. 1 Survey, also known as Plan M-3, municipally as 22 Veevers Drive, in the City of Hamilton, more particularly outlined on the survey attached hereto as Schedule "A" (the "Premises");

**AND WHEREAS** the Lessor holds the Lands pursuant to Articles of Agreement, dated the 13<sup>th</sup> day of August, 1985, between the Lessor and Ronald H. Veevers and Bertram M. Veevers (the "Veevers' Agreement") which provided, amongst other things, that the Lands shall be used in perpetuity and for all time as a horticultural/historical resource;

**AND WHEREAS** the Lessor was in receipt of the income from the residues of the estates of the late Ronald H. Veevers and Bertram M. Veevers (the "Veevers' Estates") until August 3, 2013, which income was used for the maintenance and refurbishing of the Lands in accordance with the said Veevers' Agreement;

**AND WHEREAS** the Lessee is an organization which promotes sustainable living in the Hamilton area;

**AND WHEREAS** the Lessor and the Lessee did enter into a licence agreement dated January 16, 2002 providing for the licensing of the above-noted Premises for a term of ten (10) years, commencing January 15, 2002 and ending January 14, 2012, attached as Schedule "B" hereto;

**AND WHEREAS** the Lessee has continued to occupy the said lands and wishes to continue to do so;

**AND WHEREAS** the Lessee desires to enter into a Lease for an additional twelve (12) years for the period commencing January 15, 2013 and terminating on January 14, 2025 upon the covenants and conditions provided herein;

**NOW THEREFORE** in consideration of the payments, covenants, terms, warranties, conditions and provisos contained in this Lease, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. Grant of Lease

(1) The Lessor leases the Premises to the Lessee:

(a) for the Term set forth in Article 2;

(b) at the Rent set forth in Article 3; and

(c) subject to the conditions and in accordance with the covenants, obligations and agreements herein.

(2) The Lessor covenants that it has the right to grant the leasehold interest in the Premises free from encumbrances except as disclosed on title.

## 2. Term and Extension of Term

(1) The Lessee shall have possession of the Premises for a term of twelve (12) years commencing on **January 15, 2013** and ending on **January 14, 2025** (the "Term"), unless terminated early in accordance with the terms of this Lease.

(2) Subject to the Lessor's rights under this Lease, and as long as the Lease is in good standing the Lessor covenants that the Lessee shall have quiet enjoyment of the Premises during the Term of this Lease without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming through the Lessor.

(3) The Lessee may apply in writing to the Lessor at least sixty (60) days prior to the end of the Term for a renewal or extension of this Lease upon such terms and conditions as are satisfactory to the Lessor, including Rent, but nothing herein contained shall obligate the Lessor to renew or extend this Lease created thereby.

## 3. Rent

(1) Rent means the amounts payable by the Lessee to the Lessor pursuant to this Section and includes Additional Rent.

(2) The Lessee shall pay to the Lessor rent (the "Rent"), without deduction, abatement or set-off, of **TWENTY-FOUR DOLLARS (\$24.00)** for the Term (plus all applicable harmonized sales tax) payable in advance upon the execution of this Lease by the Lessee.

(3) The Lessee further covenants to pay all other sums required by this Lease to be paid by it and agrees that all amounts payable by the Lessee to the Lessor or to any other party pursuant to the provisions of this Lease shall be deemed to be additional rent ("Additional Rent") whether or not specifically designated as such in this Lease.

(4) The Lessor and the Lessee agree that it is their mutual intention that this Lease shall be a completely carefree net lease for the Lessor and that the Lessor shall not, during the Term of this Lease, be required to make any payments in respect of the Premises other than charges of a kind personal to the Lessor (such as income and estate taxes and mortgage payments):

- (a) and to effect the said intention of the parties the Lessee promises to pay the following expenses related to the Premises as Additional Rent;
  - (i) business taxes and licences;
  - (ii) utilities (including but not limited to gas, electricity, water, heat, air-conditioning);
  - (iii) services supplied to the Premises, provided that this does not in any way oblige the Lessor to provide any services, unless otherwise agreed in this Lease;
  - (iv) property taxes and rates, duties and assessments;
  - (v) maintenance of the Premises, including but not limited to outside painting, landscaping, garbage removal, snow removal, all of which shall be the Lessee's responsibility;
  - (vi) insurance premiums;
  - (vii) sales tax, and any other taxes imposed on the Lessor respecting the Rent including but not limited to Harmonized Sales Tax exigible under the *Excise Tax Act* (Canada);
  - (viii) all other reasonable charges, impositions, costs and expenses subject however to the Lessee first having the opportunity to discuss with the Lessor any amount imposed or to be imposed under this sub-clause 3.(4)(viii) as or before it becomes due and payable where the Lessee does not believe it has the fiscal capacity to pay any such amount and to seek relief from the Lessor, in whole or in part, as the Lessor in its sole discretion determines, from having to pay such amount so as not to undermine the ability of the Lessee to be able to continue to occupy the Premises and to be able to continue its environmental and heritage education programming;
- (b) and if any of the foregoing charges are invoiced directly to the Lessee, the Lessee shall pay same as and when they become due and shall produce proof of payment to the Lessor immediately if requested to do so;

- (c) and the Lessee hereby agrees to defend, indemnify and protect the Lessor from any liability accruing to the Lessor in respect of the expenses payable by the Lessee as provided herein;
  - (d) and if the Lessee fails to make any of the payments required by this Lease then the Lessor may make such payments and charge to the Lessee as Additional Rent the amounts paid by the Lessor;
    - (i) and if such charges are not paid by the Lessee on demand the Lessor shall be entitled to the same remedies and may take the same steps for recovery of the unpaid charges as in the event of Rent in arrears;
  - (e) and if the Lessee enjoys the use of any common areas and facilities not included in the Premises, the Lessee shall pay its proportionate share of the foregoing expenses relating to such common areas and facilities.
- (5) Additional Rent shall be payable annually in advance on the 15<sup>th</sup> day of January in each year and the Lessor shall at least once each year provide the Lessee with a statement providing such information as may be required to calculate accurately the amounts payable by the Lessee as Additional Rent:
- (a) prior to the first such statement being delivered the payments of Additional Rent shall be based on the Lessor's estimate of the expenses chargeable to the Lessee;
  - (b) in the event that any such statement indicates that the amounts paid by the Lessee for Additional Rent are either more or less than the amount required pursuant to the statement then an adjusting statement and payment shall be delivered within thirty (30) days.
- (6) The Lessee acknowledges and agrees that the payments of Rent and Additional Rent provided for in this Lease shall be made without any deduction for any reason whatsoever unless expressly allowed by the terms of this Lease or agreed to by the Lessor in writing; and
- (a) no partial payment by the Lessee which is accepted by the Lessor shall be considered as other than a partial payment on account of Rent owing and shall not prejudice the Lessor's right to recover any Rent owing.

(7) Due to the status as a municipal capital facility under section 110 of the *Municipal Act, 2001*, the Premises is currently exempted from realty taxes. Should all or any part of the Premises be no longer considered a municipal capital facility under section 110 of the *Municipal Act, 2001*, the Lessor shall deliver to the Lessee receipts evidencing all such realty taxes owed due to the change of status of all or any part of the Premises and the Lessee shall pay the realty taxes solely and exclusively related to the Premises. In the event that the Lessee has failed to pay any realty taxes, the Lessor shall have the right, at the Lessor's sole discretion, to pay such realty taxes and any interest, charges or penalties thereon, to the relevant taxing authorities and shall have the right to include such amounts from any payments required to be made by the Lessee to the Lessor pursuant to this Lease as additional rent. Notwithstanding anything to the contrary, this Section 3(7) shall only apply so long as the City of Hamilton is the owner of the Premises.

#### **4. Capital Improvements and Maintenance Expenditures**

- (1) The Lessor shall be responsible for all Capital Improvements (as hereinafter defined) related to the Premises. Capital Improvements are defined as any improvements related to making changes to improve the asset, increase its useful life and/or add to the value of the asset. Capital Improvements may include, but are not limited to, the following:
- (a) installing new doors and/or windows;
  - (b) restoring doors and/or windows;
  - (c) installing or replacing air conditioning or ventilation system;
  - (d) replacing a HVAC unit;
  - (e) replacing or restoring flooring in the Premises;

- (f) repairing foundations for buildings;
- (g) repairs or restoration of building envelope;
- (h) replacement of building roofs;
- (i) all maintenance and repairs to electrical systems;
- (j) replace retaining walls, fences, and other landscape elements;
- (k) repairs or restoration of interior finishes; and
- (l) any capital project or combination of capital projects In the amount of \$50,000.00 or greater.

(2) The Lessee shall be solely responsible for Maintenance Expenditures (as hereinafter defined) related to the Premises required to keep and maintain the Premises in a good and safe condition and in good repair as would a careful and prudent owner. Maintenance Expenditures are defined as work that is required to ensure the security, health and/or safety of the Premises' occupants and visitors and ensures the efficient operating condition of the Premises. Maintenance Expenditures may include, but are not limited to, the following:

- (a) replacing light bulbs in the building and on the Premises;
- (b) repairing plumbing issues such as leaks, clogs and fixture repairs;
- (c) repairs to equipment;
- (d) maintenance to the landscaping;
- (e) snow removal;
- (f) cleaning of Premises;
- (g) cleaning of eaves troughs;
- (h) minor painting jobs;
- (i) caulking of seams;
- (j) regular inspection and minor repairs to building roofs;
- (k) minor plaster repairs or restoration; and
- (l) regular preventative maintenance of retaining walls, fences and other landscape elements.

(3) If the Lessee observes any apparent structural defect or material damage to the Premises by any cause, it shall immediately notify the Lessor. If any structural defect or damage becomes known to the Lessee or reasonably should have been observed by the Lessee and the Lessee fails to notify the Lessor, the Lessee shall be liable for any costs incurred by the Lessor in repairing the defect or damage which can be shown to be directly attributable to the actions of the Lessee and those for whom in law the Lessee is responsible (including failure to give the required notice) after such defect or damage became known to the Lessee or reasonably should have been observed by the Lessee.

(4) The Lessee shall be solely responsible for all costs of any upgrades and improvements under Section 4(2) of this Lease and shall obtain the prior written authorization from the Lessor prior to any such upgrades or improvements in accordance to Section 12(1) of this Lease.

- (5) (a) Should work be required on the Premises and the Lessor and the Lessee are unable to agree as to which party shall be responsible for the completion and cost of the work, then without in any way affecting the rights of the parties as herein provided, it is agreed that any dispute between the parties hereto in relation to this Lease may be referred to arbitration by any of the parties to this Lease.
- (b) The arbitration shall be heard by a single arbitrator as agreed to by both parties and be heard in Hamilton, Ontario.
- (c) In the event that the parties are unable to agree on an arbitrator, any party may make an application to the Superior Court of Justice (Ontario) pursuant to Section 8 of the Arbitrations Act, 1991, S.O. 1991, c. 17, as amended from time to time, for the selection of an arbitrator, and the provisions of the Arbitrations Act shall govern such selection.
- (d) No person shall be appointed to act as an arbitrator who is in any way interested financially or otherwise in this Lease or in the business or other affairs of any of the Lessor or the Lessee.
- (e) The arbitrator shall proceed to hear the submissions of the parties, and shall render his award within thirty (30) days of hearing the submissions.

- (f) The award of the arbitrator shall be final and binding upon the parties subject to the right of either party to bring an application to set aside the award.
- (g) Each party shall pay its cost of the arbitration, including all witness and counsel fees. The Lessor shall pay 50% of the arbitrator's fee and the Lessee shall pay the remaining 50% of the arbitrator's fee.
- (h) Except as provided herein, the provisions of the Arbitrations Act, 1991, S.O. 1991, c. 17, as amended from time to time, shall apply to the arbitration.

## **5. Approved Use and Purpose**

(1) The Lessee covenants and agrees that it shall use the Premises during the Term of the Lease for the purposes of an environmental and heritage educational facility to conduct education and outreach to the Hamilton community through school trips, individual citizen visits and seminars and offices for the Lessee and for no other purpose whatsoever. The Lessee shall not use the Premises nor allow or permit the Premises to be used for residential purposes. The Lessee will conduct its business in accordance with the rules and regulations established by the Lessor for the Premises, from time to time and as notified by the Lessor. The use of the Premises and any activities thereon shall be in compliance with all governmental, municipal, provincial and federal laws, by-laws, regulations, directives and controls, and all court orders, judgments and declarations of a court of competent jurisdiction. The Lessee shall not do anything or permit anything to be done on the Premises which may constitute a nuisance, cause damage or loss or endanger the Premises, adjoining properties or any person. The Lessee warrants that the use as stated above conforms to the existing zoning by-laws.

(2) The Lessee shall not cause, suffer or permit the Premises or any part thereof to be used at any time during the Term for any of the following sales, businesses or activities:

- (a) the sale of second-hand goods, surplus articles, insurance salvage stock, fire sale stock, any damaged or defective merchandise, liquidation stock, bankruptcy stock or other distress or "end-of-line" stock;
- (b) the sale of out-of-style, job lot, low quality or any inferior merchandise;
- (c) any auction;
- (d) a liquidation, bankruptcy, "going-out-of-business", "moving", "lease expiry" or any other similar sale;
- (e) any fire, "smoke damage", or other type of sale following or referring to any type of damage;
- (f) any other special sale other than occasional seasonal sales in the normal routine of Tenant's business with its regular customers;
- (g) an order office or mail order office;
- (h) the sale of merchandise through catalogue;
- (i) the operation of any vending machines or other coin operated machines, entertainment or games machines or any other mechanical or electrical serving or dispensing machines or devices whatsoever unless expressly permitted in writing by the Lessor, in its sole discretion;
- (j) any sale of tickets for theatre or other entertainment events or lottery tickets;
- (k) any deceptive, misleading or fraudulent advertising or selling procedures or practices or any unethical or dishonest procedures or practices;

- (l) any type of business or business practice which would, in the sole opinion of the Lessor, tend to lower the character or image of the building or any portion thereof;
- (m) any use which is not expressly permitted pursuant to Section 5(1);
- (n) any use which in any way contravenes any restrictive covenants in leases granted by the Lessor; the Lessee covenants and agrees that it will not carry on in the Premises any business which will in any way place the Lessor in breach of any such restrictive covenants and the Lessee will defend, indemnify and save the Lessor harmless from and against all actions, claims, demands and costs with respect thereto; this subsection (o) shall not be interpreted to prevent the Lessee from carrying on in the Premises any business to the extent expressly permitted pursuant to Section 5(1); or
- (p) any business or activity not in compliance with all statutes, laws, by-laws, regulations, ordinances, notices, rulings and orders of the federal, provincial or municipal government.

The inclusion of the foregoing provisions of this Section 5(2) shall not be deemed to be a representation or warranty of the Lessor that any of the foregoing activities will not be authorized by the Lessor to be conducted in any part of the building.

The Lessee shall forthwith, upon the request of the Lessor, discontinue any business, conduct or practice carried on or maintained in or from the Premises which, in the Lessor's sole opinion, may damage or reflect unfavourably upon the Lessor, the building, or any other tenants or occupants thereof.

If, in the opinion of the Lessor, the Lessee is in breach of any of the provisions of this Section 5(2), the Lessee shall immediately discontinue such use upon the Lessor's written request, failing which, the Lessor shall have the right to terminate this Lease forthwith or exercise any other remedies available to it under this Lease or at law, without further notice.

## **6. Parking**

The Lessor has allocated to the Lessee a dedicated parking area as shown in blue on Schedule "A" of this Lease. The Lessee shall plough the snow of the dedicated parking area and the routine maintenance of the parking area shall be the responsibility of the Lessee.

## **7. Entry by Lessor**

(1) This Lease is subject to the right of the Lessor, with reasonable Notice to the Lessee, to enter onto the Premises at any time to inspect the Premises. Without limiting the foregoing general right of the Lessor to inspect or any other right of the Lessor, the Lessor shall be permitted to enter the Premises from time to time for the purpose of making repairs, alterations or improvements to the Premises or to remove any article or remedy any condition which in the opinion of the Lessor would be likely to lead to cancellation of any policy of insurance on the Premises, the surrounding lands or any part thereof, and the Lessee shall not be entitled to any compensation whatsoever for any inconvenience, nuisance or discomfort occasioned thereby. Any such entry by the Lessor shall not be deemed to be a re-entry.

(2) Notwithstanding anything herein contained, the Lessor shall have unrestricted access to the Premises in an emergency situation. In the event that emergency work is necessitated as a result of the act, omission or neglect of the Lessee, such work may be undertaken immediately, without notice, by the Lessor and all reasonable costs, expenses and expenditures of the Lessor of such emergency work shall be borne by the Lessee and payable forthwith upon written demand by the Lessor, unless covered by the insurance policy of the Lessor or the Lessee, and the Lessor shall have no liability to, or obligation to compensate, the Lessee for any loss or damage whatsoever resulting from such action by the Lessor. Without limiting the generality of the foregoing, the Lessor, acting reasonably, may suspend for such period of time as it deems necessary in its sole discretion or terminate the lease hereunder in an emergency, or whenever in its sole opinion, acting reasonably, such suspension or termination may be necessary to ensure the safety of life, or of a structure, or of a neighbouring property, or whenever in its sole opinion the use of the Premises or any part or parts thereof are being carried out in an unsafe manner, and the Lessor shall not be responsible for any loss, expense, costs, charges, damages, indemnities and/or liability which

may be sustained, paid or incurred by the Lessee or any other person or persons, by reason of such suspension or termination by the Lessor.

**8. Warranties of Authority of Lessee**

The Lessee expressly acknowledges, agrees and warrants as follows:

- (a) The Lessee is not prohibited or restricted from entering into any of the obligations assumed, liabilities imposed, or restrictions accepted by the Lessee under this Lease by any agreement, constating documents, constitution, legislation, statute, act, regulation, order or otherwise.
- (b) To the best of the Lessee's information and belief and after making diligent inquiries, the Lessee is not aware of any material facts or circumstances having a bearing upon its ability to perform or comply with its obligations under this Lease.

**9. Good Repair, Safety and Environmental Measures - Responsibilities and Obligations of the Lessee**

Without limiting or restricting in any way any other responsibilities and obligations of the Lessee in this Lease, the Lessee shall, at its own cost:

- (a) ensure that all health and safety requirements are met;
- (b) ensure that the Premises and any buildings and/or structures thereon are secured and safeguarded at all times;
- (c) be responsible for the security of any specialty equipment;
- (d) not allow the preparation, service and/or sale of food in or at the Premises without the prior written consent of the Lessor and strict compliance with all applicable health and safety requirements, laws and regulations;
- (e) ensure, at its own cost and expense, that the Premises are maintained in a condition of good repair which includes the obligation to make Maintenance Expenditures as outlined in Section 4(2) of this Lease, and that the Premises will be maintained in a safe, clean and tidy condition, and free from hazards. The Lessor shall be responsible for the Capital Improvements of the Premises as outlined in Section 4(1) of this Lease;
- (f) at all times keep the Premises and any buildings, structures, erections or improvements thereon reasonably clean and free from debris, discarded or unnecessary materials, equipment or supplies, loose soil, empty containers and all other unsightly or potentially dangerous rubbish;
- (g) not do or permit any waste or damage, disfiguration or injury to the Premises or any of the equipment, chattels, fixtures, buildings, structures, erections or improvements of the Lessor thereof or permit any overloading of the floors thereof; not to place therein any safe, heavy business machine, or other heavy thing, without first obtaining the consent in writing of the Lessor;
- (h) ensure that all materials, equipment and supplies delivered to the Premises are neatly and safely stored or contained upon delivery and shall be so maintained until used up;
- (i) ensure that the Premises are kept clear of ice, snow, slippery surfaces or of any other unsafe condition, including but not limited to ensuring that the exterior parking areas, walkways and approaches to the Premises are cleared of snow and salted while the building is operated by the Lessee;
- (j) take reasonable and required measures, including those required by authorities having jurisdiction, to protect the public and those employed on the Premises from bodily harm and to protect adjacent public and private property and Lessor's property from damage;
- (k) not allow the introduction or use of beer or other alcoholic beverages or liquors upon the Premises without the written consent of the Lessor and on such conditions as the Lessor may impose including but not limited to strict compliance with the City of Hamilton *Municipal Alcohol Risk Management Policy*, the *Liquor Licence Act (Ontario)*, as amended, the *Alcohol and Gaming Regulation and Public Protection Act, 1996 (Ontario)* and the regulations thereunder;
- (l) not allow the introduction or use of illegal narcotics upon the Premises;
- (m) ensure that all tools, equipment, supplies and materials are stored properly and in a safe and secure manner;
- (n) not use or permit to be used any part of the Premises for any dangerous, noxious or offensive business and not cause or permit any nuisance in, at or on the Premises;

- (o) not use or produce on the Premises or allow to be brought on to the Premises any noxious, offensive, toxic or hazardous substance or any vehicles, equipment or parts which contain any such substances, or any substance which if it were to remain on or escape from the Premises would contaminate the Premises or any other property to which it came in contact. This provision shall not apply to prevent the Lessee from bringing vehicles and equipment, which contain gasoline and engine oil, upon the Premises provided that such vehicles are adequately protected against the escape of such substances;
- (p) endeavour to adequately protect and preserve all existing trees, shrubs and other landscaping items, if any, on the Premises;
- (q) not damage or remove any trees or shrubs on the road allowance or adjoining lands unless the Lessor shall otherwise direct;
- (r) make full restitution for harm and damage resulting from failure to take adequate protective measures, and shall make good any such damage from whatever cause;
- (s) ensure that any and all contractors performing or engaged to perform any capital work or repairs to the Premises are approved in writing by the Lessor in advance of commencing any such work or repairs and provide insurance naming the Lessor as an additional insured party, that the contractors are qualified to do the intended works or repairs, and that all safety precautions, permits, laws and regulations are fully complied with at all times;
- (t) not do anything or permit anything to be done on the Premises which may constitute a nuisance, cause damage or loss or endanger the Premises, adjoining properties or any person;
- (u) ensure a log book is kept on site and record any alterations to the electrical systems within the Premises, provided such alterations have first been approved by the Lessor in writing and are done by qualified individuals, all in accordance with this Lease.

#### **10. Observance of Laws, Statutes and Regulations**

(1) The Lessee shall comply at its own expense with, and conform to, all applicable statutes, laws, by-laws, regulations, ordinances, notices, rulings and orders of the federal, provincial or municipal government from time to time in effect during the Term of this Lease and any renewal or extension thereof. Without limiting the foregoing, the Lessee, at its own expense, shall obtain all necessary municipal, provincial, federal or other governmental approvals, permits and licences to conduct its business, operations and/or activities in or upon the Premises prior to entering the subject Premises.

(2) The Lessee shall further comply at its own expense with the rules and regulations established by the Lessor for the Premises from time to time, including without limitation those relating to permitted hours of use.

#### **11. Condition of Premises**

The Lessee accepts the Premises in their present condition and acknowledges and agrees that the Lessor has not given any representation, warranty or condition, express or implied, in fact or by law, as to the state, quality or condition in, on, or of the Premises, whether with respect to environmental matters or otherwise, or that the Premises are suitable for any particular use or purpose (including, but not limited to any use permitted by this Lease) or as to any other matter or thing, whether or not related to any of the foregoing. Furthermore, the Lessee assumes any and all risks relating to the physical condition of the Premises, including the surface and subsurface conditions thereof. Neither the Lessee nor any permitted occupant shall have any recourse to the Lessor as a result of the nature or condition of the Premises, whether or not the Lessor has or had actual or imputed knowledge of such nature and condition as at the commencement date of this Lease or at any other time during the Term or any renewal or extension thereof. The Lessee acknowledges and agrees that the Lessee shall be an occupier of the Premises pursuant to the *Occupier's Liability Act* (Ontario), as amended.

#### **12. Alterations and Additions**

(1) The Lessor and the Lessee acknowledge and agree that the Premises has been designated under Part IV of the Ontario Heritage Act, R.S.O. 1990, c. O18 and as such, heritage permits are required for any and all alterations and additions to the Premises. The Lessee agrees that it shall not make any alterations whatsoever to the Premises without the prior written approval of the Lessor. Without limiting the generality of the foregoing, the Lessee shall not paint, wallpaper, construct, renovate, install or erect any buildings, structures, fixtures, grounds, improvements or other facilities without first obtaining heritage permits and the written approval of the Lessor for



such works. The Lessee shall at its own cost and expense prepare the Premises appropriately for the approved use. The Lessee shall implement, at its sole cost and expense, all precautions, measures and safeguards as are necessary to protect the public from injury during any approved alterations of the Premises and to maintain the heritage designation of the Premises.

(2) All permitted installations, alterations, additions, partitions and fixtures (except Lessee's trade fixtures, attached as Schedule "C" of this Lease) in or upon the Premises are, immediately upon placement, the Lessor's property without any compensation therefor to the Lessee.

(3) No installations, alterations, additions, partitions or fixtures (including Lessee's trade fixtures) shall be removed from the Premises by the Lessee at any time either during or after the Term, without the Lessor's prior written approval.

(4) The Lessor is under no obligation to repair or maintain the Lessee's installations, alterations, additions, partitions and fixtures or anything in the nature of an occupant's improvement made or installed by the Lessee.

(5) The Lessor, acting reasonably, has the right at any time to require the Lessee to remove its installations, alterations, additions, partitions and fixtures or anything in the nature of an occupant's improvement made or installed by the Lessee, and the Lessee shall be required to make good all damage caused by the installation or removal.

(6) The Lessee shall not paint, display, inscribe, place or affix any sign, picture, advertisement, notice, lettering or direction on any part of the outside or interior of the Premises without the prior written consent of the Lessor, which consent may be unreasonably withheld. However, the Lessee shall have the right to erect signage at the entrance door to the Premises, the design of which shall be subject to the Lessor's prior approval.

(7) The Lessee covenants to pay all charges incurred by or on behalf of the Lessee for any services, work or materials which may be supplied, done or performed in respect of the Premises and the Lessee shall forthwith discharge any liens arising therefrom claimed or registered against or in respect of the Premises, the lands to which they form a part, or any part thereof.

(8) If the Lessee has complied with his obligations according to the provisions of this Lease, the Lessee may remove his trade fixtures at the end of the Term or other termination of this Lease and the Lessee covenants that he will make good and repair or replace as necessary any damage caused to the Premises by the removal of the Lessee's trade fixtures.

### **13. Notice of Accident, Injury or Harm**

The Lessee shall give immediate written notice with complete details thereof, to the Lessor of any accident, injury or harm to any person on or using the Premises or of any damage, loss or defect in or to any part of the Premises or any damage or loss of any property of any person using the Premises or any damage or loss of any property of the Lessor in the Premises, notwithstanding that the Lessor may not have any obligation with respect to same.

### **14. Insurance and Indemnification**

(1) For the purposes of this Section, "Lessor" means the City of Hamilton, as well as any and all of its elected officials, representatives, officers, employees, servants, consultants, agents and contractors (other than the Lessee) and "Lessee" means the Lessee as well as any officer, employee, servant, member, contractor, subcontractor, consultant, agent, permitted assign and invitee of the Lessee or of any person permitted or allowed by the Lessee to enter upon or use the Premises.

(2) The Lessee agrees to obtain and maintain in force throughout the duration of this Lease, including any permitted possession after the Term, at its sole cost and expense including the payment of all deductibles, the following policies of insurance for the specified limits, or such other policies of insurance or higher limits as the Lessor acting reasonably and prudently may from time to time require:

- (a) Commercial General Liability insurance covering against any and all claims for bodily injury, including death, personal injury, and property damage or loss, including acts or omissions of the

Lessee, its employees, contractors, sub-contractors, agents and invitees and in a form and with an insurance company acceptable to the Lessor. Such policies of insurance shall have a limit of coverage of not less than Two Million Dollars (\$2,000,000.00) per occurrence or such higher limits as the Lessor, acting reasonably and prudently, may from time to time require. Such policies of insurance shall include, but not be limited to the following: blanket contractual liability; land and premises liability; occupier's liability, completed operations liability; products liability; owners and contractors liability; non-owned automobile liability; cross-liability and severability of interest provisions;

- (b) "All Risks" insurance on property of every description and kind owned by the Lessee, or for which the Lessee is legally liable, or which is installed by or on behalf of the Lessee within the Premises including, without limitation, equipment, trade fixtures and improvements, in an amount not less than the full replacement cost thereof from time to time;
- (c) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario including third party liability insurance and at least One Million Dollars (\$1,000,000.00) inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the Lessee;
- (d) Broad Form Comprehensive Boiler and Machinery insurance on a blanket repair and replacement basis, with limits of accident in an amount not less than the full replacement costs of the property, with respect to all boilers and machinery owned or operated by the Lessee or by others (other than the Lessor) on behalf of the Lessee in the Premises or relating to or serving the Premises; and
- (e) such other forms of insurance as may be reasonably and prudently required by the Lessor from time to time.

(3) All such insurance policies and certificates shall name as an additional insured the Lessor and anyone else with an interest in the Premises from time to time designated in writing by the Lessor. Such policies shall also require at least thirty (30) days' written prior notice of any change to or amendment, cancellation, expiration or termination of the coverage under such policies to be given to the Lessor herein and be in a form satisfactory to the Lessor. All insurers shall be licensed to do business in Ontario, and such insurers and the insurance coverages shall be acceptable to the Lessor acting reasonably and prudently. The Lessee shall deliver to the Lessor certificates of insurance originally signed by authorized insurance representatives, or, if required by the Lessor, certified copies of such policies prior to the execution of this Lease and for all renewals/extensions thereafter during the Term of this Lease no later than sixty (60) days prior to their renewal date and at any other time upon request by the Lessor. In the event that the Lessee fails to do so, then this Lease may be immediately terminated at the Lessor's option without further notice. All insurance coverages to be provided by the Lessee herein shall be primary and not call into contribution any other insurance coverages available to the Lessor and such coverage shall preclude subrogation claims against the Lessor and any other person insured under the policy. Insurance requirements and coverage herein shall not limit, reduce, or waive any of the Lessee's obligations to indemnify the Lessor pursuant to this Lease herein or the liabilities assumed by the Lessee under this Lease. The Lessee shall not do or omit to do anything that may breach, limit, restrict, or prejudice the terms or conditions of the insurance coverages referred to herein.

(4) The Lessee shall defend and indemnify the Lessor and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses (including, without limitation, solicitor fees) in connection with loss of life, personal injury and/or damage to or loss of property: (a) arising out of any occurrence in or about the Premises; (b) occasioned or caused wholly or in part by any act or omission of the Lessee or anyone for whom it is responsible at law; or (c) arising from any breach by the Lessee of any provisions of this Lease. The foregoing indemnity shall survive the termination of this Lease notwithstanding any provision of this Lease to the contrary.

(5) The Lessee shall use the Premises at its sole risk, and the Lessor shall not be liable for any loss, injury or damage caused to persons using the Premises or to any property, except to the extent that same is attributable or caused by the negligence of the Lessor, its officers, officials, employees and agents, or any of them, the responsibility for insuring against any such loss, injury or damage being that of the Lessee who hereby waives, on behalf of itself and its insurers, any rights of subrogation against the Lessor. In addition and without limitation, the Lessee agrees that the

Lessor, except to the extent that same is attributable or caused by the negligence of the City, its officers, officials, employees and agents, or any of them, shall not be liable for and hereby releases the Lessor from:

- (a) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Premises or from the water, steam or drainage pipes or plumbing works of the Premises or from any other place or quarter;
- (b) any and all claims, actions, causes of action, damages, demands for damages and other liabilities for or related to:
  - (i) any bodily injury, personal injury, illness or discomfort to or death of the Lessee or any of its employees, contractors, invitees, customers, others for whom it is in law responsible or any other, in or about the Premises; and
  - (ii) any loss or damage to all property in or about the Premises owned by the Lessee or others;
- (c) any indirect or consequential damages including, but not limited to, loss of profit.

**15. Breach/Failure to Perform**

- (1) Any of the following occurrences or acts shall constitute an event of default by the Lessee:
  - (a) the Lessee fails to make any payment of any sums herein required to be paid and fails to pay the same, with interest, within fifteen (15) days of written notice to the Lessee of such failure;
  - (b) the Lessee fails to perform any covenant, condition or obligation required to be performed or observed under this Lease, and
    - (i) the Lessor has given notice specifying the nature of the default and the steps required to correct it; and
    - (ii) the Lessee has failed to correct the default as required by the notice;
  - (c) the Lessee (i) becomes bankrupt; (ii) has its property seized or attached in satisfaction of a judgment; (iii) has a receiver appointed; (iv) commits any act or neglects to do anything with the result that a construction lien or other encumbrance is registered against the Premises, the lands to which they form a part, or any part thereof; (v) without the Lessor's written consent, makes or enters into an agreement for a sale of its assets to which the *Bulk Sales Act* applies; (vi) takes action with a view to winding up, dissolution or liquidation of the Lessee;
  - (d) any insurance policy is canceled or not renewed by reason of the use or occupation of the Premises or by reason of non-payment of premiums; and
  - (e) the Premises (i) become vacant or abandoned for a period of fourteen (14) consecutive days; (ii) are not open for business on more than thirty (30) business days in any twelve (12) month period or any twelve (12) consecutive business days; or (iii) are used by any other person or persons for any purpose other than as provided for in this Lease without the Lessor's written consent.
- (2) When a default on the part of the Lessee has occurred:
  - (a) all amounts payable in respect of the Rent, together with all other amounts owing by the Lessee to the Lessor, including those payments not yet due if any, shall immediately become due and payable; and
  - (b) the Lessor shall have the right to terminate this Lease, or in lieu of termination, the Lessor shall have the right to re-enter the Premises and to retake possession of the Premises and deal with them as it may choose.
- (3) If, because an event of default has occurred, the Lessor exercises its right to terminate this Lease and re-enter the Premises prior to the end of the Term, the Lessee shall nevertheless be liable for payment of Rent and all other

amounts payable by the Lessee in accordance with the provisions of this Lease until the Lessor has re-let the Premises or otherwise dealt with the Premises in such manner that the cessation of payments by the Lessee will not result in loss to the Lessor:

- (a) and the Lessee agrees to be liable to the Lessor, until the end of the Term of this Lease for payment of any difference between the amount of Rent hereby agreed to be paid for the Term hereby granted and the Rent any new lessee pays to the Lessor.

(4) The Lessee covenants that notwithstanding any present or future Act of the Legislature of the Province of Ontario, the personal property of the Lessee during the Term of this Lease shall not be exempt from levy by distress for Rent in arrears:

- (a) and the Lessee acknowledges that it is upon the express understanding that there should be no such exemption that this Lease is entered into, and by executing this Lease:
  - (i) the Lessee waives the benefit of any such legislative provisions which might otherwise be available to the Lessee in the absence of this agreement; and
  - (ii) the Lessee agrees that the Lessor may plead this covenant as an estoppel against the Lessee if an action is brought to test the Lessor's right to levy distress against the Lessee's property.

(5) When a default has occurred and the Lessor chooses not to terminate this Lease, the Lessor shall have the right, but not the obligation, to take any and all necessary steps to rectify any or all acts of default of the Lessee and to charge the costs of such rectification (including, without limitation, solicitor fees) to the Lessee and to recover the costs from the Lessee, which amount shall be immediately due and payable.

(6) No acceptance of the Rent subsequent to any breach or default, other than non-payment of Rent to the extent that same has been received, shall be taken to operate as a waiver or condoning of any term, condition or covenant of this Lease nor in any way to defeat or affect the rights of the Lessor hereunder. The Lessor's rights under this Lease shall not in any manner be prejudiced even if the Lessor has overlooked or condoned any non-compliance, breach or default with the terms, covenants and conditions of this Lease by the Lessee nor shall the Lessor's rights in any way be limited or restricted by any other right or privilege that the Lessor may have under this Lease or provided by law. Upon default by the Lessee under any term, covenant or condition of this Lease, and at any time after the default, the Lessor shall have all rights and remedies provided by law and by this Lease. No delay or omission by the Lessor in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy. Furthermore, the Lessor may remedy any default by the Lessee in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Lessee. The failure of the Lessor to insist upon strict performance of any of the covenants, terms or conditions of this Lease, in any one or more instances, shall not be construed as a waiver of its right to insist on compliance with same or any other covenant, term or condition at any time. All rights and remedies of the Lessor granted or recognized in this Lease or by law are cumulative and may be exercised at any time from time to time independently or in combination. No covenant, term or condition of this Lease shall be deemed to have been waived by the Lessor unless the waiver is in writing and signed by the Lessor.

## **16. Removal of Lessee's Property**

Upon the expiration of the Term or earlier termination of this Lease, the Lessee shall immediately cease activities and operations at the Premises and make whatever arrangements are necessary to leave the Premises in a clean, tidy and safe condition free from any hazards. In addition, the Lessee shall remove, upon request by the Lessor and at the Lessee's own expense, all equipment, chattels, the Lessee's trade fixtures (attached as Schedule "C" of this Lease), buildings, structures, erections or improvements placed or made by the Lessee on the Premises or supplies and materials deposited on the Premises by the Lessee, and shall restore the Premises to the satisfaction of the Lessor, and upon failure to do so within ten (10) days of expiration or earlier termination as aforesaid, the Lessor may remove all or any of the said equipment, chattels, fixtures, buildings, structures, erections or improvements of the Lessee or supplies and materials so deposited by it and restore the Premises to their former condition and shall be entitled to recover all costs and expenses arising from and related to same from the Lessee and in no event shall the Lessor be required to pay compensation to the Lessee in respect of any such equipment, chattels, fixtures, buildings,

structures, erections or improvements or supplies or materials or return same to the Lessee. Notwithstanding anything contained herein to the contrary, the Lessee shall not be entitled to remove any equipment, chattels, furnishings, fixtures, buildings, structures, erections or improvements or supplies or materials donated or supplied to the Premises by the Lessor.

**16A. Lessor's Right to Early Termination**

Notwithstanding any other provision of this Lease, the Lessor shall have the right to terminate this Lease at any time upon at least one (1) year written notice to the Lessee and without any compensation to the Lessee whatsoever.

**17. Termination Upon Notice and at End of Term**

(1) If the Lessor desires at any time to remodel or demolish the Premises or any part thereof, to an extent that renders continued possession by the Lessee impracticable, the Lessee shall, upon receiving one hundred and eighty (180) clear days' written notice from the Lessor:

- (a) surrender this Lease, including any unexpired remainder of the Term; and
- (b) vacate the Premises and give the Lessor possession.

(2) If the Premises are subject to an Agreement of Purchase and Sale or if the Premises are expropriated or condemned by any competent authority:

- (a) the Lessor shall have the right to terminate this Lease by giving 180 clear days' notice in writing to the Lessee.

(3) If the Lessee remains in possession of the Premises with the consent of the Lessor after the expiration of the Term hereby granted or earlier termination of the Lease and without the execution and delivery of a new agreement, there will be no tacit renewal or extension of this Lease or renewal or extension of the Term, nor shall a lease from year to year be created but, notwithstanding any statutory provisions to the contrary, the Lessee shall be deemed a monthly Lessee at a rent payable monthly in advance in the same amount as the Rent payable in or for the last month of the Term and otherwise upon and subject to the same terms and conditions herein contained, excepting provisions for renewal or extension.

**18. Assignment**

(1) The Lessee shall not assign this Lease or sublet or share possession of the whole or any part of the Premises unless he first obtains the consent of the Lessor in writing, which consent may be unreasonably withheld, and the Lessee hereby waives his right to benefit of any present or future Act of the Legislature of the Province of Ontario which would allow the Lessee to assign this Lease or sublet the Premises without the Lessor's consent.

(2) The consent of the Lessor to any assignment or subletting shall not operate as a waiver of the necessity for consent to any subsequent assignment or subletting.

(3) Any consent granted by the Lessor shall be conditional upon the assignee, sublessee or occupant executing a written agreement directly with the Lessor agreeing to be bound by all the terms of this Lease as if the assignee, sublessee or occupant had originally executed this Lease as Lessee.

(4) Any consent given by the Lessor to any assignment or other disposition of the Lessee's interest in the Lease or in the Premises shall not relieve the Lessee from his obligations under this Lease, including the obligation to pay Rent and Additional Rent as provided for herein.

(5) If the party originally entering into this Lease as Lessee, or any party who subsequently becomes the Lessee by way of assignment or sublease or otherwise as provided for in this Lease, is a corporation then:

- (a) the Lessee shall not be entitled to deal with its authorized or issued capital or that of an affiliated company in any way that results in a change in the effective voting control of the Lessee unless the Lessor first consents in writing to the proposed change;
- (b) if any change is made in the control of the Lessee corporation without the written consent of the Lessor then the Lessor shall be entitled to treat the Lessee as being in default and to exercise the remedies stipulated in Article 15 of this Lease and any other remedies available in law;
- (c) the Lessee agrees to make available to the Lessor or its authorized representatives the corporate books and records of the Lessee for inspection at reasonable times.

**19. Damage to the Premises**

(1) If the Premises or the building in which the Premises are located, are damaged or destroyed, in whole or in part, by fire or other peril, then the following provisions shall apply:

- (a) if the damage or destruction renders the Premises unfit for occupancy and impossible to repair or rebuild using reasonable diligence within 180 clear days from the happening of such damage or destruction, then the Term hereby granted shall cease from the date the damage or destruction occurred, and the Lessee shall immediately surrender the remainder of the Term and give possession of the Premises to the Lessor, and the Rent from the time of the surrender shall abate;
- (b) if the Premises can with reasonable diligence be repaired and rendered fit for occupancy within 180 days from the happening of the damage or destruction, but the damage renders the Premises wholly unfit for occupancy, then the Rent hereby reserved shall not accrue after the day that such damage occurred, or while the process of structural repair is going on, and the Lessor shall repair the structural components of the Premises with all reasonable speed, and the Lessee's obligation to pay Rent shall resume immediately after the Lessor's repairs have been completed;
- (c) if the Premises can be repaired within 180 days as aforesaid, but the damage is such that the Premises are capable of being partially used, then until the structural damage has been repaired, the Lessee shall continue in possession and the Rent shall abate proportionately.

(2) Any question as to the degree of damage or destruction or the period of time required to repair or rebuild shall be determined by an architect retained by the Lessor.

(3) Apart from the provisions of Section 19(1), there shall be no abatement from or reduction of the Rent payable by the Lessee, nor shall the Lessee be entitled to claim against the Lessor for any damages, general or special, caused by fire, water, sprinkler system, partial or temporary failure or stoppage of services or utilities which the Lessor is obliged to provide according to this Lease, from any cause whatsoever.

**20. Acknowledgement by Lessee**

The Lessee agrees that he will at any time or times during the Term, upon being given at least forty-eight (48) hours prior written notice, execute and deliver to the Lessor a statement in writing certifying:

- (a) that this Lease is unmodified and is in full force and effect (or if modified stating the modifications and confirming that the Lease is in full force and effect as modified);
- (b) the amount of Rent being paid;
- (c) the dates to which Rent has been paid;
- (d) other charges payable under this Lease which have been paid;
- (e) particulars of any prepayment of Rent or security deposits; and

(f) particulars of any subtenancies.

**21. Subordination and Postponement**

(1) This Lease and all the rights of the Lessee under this Lease are subject and subordinate to any and all charges against the land, buildings or improvements of which the Premises form part, whether the charge is in the nature of a mortgage, trust deed, lien or any other form of charge arising from the financing or re-financing, including extensions or renewals, of the Lessor's interest in the property.

(2) Upon the request of the Lessor, the Lessee will execute any form required to subordinate this Lease and the Lessee's right to any such charge, and will, if required, attorn to the holder of the charge.

**22. No Registration**

The Lessee will not register this Lease or notice thereof against title to the Premises, the lands to which they form a part, or any part thereof.

**23. Miscellaneous**

(1) All notices, or any other thing to be given or delivered pursuant to this Lease, unless otherwise specified, shall be given in writing and delivered personally, transmitted by facsimile or by prepaid registered mail, and addressed

to the Lessor at:           City of Hamilton  
                                  City Hall, 71 Main Street West  
                                  Hamilton, Ontario  
                                  L8P 4Y5  
                                  Attention: City Clerk

With a copy to:           The Lister Block  
                                  28 James Street North  
                                  Hamilton, Ontario  
                                  L8R 2K1  
                                  Attention: Director, Tourism and Culture Division

and to the Lessee at:    The Leased Premises  
                                  Attention: Executive Director

or such other address as the Lessor or Lessee may, from time to time, advise each other by notice in writing. All notices delivered personally shall be deemed received upon delivery. All notices delivered by facsimile shall be deemed received upon mechanical confirmation of transmittal. All notices mailed hereunder shall be deemed to have been given and received by the addressee seventy-two (72) hours following mailing. In the event of actual or threatened postal interruption, all notices shall be delivered personally or by facsimile.

(2) Nothing herein contained derogates or limits the authority of the Lessor in its capacity as a municipality, from exercising its rights under municipal by-laws, the *Municipal Act, 2001* (Ontario), the *Planning Act* (Ontario), the *Building Code* (Ontario), or any other legislation.

(3) This Lease and all terms, covenants, conditions, provisions and licence fees herein reserved shall be binding upon and shall enure to the benefit of the Lessor and Lessee and their respective heirs, executors, administrators, successors and permitted assigns.

(4) The Lessor shall have the right to satisfy any amount from time to time owing by it to the Lessee by way of a set-off against any amount from time to time owing by the Lessee to the Lessor, including but not limited to any amount owing to the Lessor pursuant to the Lessee's indemnification of the Lessor in this Lease.

- (5) To the extent that the Lessor is unable to fulfil, is delayed or is restricted in fulfilling any of its obligations contained in this Lease by reason of any act of God, act of terror, any labour strike or disruption, or by reason of any statute, law or order-in-council, or any regulation, by-law or order passed thereunder or made pursuant thereto, including a by-law of the municipal Council of the City, or the order or direction of any government department, official or other authority, including the Lessor acting in its capacity as a municipal authority, or of any administrator, controller or board; not being able to obtain any permission or authority required by or under any statute, law or order-in-council, or any regulation, by-law or order; or any other cause beyond its control, whether of the foregoing character or not, the Lessor shall, in its sole discretion, be entitled to terminate this Lease, extend the time to fulfil its obligation or amend the obligation thereby restricted to conform with such restriction and the Lessee or any other person affected is not entitled to any compensation whatsoever whether for any inconvenience, nuisance, discomfort, damages, loss or otherwise thereby occasioned.
- (6) This Lease contains the entire agreement between the parties hereto with respect to the subject matters hereof. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Lease except as expressed in it. No amendment, modification or supplement to this Lease shall be valid or binding unless set out in writing and executed by the parties hereto.
- (7) A reference to any act, by-law, rule or regulation or to a provision thereof shall be deemed to include a reference to any act, by-law, rule or regulation or provision enacted in substitution therefor or amendment thereof.
- (8) The headings to each section are inserted for convenience of reference only and do not form part of the Lease.
- (9) This Lease shall be governed by, and construed under, the laws of the Province of Ontario.
- (10) Except as may be otherwise expressly provided herein, all fees, amounts or monies payable under this Lease are expressed in Canadian dollars and are exclusive of goods and services tax. All fees, amounts or monies owing hereunder by the Lessee shall be payable without deduction, abatement or set-off and shall be paid by certified cheque to the "City of Hamilton". Any overdue amounts payable by the Lessee shall bear interest at the rate of twelve percent (12%) per annum, calculated monthly, from the date upon which the payment was due.
- (11) Time is of the essence for this Lease and for every part hereof.
- (12) This Lease shall not be construed to constitute an agency, partnership or joint venture between the parties hereto.
- (13) Any schedules attached to or referred to in this Lease shall form an integral part of this Lease.
- (14) Without restricting or limiting the rights and privileges of the Lessor to any broader interpretation, any "breach" or "default" of or in respect of a term, covenant, warranty, condition or provision of this Lease caused by an officer, employee, servant, member, contractor, subcontractor, consultant, agent, permitted assign, invitee, licensee of the Lessee or of any person permitted or allowed by the Lessee to enter upon or use the Premises shall constitute a breach or default by the Lessee.
- (15) If any provision or provisions of this Lease or parts thereof or the application thereof to any person or circumstances shall be found by any court to any extent to be invalid or unenforceable or to be void or illegal, such provision or provisions or parts thereof shall be deemed severable and all other provision or provisions or parts of this Lease shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found void and/or illegal. The remainder of this Lease and its application to any person or circumstances shall not be affected thereby; and the parties hereto will negotiate in good faith to amend this Lease to implement the intentions set forth herein. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- (16) If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) sign this Lease as the Lessee, the liability of each such individual, corporation, partnership or other business association to pay the Rent and to make and perform all other payments and obligations hereunder shall be deemed to be joint and several. In like manner, if the Lessee is a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member



shall be joint and several. The Lessee warrants and represents that it is duly formed and in good standing, and has full corporate or partnership authority, as the case may be, to enter into this Lease, and has taken all corporate or partnership action, as the case may be, necessary to make this Lease a valid and binding obligation, enforceable in accordance with its terms.

(17) Whenever a word importing the singular or plural is used in this agreement such word shall include the plural and singular respectively. Words importing either gender or firms or corporations shall include persons of the other gender and firms or corporations as applicable.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Lease by its officers duly authorized in that behalf and caused to be affixed its corporate seal.

**CITY OF HAMILTON**

\_\_\_\_\_  
**R. Bratina, Mayor**

\_\_\_\_\_  
**R. Caterini, City Clerk**

\_\_\_\_\_  
**Date**

**HAMILTON-WENTWORTH GREEN VENTURE**

\_\_\_\_\_  
**Name:**  
**Title:**

\_\_\_\_\_  
**Name:**  
**Title:**

I/We have authority to bind the Lessee.

\_\_\_\_\_  
**Date**

## Schedule "A" – Survey of the Premises



## Schedule "B" – Copy of 2002 Licence Agreement

### LICENCE AGREEMENT

BETWEEN: CITY OF HAMILTON  
(hereinafter referred to as the "City")

and

HAMILTON-WENTWORTH GREEN VENTURE, a non profit corporation  
(hereinafter referred to as "Green Venture")

WHEREAS the City has agreed to grant Green Venture a Licence over the land and improvements owned by the City known municipally as 22 Veevers Drive, and being described as Lot 72, Veevers Estates No. 1 Survey, filed as Plan M-3 in the Land Titles Office at Hamilton, which land and improvements, are hereinafter referred to as the "subject lands";

AND WHEREAS the City holds the subject lands pursuant to Articles of Agreement dated the 13<sup>th</sup> day of August, 1985 between the City and Ronald H. Veevers and Bertram M. Veevers (the "Veevers' Agreement") which provided, amongst other things that the subject lands shall be used in perpetuity and for all time as a horticultural/historical resource;

AND WHEREAS the City is and will be in receipt of the income from the residues of the estates of the late Ronald H. Veevers and Bertram M. Veevers (the "Veevers' estates") until August 3, 2013 which income is to be used for the maintenance and refurbishing of the subject lands in accordance with the said Articles of Agreement dated the 13<sup>th</sup> day of August, 1985;

AND WHEREAS the City and the Green Venture will enter into and register on title a Licence Agreement;

NOW THIS AGREEMENT WITNESSES that for One Dollar (\$1.00) and other good and valuable consideration paid by Green Venture to the City, the receipt whereof is hereby acknowledged, the parties agree as follows:

1. The City grants to Green Venture a licence to occupy and use the subject lands for the purposes described herein.
2. This Licence Agreement shall be for a term of ten (10) years, running consecutively, commencing the 15<sup>th</sup> day of January, 2002, and concluding the 14<sup>th</sup> day of January, 2012.
3. Green Venture will at all times during the currency of this licence occupy and use the subject lands in a manner that is consistent with the obligation to use the same as a horticultural/historical resource centre.
4. Green Venture will not enter upon the subject lands except for the purpose of demonstrating new or improved technologies as described in Schedule "A" of the Eco-house proposal dated November 7, 2000, with school trips, individual citizen visits and seminars hosted by Green Venture or one of the EcoHouses partners. It is agreed that 45.56 square metre (500 sq. ft.) of the house will be used as office space to be maintained within the Eco-House Museum as approved by the Committee of Adjustment on July 25, 2001 as Application No. A-01:112 (hereinafter referred to as the "works"). All renovations and upgrades will be consistent with the heritage designation on the facade of the building and will not significantly alter the structure or appearance of the buildings and are to be approved by the Director of the Corporate Buildings and Real Estate Division of the City prior to the commencement of any work. That the Director of Corporate Buildings and Real Estate Division of the City shall approve in advance all renovations and alterations to the property with a cost in excess of \$1,000.00. In the event that Green Venture wishes to erect buildings or structures on the property it is understood that they can only be constructed in order to carry out the City's obligations under the Veevers' Agreement and such construction may only be done with the written approval of the executors of the Veevers' estates. Green Venture shall apply to the City for permission and the City shall in turn apply to the Veevers' executors and no such construction shall be commenced without the written approval of the Veevers' executors.
5. Green Venture shall maintain the subject lands and any of Green Venture's installations thereon in a neat and tidy condition satisfactory to the City. The City acknowledges that Green Venture will employ practices such as naturalization, pesticide free gardening and landscaping, the introduction of long grasses and native species plantings all of which are used to reduce the impact on the environment, minimize the use of fossil fuel burning and to reduce the consumption of water.
6. The subject lands shall be named "Glen Manor, The Veevers Home" and Green Venture will acknowledge the history of the Veevers' Estates, and Glen Manor and will display historic artifacts now

In the possession of the City throughout the EcoHouse. The history of the Veevers family, the Glendale dairy, and Greenhill/Cougle Road area will be highlighted and displayed in co-operation with the City and the Veevers Estates.



7. Green Venture will assume all costs and expenses resulting from the use of the subject lands for the purposes described herein, including all operating, maintenance and utility costs related to the subject lands plus the payment of property taxes, with the exception that the City shall bear the metered water costs utilized for lawn and garden purposes. Said maintenance to include, but may not be limited to, grass cutting tree trimming and snow and ice removal from all sidewalks and driveways.
  8. Green Venture will at all times indemnify and save harmless the City from and against all actions, causes of action, interests, claims, demands, costs, damages, expenses or loss which the City may bear, suffer or be put to as a result of the privilege herein allowed (including, without limiting the generality of the foregoing, construction lien claims of claims arising by reason of any damage to property or injury or death of persons).
  9. Green Venture shall not assign its agreement of Licence with the City.
  10. Green Venture shall, at its own expense, obtain and maintain during the term of this agreement, Commercial General Liability Insurance, insuring against claims arising out of this agreement, providing coverage in an amount of not less than Two Million (\$2,000,000.00) Dollars per occurrence, including, but not limited to, broad form contractual liability, non-owned automobile liability, cross liability and severability of interest provisions, and naming the City of Hamilton as additional insured. The applicant also agrees to provide any other forms of insurance (or such greater amounts with respect to the insurance of the type set out above), as the City may reasonably require from time to time, in form and amounts and for insurance risks against which a prudent party would insure. Proof of coverage, in the form of an original certificate of insurance, shall be provided to the City prior to commencement of this agreement, and for any necessary renewals or extensions thereafter. Coverage shall contain a provision that the insurer shall provide the City with at least thirty (30) days prior written notice in the event of material change, termination, or cancellation of coverage.
  11. This Licence and the permission granted hereby may be revised and cancelled in whole or in part by the City if the subject lands are required by the City for its purpose upon giving to Green Venture one year's notice in writing and in such event the City shall pay to Green Venture as full compensation an amount equal to the capital cost of any improvements to the subject lands made by Green Venture depreciated by the straight line method from the date of installation of each improvement to the end of the term herein set out. Green Venture shall not be compensated for any improvements paid for by monies forwarded from the City. Any and all improvements to the subject lands will remain the property of the City at the expiration of the licence period unless the parties agree in writing otherwise. Green Venture may cancel this Licence upon giving the City one year's notice in writing and in doing so shall not be compensated for any improvements to the subject lands.
  12. Green Venture may permit members of the Public to use the subject lands for the purposes set out in accordance with the terms hereof, but this Licence and all rights granted hereby shall not be assigned by Green Venture and it shall be and remain the responsibility and obligation of Green Venture to enforce adherence to the terms and conditions herein contained by any such person.
  13. The subject lands will be maintained as a horticultural demonstration project and will be accessible to area residents to visit and enjoy. A community garden, in a location to be approved by the Director of Corporate Buildings and Real Estate Division of the City, will be identified and made available to local residents to use as garden plots. Local residents will be encouraged by Green Venture to become part of a volunteer base to assist Green Venture with ground maintenance and development.
  14. The Royal Botanical Gardens will be approached by Green Venture for their expertise on appropriate plantings to promote onsite water management and rainwater absorption.
  15. If in the opinion of the City Green Venture does anything or permits anything to be done on the subject lands which may be a nuisance or cause damage, the City shall notify Green Venture of such activity and Green Venture shall have thirty days in which to remedy such nuisance. In the event that Green Venture fails to remedy such nuisance or repair such damage within thirty days of written notification of same then the City may perform the work, remedy the nuisance, or repair the damage and charge it to Green Venture. The City may recover the funds from Green Venture by offsetting it against any other amounts owed to Green Venture by the City under this agreement.
  16. Upon termination of the Licence the City may require Green Venture at its own expense to remove any of its installations and facilities from the subject lands and restore the subject lands to a condition satisfactory to the City.
  17. Green Venture acknowledges that it is the responsibility of Green Venture to obtain all necessary approvals prior to entering the subject lands, including municipal, provincial, federal or other governmental approvals and including, without limiting the generality of the foregoing, contacting BU DIG, telephone 1-800-400-2255.
  18. Green Venture shall have access to utilize 70% of the funds received from the income from the Veevers Estates for the sole purpose of maintaining and refurbishing the grounds and buildings of the subject
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lands in accordance with the Veevers' Agreement and in a form satisfactory to the Director of Corporate Buildings and Real Estate of the City. The amount of income from the Trust is to be provided by the Finance and Corporate Services Department of the City. Funds of the Veevers Estates shall not be used for the development of any demonstration project nor for building renovations and retrofits that form part of the EcoHouse proposal. These funds will be provided to Green Venture in a lump sum on or before January 31<sup>st</sup> of each year of this agreement. Green Venture is to provide to the City of Hamilton, Finance and Corporate Services Department, a record of expenditures annually, by January 1<sup>st</sup> of the following year. The record of expenditures must be supported by copies of all invoices and receipts. Any amount paid to Green Venture in any year by the City which is not supported by evidence satisfactory to the City shall be forthwith returned to the City upon written demand by the City to Green Venture.

19. The provisions of this loan shall be considered severable, and in the event that any provision is determined by a court to be void or unenforceable the remaining provisions shall continue in force.

DATED at Hamilton this 16<sup>th</sup> day of January, 2002

SIGNED, SEALED AND DELIVERED )  
In the presence of )

 (Seal)  
Signature of Green Venture  
I have the authority to bind the Corporation  
Vice Chairman (Seal)  
Title or Position of Officer  
of Green Venture  
 (Seal)  
Signature of Green Venture  
I have the authority to bind the Corporation  
Executive Director (Seal)  
Title or Position of Officer  
of Green Venture

## Schedule "C" – Lessee's Trade Fixtures

### Trade Fixtures list

For: 22 Veevers Drive, Hamilton  
(also known as "Glen Manor", "Veevers Estate", or "EcoHouse")

**Last update: Sept 11, 2014**  
**By: Michael Gemmell**

Working definition: *Trade fixture n. a piece of equipment on or attached to the real estate which is used in a trade or business. Trade fixtures differ from other fixtures in that they may be removed from the real estate (even if attached) at the end of the tenancy of the business, while ordinary fixtures attached to the real estate become part of the real estate. The business tenant must compensate the owner for any damages due to removal of trade fixtures or repair such damage.*

<b>Item and/or description</b>	<b>Location</b>
8 x 208 w Sharp solar panels	Front lawn, on ground mount wooden frame
Battery bank and inverter for above	Old Basement (west room)
450 w Sprite wind turbine and 12m high tower – currently feeds into battery bank (above)	Front lawn
Storm water management water table	New Basement (main room)
Green roof demonstration modules	Main deck, atop pergola
Green roof gazebo	Rear lawn
Insulation display and cutaway	Board room
Solar panel information display	Basement (main room)
Sustainable transportation display	Basement (main room)
Light bulb efficiency display	Veevers room
Ozone laundry system	Solarium
Vermicomposting and Gardening counters	Solarium
Green Venture information signage	Throughout building and exterior property
Rain barrels- various	Attached to exterior perimeter of house
Proficiency low flow toilet	Large bathroom (main floor)
Pressure-assist low flow toilet	Small bathroom (main floor)
Microfit solar panel installation : 18 x 230w panels and revenue-generating 2011-2031 Ontario Power Authority MicroFIT contract (site specific- cannot be removed without abrogating the contract)	Rear roof
Composters- various	On the grounds
Grey Water system- BRAC tank and cut-away toilet	Basement, main room and bathroom 1
Composting toilet	Basement bathroom 2
EATON electric vehicle charging station	Beside Veevers Drive gate
Computer server and switches	Old Basement (east room)

Some negotiation are recommended regarding many of these items (e.g. MicroFIT solar system), as they were installed as part of Green Venture's operations (or trade) and are removable, but could remain as part of the real estate upon Green Venture's exit.