



City of PARKSVILLE

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COUNCIL MEETING AGENDA

WEDNESDAY, MAY 20, 2009 - 6:00 P.M.

1. ADOPTION OF MINUTES

- a) of the regular meeting of Council held May 4, 2009 - Pages 1 to 5

Recommendation: THAT the minutes of the regular meeting of Council held May 4, 2009 be adopted.

- b) of the special meeting of Council held May 11, 2009 - Pages 6 to 7

Recommendation: THAT the minutes of the special meeting of Council held May 11, 2009 be adopted.

2. APPROVAL OF AGENDA

3. PRESENTATIONS

4. DELEGATIONS

5. UNFINISHED BUSINESS

6. CORRESPONDENCE

7. DISCUSSION RELATED TO DELEGATIONS OR CORRESPONDENCE

8. REPORTS

- a) Committee of the Whole - May 11, 2009 - Pages 8 to 9

- (1) Robert Laframboise - Establishing a Food Trailer in the Industrial Park
Delegation presentation at the May 11, 2009 Committee of the Whole requesting permission to set up a food trailer in the industrial park.

Recommendation: THAT Council refer the request of establishing a food trailer in the Industrial Park to staff for review and recommendation.

- (2) Director of Finance - Quarterly Budget Report
The first quarter budget variance report (Appendix 1) focuses primarily on expenditures because the bulk of our revenues come in later in the year. A review of the revenues and expenditures compared to budget for the first quarter of 2009 has not revealed any significant budget overages.
- Recommendation: THAT the "Quarterly Budget Report" for the period January to March 2009 as submitted by the Director of Finance, be received for information.**
- (3) Director of Community Planning - Consideration of a City Policy with Respect to Affordable Housing
This report addresses the specific topics of development cost charges, tax and fee waivers for affordable housing.
- Recommendation: THAT staff be directed to prepare a policy which permits the waiving of development permit and building permit application fees associated with applications for developments [or that portion thereof] intended to provide affordable housing, that meets the City's definition of affordable housing;
AND THAT staff prepare a bylaw for the purpose of implementing the development cost charge waivers that are permissible under Section 933.1 of the Local Government Act.**
- (4) Director of Community Planning - Development Permit Amendment and Variance Permit for 500 Corfield Street
An application has been received from Corfield Glades Development Limited for the purpose of seeking a Zoning Bylaw relaxation which would permit the removal of an amenity building and replacing it with one residential unit. Development Permit Amendment would also be necessary to facilitate this request. This report is intended to deal with both.
- Recommendation: THAT staff commence the statutory notification process required as Council intends to consider granting a Development Variance Permit to Corfield Glades Development Limited, Inc. No. BC0817974 for the purpose of providing a Zoning Bylaw relaxation which would permit removal of the requirement for indoor recreation space on Parcel A (being a consolidation of Lots 30 and 31, see FB186963), Block 1438, Nanoose District, Plan VIP66125 [500 Corfield Street].**
- (5) Director of Community Planning - Consideration of City Position for Change of Hours to a "Liquor-Primary" Liquor Licence - 491 Island Highway East
The required steps have been taken to permit Council to adopt a resolution which could be sent to the Liquor Control and Licensing Branch in regards to the application for the Ocean Lounge and Liquor Store to permanently change their hours.
- Recommendation: THAT having considered the issues and providing an opportunity for public input, a resolution be forwarded to the Liquor Control and Licensing Branch indicating that Council 'does not support' the permanent change to the hours of liquor sales for the Ocean Lounge on Lot B, District Lot 4, Nanoose District, Plan 23567 [491 Island Highway East];
AND THAT having considered the issues and providing an opportunity for public input that a resolution is forwarded to the Liquor Control and**

Licensing Branch indicating Council's 'support' for a one year temporary change to the hours of liquor sales for the Ocean Lounge as follows:

ONE YEAR TEMPORARY CHANGE OF HOURS

Sunday, Monday, Tuesday and Wednesday - 11:00 AM to 11:00 PM

Thursday, Friday and Saturday - 11:00 AM to 1:00 AM

AND THAT Council's comments on the prescribed Liquor Control and Licensing Branch considerations are as per Schedule 'A' attached to and forming part of the Planner's report dated April 30, 2009;

AND FURTHER THAT the views of the local residents and businesses were solicited through newspaper advertisements, posted signage and delivered notices and that fourteen comments were received as per the attached Schedule 'B'.

(6) Director of Community Planning - Consideration of Mandatory Water Catchment Systems

A Council resolution directed Staff to consider the topic of implementing mandatory water catchment systems in new single family dwellings. This report indicates reasons why this important initiative would be better positioned for success further into the water conservation program.

Recommendation: THAT the requirement for all new single family home construction after January 1, 2010 to have water catchment/cistern systems that will allow for the collection of rain water for the watering of lawns, flower gardens and washing of cars be tabled at this time and brought forward for consideration as part of the water conservation program at the appropriate time.

b) Chief Administrative Officer - Special Events Application, BC Bike Race - Monday June 29, 2009 - Pages 10 to 11

At the April 6, 2009 Council meeting the Special Events application dated January 16, 2009 submitted by the BC Bike Race for permission to use City Streets and portions of the Parksville Community Park for the finish of Day 2 of the "BC Bike Race" on June 29, 2009 as indicated on the Event Application Form, was approved. At that time staff was also directed to bring forward an amendment to "City of Parksville Park Regulation Bylaw, 1999, No. 1327" that would allow overnight accommodation in a Park when authorized by Council resolution. "City of Parksville Park Regulation Amendment Bylaw, 2009, No. 1327.1", containing the requested amendment, was adopted May 4, 2009.

Recommendation: THAT the report dated May 11, 2009 from the Chief Administrative Officer regarding the BC Bike Race be received;

AND THAT the request by the BC Bike Race to allow for the set up of a maximum of 200 tents in the Parksville Community Park for the evening of Monday, June 29, 2009, be approved.

c) Chief Administrative Officer - Offer to Purchase City Owned Land at 201 Pym Street - Pages 12 to 16

The owner of 205 Pym has made a request to purchase City owned property at 201 Pym in order to meet new provincial requirements for outdoor daycare services. Staff has determined that although out right sale of the property would not be in the City's best interest, the needs of the owner of 205 Pym could be met by leasing only a portion of the property. The property in question was originally obtained as a 5% parkland dedication although all indications suggest that it was acknowledged at the time of acquisition that its actual use would be for municipal

utility purposes. The uncertainty of its acknowledged use has complicated the interpretation and application of the notification requirements for the disposal of city owned property.

Recommendation: THAT the report from the Chief Administrative Officer dated April 29, 2009 entitled "Offer to Purchase the City Owned Land at 201 Pym Street (Lot 1, Plan 37388)" be received;

AND THAT Council approve in principal a three (3) year lease, as generally described in the May 11, 2009 report, with Ms. Nancy Anderson for a portion of Lot 1, Plan 37388 (201 Pym Street) for the period July 1, 2009 and ending June 30, 2012 with provisions that the lease may be extended for one three (3) year renewal period;

AND FURTHER THAT Staff be directed to publish notice of the proposed disposition of property in accordance with Section 26 (3) of the Community Charter.

- d) Chief Administrative Officer - Lease Agreement for 183 McVickers - Pages 17 to 40
At the March 16, 2009 regular council meeting, Council passed a motion directing staff to extend the lease for 183 McVickers between the City and Joe Friede for a further 3 years at the current rate and to include provisions in the lease extension to waive the monthly rental amounts so long as the Family Resource Association Ripple Effect Program is in operation on the Leased Property. Staff met with Mr. Friede and negotiated a lease extension under those directions for Council's approval (see Schedule A).

Recommendation: THAT the report dated May 5, 2009 for the Chief Administrative Officer regarding the lease agreement for 183 McVickers Street be received;

AND THAT the Mayor and Corporate Officer be authorized to sign the Lease as outlined in Schedule A attached to the May 5, 2009 report from the Chief Administrative Officer with Mr. Joe Friede for the property legally described as the East Half of Lot 11, District Lot 4, Nanoose District, Plan 6725 (183 McVickers Street) for the period of September 1, 2009 to and including August 31, 2012 at an annual rent of six thousand (\$6,000.00) dollars subject to Section 4.6 of the Lease Agreement.

- e) Chief Administrative Officer - 745 Humphrey Road - Report to be distributed

9. BYLAWS

10. NEW BUSINESS

11. NOTICE OF MOTION

12. SPECIAL BUSINESS (Closed/In Camera)

13. ADJOURNMENT

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CITY OF PARKSVILLE **TO BE ADOPTED**

Minutes of the regular meeting of Council held in the Civic and Technology Centre, 100 E. Jensen Avenue, Parksville, BC, on Monday, May 4, 2009 at 6:00 p.m.

PRESENT: His Worship Mayor E. F. Mayne

- Councillors: C. R. Burger
- A. R. Greir
- M. Lefebvre
- T. C. Patterson
- S. E. Powell
- C. J. Powell-Davidson

- Staff: F. Manson, Chief Administrative Officer
- L. Kitchen, Deputy Corporate Administrator
- G. Jackson, Director of Community Planning
- L. Butterworth, Director of Finance
- M. Squire, Manager of Engineering

1. ADOPTION OF MINUTES

09-101 Lefebvre – Powell-Davidson
THAT the minutes of the Parcel Tax Roll Review Panel held April 20, 2009 be adopted. CARRIED.

09-102 Powell - Burger
THAT the minutes of the regular meeting of Council held April 20, 2009 be adopted. CARRIED.

2. APPROVAL OF AGENDA

09-103 Lefebvre - Powell
THAT the May 4, 2009 Council meeting agenda be approved. CARRIED.

3. PRESENTATIONS - Nil

4. DELEGATIONS - Nil

5. UNFINISHED BUSINESS - Nil

6. CORRESPONDENCE

a) **Regional District of Nanaimo - Regional Growth Management Service Amendment Bylaw No. 1553.01**

09-104 Greir - Lefebvre
THAT the Council of the City of Parksville consents to the adoption of "Regional Growth Management Service Amendment Bylaw No. 1553.01", and the Regional District be notified accordingly. CARRIED.

7. DISCUSSION RELATED TO DELEGATIONS OR CORRESPONDENCE - Nil

8. REPORTS

a) Committee of the Whole – April 27, 2009

09-105 THAT the report of the Committee of the Whole meeting held April 27, 2009 be received and the following recommendations considered:

(1) Manager of Budgets & Special Projects - 2009-2013 Final Financial Plan

Greir – Powell-Davidson

THAT staff be directed to prepare all relevant budget, property tax and other required bylaws for the 2009-2013 Financial Plan for Council's consideration. CARRIED.

(2) Director of Community Planning - Historical Plaque Program Phase 2 - Sustaining Parksville's Cultural Capital

Burger - Powell

THAT the report from the Director of Community Planning dated April 1, 2009 providing a status report on Phase 2 of the City's Cultural History Plaque Program and development of a historical walk in and around the City's core area, be received for information. CARRIED.

(3) Director of Community Planning - Introduction of Updated Sustainable Community Builder Checklist and New Accessible Community Builder Checklist

Patterson - Lefebvre

THAT the report from the Director of Community Planning dated April 2, 2009 entitled "Introduction of an Updated Sustainable Community Builder Checklist and a New Accessible Community Builder Checklist", be received;

AND THAT the revised Sustainable Community Builder Checklist and a new Accessible Community Builder Checklist attached to the report from the Director of Community Planning dated April 2, 2009, be approved;

AND FURTHER THAT the Accessible Community Builder Checklist be referred to Parksville's Measuring Up Committee and the Oceanside Development Construction Association. CARRIED.

(4) Director of Community Planning - Implementation of a Zoning Bylaw Amendment to Permit Urban Food Gardens

Lefebvre – Powell-Davidson

THAT the report from the Director of Community Planning dated April 2, 2009 regarding the implementation of a zoning amendment bylaw to permit urban food gardens, be received;

AND THAT an amendment to "Zoning and Development Bylaw, 1994, No. 2000" be brought forward to permit urban food gardens use and establish appropriate regulations. CARRIED.

(5) Director of Community Planning - Development Permit to permit a 24 Unit Townhouse Development [703 and 739 Turner Road]

Greir - Lefebvre

THAT the report from the Director of Community Planning dated April 16, 2009 for the issuance of a development permit at 703 and 739 Turner Road be received;

AND THAT a development permit be issued to 614871 B.C. Ltd. to permit a 24 unit townhouse development and overall site works on Lot 9, District Lot 3, Nanoose District, Plan 7127; Lot 10, District Lot 3, Nanoose District, Plan 7127 except part in Plan 39802 (703 and 709 Turner Road);

AND THAT where the Qualified Environmental Professional's report dated November 15, 2007 as prepared by EBA Engineering Consultants, describes an area designated as Streamside Protection and Enhancement Area that development activities within the Streamside Protection and Enhancement Area shall be conducted only in accordance with the Qualified Environmental Professional's assessment report and with appropriate Provincial Government approvals;

AND THAT proof of lot consolidation be received prior to the issuance of the permit;

AND FURTHER THAT a landscaping letter of credit in the amount of \$267,364.90 be received prior to the issuance of the permit, for the purpose of assuring the completion of site landscaping. CARRIED.

(6) Director of Community Planning - Development Permit to permit a 3-Storey Mixed Use Building with Commercial/Retail Unit and Parking [173 Weld Street]

Greir – Powell-Davidson

THAT the report from the Director of Community Planning dated April 15, 2009 for the issuance of a development permit at 173 Weld Street be received;

AND THAT a development permit be issued to 449631 B.C. LTD., (INC #449631) to permit a 3-storey mixed use building with a commercial/retail unit and parking on the ground floor; 2nd floor professional office space and 3rd floor that contains 2 residential units on Lot 33, District Lot 13, Nanoose District, Plan 1565 (173 Weld Street);

AND FURTHER THAT a landscaping letter of credit in the amount of \$2,300.00 be received prior to the issuance of the permit, for the purpose of assuring the completion of site landscaping. CARRIED.

b) Manager of Engineering - Canada-British Columbia Second Intake Building Canada Fund - Application for Temple Street Upgrade

Lefebvre – Powell-Davidson

09-106

THAT Council direct staff to apply for funding of the Temple Street Upgrade Project, at a total estimated cost of \$3.65 million, under the Canada - British Columbia Second Intake Building Canada Program;

AND THAT Council confirm the City of Parksville Temple Street Upgrade Project is the City of Parksville's priority project under the Canada - British Columbia Second Intake Building Canada Program;

AND THAT Council direct staff to continue to include funding for the Temple Street Upgrade Project in the 2009 – 2013 Financial Plan budget. CARRIED.

c) **Manager of Engineering - Tender Pre-Qualifications for 2009 Capital Works Projects**

Powell – Powell-Davidson
09-107 THAT Council invite Argus Excavating Ltd., Copcan Contracting Ltd., Fournier Excavating Ltd., Haylock Bros. Paving Ltd., Hermsen Construction Ltd., Hub Excavating Ltd., JJM Construction Ltd., Knappett Industries (2006) Ltd., Locar Industries Ltd., Nash Excavating Ltd., Northridge Equipment Ltd., Palladian Developments Inc., Parksville Heavy Equipment (Div of T.B.C., Holdings Ltd.), and Windley Contracting Ltd. to submit bids for the specific Capital Works projects selected in their individual applications from the list of 2009 Capital Works Projects, listed on the appended Schedule "A". CARRIED.

d) **Director of Finance – 2009 Municipal Property Tax Rates**

Greir - Powell
09-108 THAT the report from the Director of Finance dated April 27, 2009 entitled "2009 Municipal Property Tax Rates" be received for information;
AND THAT "Tax Rates Bylaw, 2009 No. 1455" be advanced for reading consideration by Council. CARRIED.

9. BYLAWS

a) **"City of Parksville Park Regulation Amendment Bylaw, 2009, No. 1327.1"**

Burger - Greir
09-109 THAT "City of Parksville Park Regulation Amendment Bylaw, 2009, No. 1327.1" be adopted. CARRIED.

Councillors Patterson and Powell were opposed to the motion.

b) **"Official Community Plan Amendment Bylaw, 2009, No. 1370.11"**

Greir – Powell-Davidson
09-110 THAT "Official Community Plan Amendment Bylaw, 2009, No. 1370.11" be read a first time. CARRIED.

Lefebvre - Greir
09-111 THAT "Official Community Plan Amendment Bylaw, 2009, No. 1370.11" be read a second time;
AND THAT "Official Community Plan Amendment Bylaw, 2009, No. 1370.11" be advanced to a public hearing. CARRIED.

c) **"Five Year Financial Plan Amendment Bylaw, 2009-2013, No. 1451.1"**

Powell - Lefebvre
09-112 THAT "Five Year Financial Plan Amendment Bylaw, 2009 - 2013, No. 1451.1" be read a first time. CARRIED.

Councillor Patterson was opposed to the motion.

09-113 Lefebvre - Burger
THAT "Five Year Financial Plan Amendment Bylaw, 2009 - 2013, No. 1451.1" be read a second and third time. CARRIED.

Councillor Patterson was opposed to the motion.

d) **"Tax Rates Bylaw, 2009, No. 1455"**

09-114 Powell - Greir
THAT "Tax Rates Bylaw, 2009, No. 1455" be read a first time. CARRIED.

Councillor Patterson was opposed to the motion.

09-115 Lefebvre - Powell
THAT "Tax Rates Bylaw, 2009, No. 1455" be read a second and third time. CARRIED.

Councillor Patterson was opposed to the motion.

10. NEW BUSINESS - Nil

Councillor Al Greir presented Mayor Ed Mayne with a t-shirt from the *Right to Play* organization as the Mayor is hosting a charity golf tournament that will generate funds to benefit the *Right to Play* organization.

11. NOTICE OF MOTION - Nil

12. SPECIAL BUSINESS - Nil

13. ADJOURNMENT

It was moved by Councillor Powell-Davidson and seconded by Councillor Burger that the meeting adjourn. CARRIED.

The meeting adjourned at 6:39 p.m.

Certified Correct.

Mayor

Corporate Administrator

TO BE ADOPTED

AGENDA
COUNCIL
MAY 20 2009
4612 DATE

CITY OF PARKSVILLE

May 4, 2009

Minutes of the Special meeting of Council held in the Civic and Technology Centre, 100 E. Jensen Avenue, Parksville, BC, on Monday, May 11, 2009 at 5:45 p.m.

PRESENT: His Worship Mayor E. F. Mayne

Councillors: C. R. Burger
A. R. Greir
M. Lefebvre
T. C. Patterson
S. E. Powell
C. J. Powell-Davidson

Staff: F. Manson, Chief Administrative Officer
L. Butterworth, Director of Finance
A. Metcalf, Manager of Operations
M. Squire, Manager of Engineering
B. Russell, Manager of Current Planning
A. Haywood, Recording Secretary

1. BYLAWS

a) "Five Year Financial Plan Amendment Bylaw, 2009-2013, No. 1451.1"

09-116 Lefebvre - Burger
THAT "Five Year Financial Plan Amendment Bylaw, 2009 - 2013, No. 1451.1" be read adopted. CARRIED.

b) "Tax Rates Bylaw, 2009, No. 1455"

09-117 Powell - Powell-Davidson
THAT "Tax Rates Bylaw, 2009, No. 1455" be adopted. CARRIED.

2. SPECIAL BUSINESS

09-118 Lefebvre - Powell
THAT Council resolve into the duly advertised May 11, 2009 Committee of the Whole meeting. CARRIED UNANIMOUSLY.

Time 5:49 p.m.

Council reconvened at 8:20 p.m.

09-119 Powell-Davidson - Patterson
THAT Pursuant to Sections 90 (1) (k) of the *Community Charter* Council proceed to a closed meeting to consider an item relating to negotiations respecting the provision of a municipal service. CARRIED UNANIMOUSLY.

Time 8:30 p.m.

Council reconvened at 9:02 p.m.

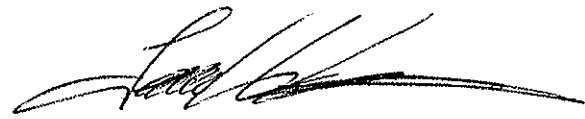
3. ADJOURNMENT

It was moved by Councillor Powell and seconded by Councillor Greir that the meeting adjourn. CARRIED.

The meeting adjourned at 9:02 p.m.

Certified Correct.

Mayor



Corporate Administrator

May 12, 2009

REPORT TO: MAYOR AND COUNCIL

FROM: COMMITTEE OF THE WHOLE

SUBJECT: MAY 11, 2009 MEETING RECOMMENDATION

The following items were considered by the Committee of the Whole at its special meeting held Monday, May 11, 2009:

RECOMMENDATIONS

(1) Robert Laframboise - Establishing a Food Trailer in the Industrial Park

THAT Council refer the request of establishing a food trailer in the Industrial Park to staff for review and recommendation.

(2) Director of Finance - Quarterly Budget Report

THAT the "Quarterly Budget Report" for the period January to March 2009 as submitted by the Director of Finance, be received for information.

(3) Director of Community Planning - Consideration of a City Policy with Respect to Affordable Housing

THAT staff be directed to prepare a policy which permits the waiving of development permit and building permit application fees associated with applications for developments [or that portion thereof] intended to provide affordable housing, that meets the City's definition of affordable housing;
AND THAT staff prepare a bylaw for the purpose of implementing the development cost charge waivers that are permissible under Section 933.1 of the Local Government Act.

(4) Director of Community Planning - Development Permit Amendment and Variance Permit for 500 Corfield Street

THAT staff commence the statutory notification process required as Council intends to consider granting a Development Variance Permit to Corfield Glades Development Limited, Inc. No. BC0817974 for the purpose of providing a Zoning Bylaw relaxation which would permit removal of the requirement for indoor recreation space on Parcel A (being a consolidation of Lots 30 and 31, see FB186963), Block 1438, Nanoose District, Plan VIP66125 [500 Corfield Street].

(5) Director of Community Planning - Consideration of City Position for Change of Hours to a "Liquor-Primary" Liquor Licence - 491 Island Highway East

THAT having considered the issues and providing an opportunity for public input, a resolution be forwarded to the Liquor Control and Licensing Branch indicating that Council 'does not support' the permanent change to the hours of liquor sales for the Ocean Lounge on Lot B, District Lot 4, Nanoose District, Plan 23567 [491 Island Highway East];

AND THAT having considered the issues and providing an opportunity for public input that a resolution is forwarded to the Liquor Control and Licensing Branch indicating Council's 'support' for a one year temporary change to the hours of liquor sales for the Ocean Lounge as follows:

ONE YEAR TEMPORARY CHANGE OF HOURS

Sunday, Monday, Tuesday and Wednesday - 11:00 AM to 11:00 PM

Thursday, Friday and Saturday - 11:00 AM to 1:00 AM

AND THAT Council's comments on the prescribed Liquor Control and Licensing Branch considerations are as per Schedule 'A' attached to and forming part of the Planner's report dated April 30, 2009;

AND FURTHER THAT the views of the local residents and businesses were solicited through newspaper advertisements, posted signage and delivered notices and that fourteen comments were received as per the attached Schedule 'B'.

(6) Director of Community Planning - Consideration of Mandatory Water Catchment Systems

THAT the requirement for all new single family home construction after January 1, 2010 to have water catchment/cistern systems that will allow for the collection of rain water for the watering of lawns, washing of cars and flower gardens be tabled at this time and brought forward for consideration as part of the water conservation program at the appropriate time.

MAYOR ED MAYNE, Chair
COMMITTEE OF THE WHOLE

May 11 2009

MEMO TO: HIS WORSHIP THE MAYOR AND MEMBERS OF COUNCIL

FROM: FRED MANSON, CHIEF ADMINISTRATIVE OFFICER

**SUBJECT: SPECIAL EVENTS APPLICATION, BC BIKE RACE - MONDAY,
JUNE 29, 2009 - OUR FILE: 8100-01**

ISSUE:

BC Bike Race Special Events request for overnight camping in the Community Park.

EXECUTIVE SUMMARY:

At the April 6, 2009 Council meeting the Special Events application dated January 16, 2009 submitted by the BC Bike Race for permission to use City Streets and portions of the Parksville Community Park for the finish of Day 2 of the "BC Bike Race" on June 29, 2009 as indicated on the Event Application Form, was approved. At that time staff were also directed to bring forward an amendment to "City of Parksville Park Regulation Bylaw, 1999, No. 1327" that would allow overnight accommodation in a Park when authorized by Council resolution. "City of Parksville Park Regulation Amendment Bylaw, 2009, No. 1327.1", containing the requested amendment, was adopted May 4, 2009.

REFERENCE:

Report from the Chief Administrative Officer dated March 23, 2009.

BACKGROUND:

This topic was discussed at the April 6, 2009 regular meeting of Council. It has been determined that the reason for the request for "camping" in the park is that the "camping experience" for the racers is an integral part of the "7 Day Mountain Bike Adventure Race".

The organizers are focusing on Parksville for the finish of Stage 2 of their race simply because the curling club could provide a warm dry place to feed the racers and for the racers to have a place out of any inclement weather while the community park could provide the space for the outdoor camping "experience".

OPTIONS:

1. Approve the request for camping in the Parksville Community Park in accordance with "City of Parksville Park Regulation Amendment Bylaw, 2009, No. 1327.1", Part II, Prohibited Acts, Item 5.
2. Deny the request for camping in the Community Park.

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ANALYSIS:

Option 1

"City of Parksville Park Regulation Amendment Bylaw, 1999, No.1327.1" has been amended to allow overnight accommodation in a City park by Council resolution.

Option 2

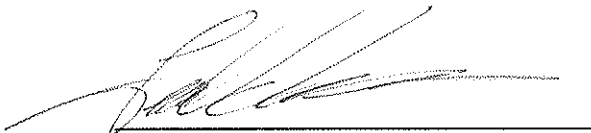
This option would likely mean that the organizers would move the event to another location outside of the City.

RECOMMENDATION:

THAT the report dated May 11, 2009 from the Chief Administrative Officer regarding the BC Bike Race be received;

AND THAT the request by the BC Bike Race to allow for the set up of a maximum of 200 tents in the Parksville Community Park for the evening of Monday, June 29, 2009, be approved.

Respectfully submitted,



FRED C. MANSON
Chief Administrative Office

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May 11, 2009

MEMO TO: HIS WORSHIP THE MAYOR AND MEMBERS OF COUNCIL
FROM: FRED MANSON, CHIEF ADMINISTRATION OFFICER
**SUBJECT: OFFER TO PURCHASE CITY OWNED LAND AT 201 PYM STREET
(LOT 1 PLAN 37388)**

Issue:

Request to purchase City owned property at 201 Pym Street South

Executive Summary:

The owner of 205 Pym has made a request to purchase City owned property at 201 Pym in order to meet new provincial requirements for outdoor daycare services. Staff has determined that although out right sale of the property would not be in the City's best interest, the needs of the owner of 205 Pym could be met by leasing only a portion of the property. The property in question was originally obtained as a 5% parkland dedication although all indications suggest that it was acknowledged at the time of acquisition that its actual use would be for municipal utility purposes. The uncertainty of its acknowledged use has complicated the interpretation and application of the notification requirements for the disposal of city owned property.

Background:

201 Pym is a parcel of land that was provided to the City as the 5% parkland dedication required as a condition of subdivision for those property covered by Plan 37388 (Orchid Close). The subject property is a small rectangular shaped lot (approximately 456 m²) with pan-handle access off Pym Street. The property is located between 205 Pym to the north and Ballenas High School to the south. Although the property was acquired through "parkland dedication" in January 1982, its only City use has been for a water utility pumping station for which a building permit was issued in March of 1982. The pumping station has subsequently been decommissioned. The property is currently totally under pavement and the old pump station building is being used for miscellaneous parks storage. Although the pumping station has been decommissioned, there are still City water mains running through the property between Pym and Orchid Close. The property has never been included in the City's inventory of "dedicated parkland" and when it was created it was registered at Land Titles as a fee simple lot with it own specific legal description as opposed to the normal practice for parkland to be simply registered as "Park".

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The owner of 205 Pym approached the City some months ago with a request to purchase the subject property. The owner is currently operating a daycare service from 205 Pym. New provincial regulations regarding area requirements for daycare services that offer outdoor activities require the owner to either stop their outdoor activity program or acquire additional outdoor space for consolidation with their existing property (205 Pym).

Staff has reviewed the subject property in view of the request to purchase and have determined that although the pumping station has been decommissioned, there still is benefit to the City from the property, both through the continued usage of the old utility building for miscellaneous parks materials and equipment storage, as well as access to the remaining water mains running under the property between Pym and Orchid Close.

Further discussions with the owner of 205 Pym have indicated that in lieu of outright purchase, their need for additional space could be met through a lease of only that portion of the property that is directly adjacent to and between the west boundary of their property and the east side of the old utility building. This area has been outlined in red on the attached plan which is attached as Schedule A to this report. Staff has reviewed this request and have determined that leasing would be an acceptable option for Councils consideration with the following conditions:

1. The owner would be responsible for any costs associated with removal and reconstruction of and required fencing, both at the beginning of, and upon termination of the lease.
2. The owner would grant the City unrestricted access to the east wall of the old utility building (for maintenance purposes) with 24 hours advanced notice.
3. The owner agrees that the usage of the property is restricted to only those activities that could reasonably be associated with the normal outdoor activities of a daycare.
4. No improvements would be placed on the leased property without the written authorization of the City. Notwithstanding the forgoing, the City does acknowledge and agrees to the owner installing playground equipment on that portion of the property outlined in red on Schedule A.
5. The owner agreeing to obtaining third party liability insurance with the City as a named insured in the amount of \$5,000,000.
6. The owner acknowledges the possible implications for notification of disposal of dedicated parkland and further acknowledges and agrees that if notification under Section 26 of the Community Charter is found to be invalid, the lease will be immediately terminated at no cost to the City for any improvements made by the owner associated with the lease.

The owner is requesting a 5 year lease and has agreed to an annual lease amount of \$1,500 in 12 equal monthly instalments of \$125 plus any other costs incurred by the City as a result of the lease.

OPTIONS

1. That Council agrees to lease a portion of the property with the conditions as outlined by staff.
2. Deny the offer to lease.
3. Refer the lease request back to staff with specific direction for changes.

ANALYSIS

Although the parcel in question was acquired as "dedicated parkland", to the best of Staff's knowledge it has never been treated as "dedicated park" and has never been included in the City's parkland inventories. In fact contrary to normal practice for parkland, upon acquisition it was registered as a fee simple lot and immediately used for "municipal water utility" purposes. Clarification of whether or not the property is "dedicated parkland" is relevant as the requirements for the disposition of property is significantly different for "dedicated parkland" than for other City owned property. Sections 26 and 27 of the Community Charter apply. Under Section 26 Council simply needs to advertise the proposed disposition. Under Section 27, dedicated parkland can only be disposed of by bylaw and the bylaw may only be adopted with the approval of the electors. It is staffs opinion that even though the land was acquired by way of the 5% parkland dedication its actual use and method of registration indicates that at the time of acquisition it was intended for municipal utility purposes and that the provisions of Section 26 apply. Council should however be aware that there is a small risk that this opinion could be contested. If contesting was successful, the notification under Section 26 and any lease so issued would be considered null and void and the requirements under Section 27 would apply.

Under either Section the legislation calls for a two step process, the first step as described above is for notification of Councils intent plus under Section 27 the requirement for the assent of the electorate. The second step under Section 26 is the requirement for a Council resolution for disposal of the property, and under Section 27 the added requirement for bylaw authorization for disposal of dedicated parkland.

Notwithstanding the above, leasing the portion of the property outlined on Schedule A provides an opportunity for the City to retain the benefits the City has been receiving from the property as well as allowing some minimal income which would be roughly double the annual property taxes if the property were taxable in private hands in its current state.

Further to the above, Section 73 (1) (b) of the Land Titles Act states that except upon compliance with the ACT, a parcel must not be divided into smaller parcels for the purpose of leasing for terms exceeding 3 years. This would restrict any lease to 3 years. It is staffs believe that a provision for renewal could be provide within the

lease to go beyond the 3 year limit, provided it is not an automatic renewal and provided that it be mutually agreed to by both party's rather than at the option of one party or the other.

FINANCIAL IMPLICATIONS

Aside from staff time in preparing the lease and coordinating the relocation of the indicated fence, the cost of which has been agreed to by the propose tenant, there would be very minimal costs to the City, assuming the Section 26 notification is not contested. If the Section 26 notification is contested and Council chose to continue with the lease, assuming Council would authorize the alternate approval process, costs are estimated to be between \$1,000 and \$2,000 including advertising and staff time.

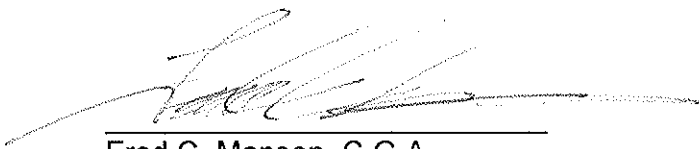
Revenue from the lease would be \$1,500 annually.

RECOMMENDATION

THAT the report from the Chief Administrative Officer dated April 29, 2009 entitled "Offer to Purchase the City Owned Land at 201 Pym Street" (Lot 1, Plan 37388) be received;

AND THAT Council approve in principal a three (3) year lease, as generally described in the April 29, 2009 report, with Ms. Nancy Anderson for a portion of Lot 1, Plan 37388 (201 Pym Street) for the period July 1, 2009 and ending June 30, 2012 with provisions that the lease may be extended for one three (3) year renewal period;

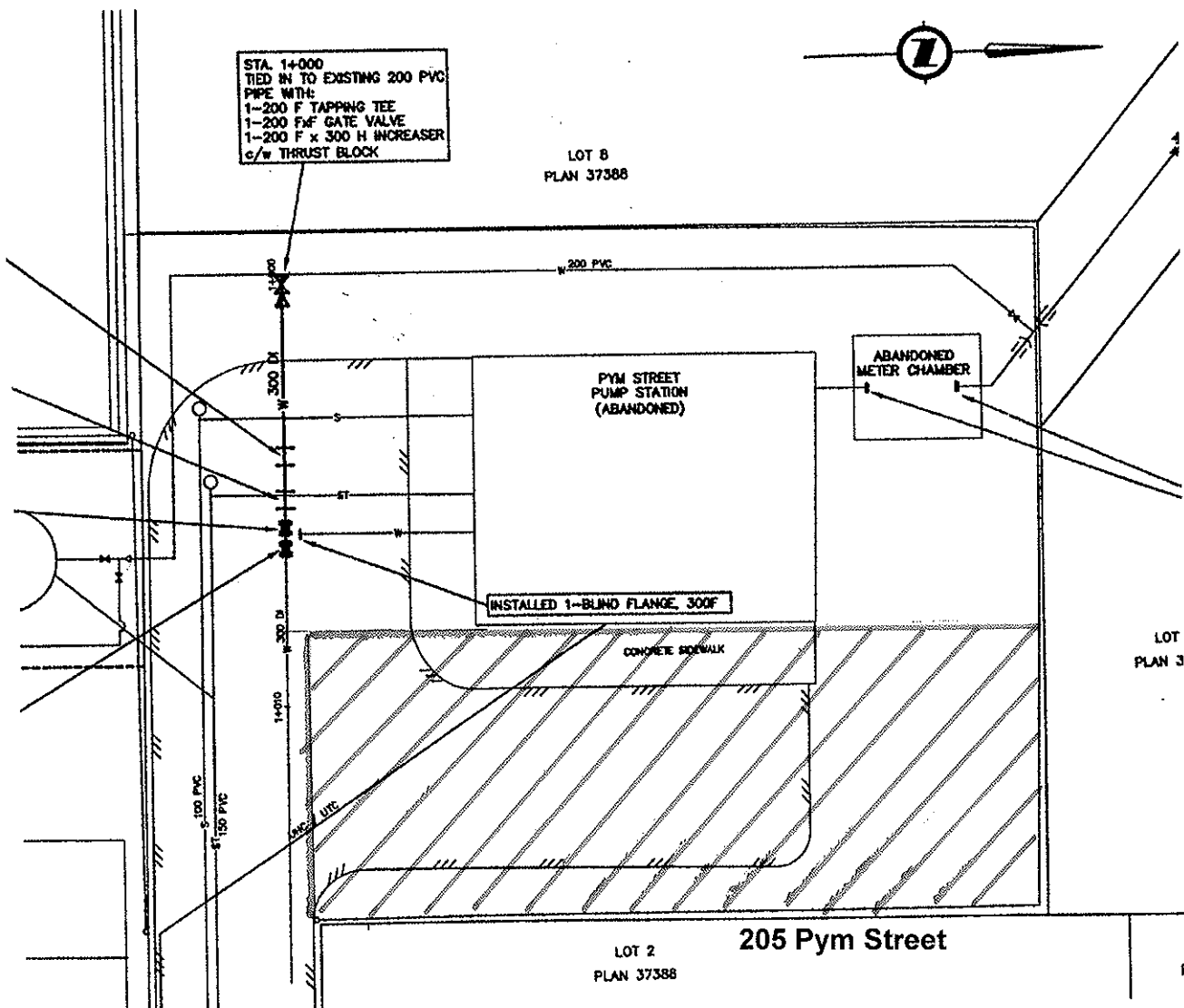
AND FURTHER THAT Staff be directed to publish notice of the proposed disposition of property in accordance with Section 26 (3) of the Community Charter.



Fred C. Manson, C.G.A.
Chief Administrative Officer

Attachment – Schedule A

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Report to Council

May 5, 2009

MEMO TO: HIS WORSHIP THE MAYOR AND MEMBERS OF COUNCIL

FROM: FRED MANSON, CHIEF ADMINISTRATIVE OFFICER

SUBJECT: LEASE AGREEMENT – 183 MCVICKERS

ISSUE:

Lease of City owned property at 183 McVickers Street.

BACKGROUND:

At the March 16, 2009 regular council meeting, Council passed a motion directing staff to extend the lease for 183 McVickers between the City and Joe Friede for a further 3 years at the current rate and to include provisions in the lease extension to waive the monthly rental amounts so long as the Family Resource Association Ripple Effect Program is in operation on the Leased Property.

Staff met with Mr. Friede and negotiated a lease extension under those directions for Council's approval (Schedule A).

OPTIONS:

Council may:

1. Accept the lease as negotiated.
2. Provide staff with specific direction for continued negotiations.

ANALYSIS:

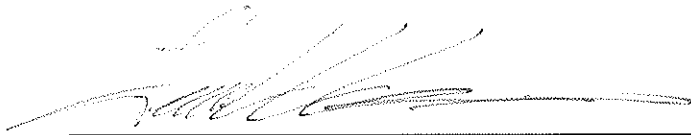
The lease renewal has been negotiated as per Council direction.

BUDGET IMPLICATIONS:

The 2009 – 2013 Final Financial Plan was adjusted to include the reduction in rental income as per Councils March 16, 2009 resolution.

RECOMMENDATION:

THAT the report dated May 5, 2009 for the Chief Administrative Officer regarding the lease agreement for 183 McVickers Street be received;
AND THAT, the Mayor and Corporate Officer be authorized to sign the Lease as outlined in Schedule A attached to the May 5, 2009 report from the Chief Administrative Officer with Mr. Joe Friede for the property legally described as the East Half of Lot 11, District Lot 4, Nanoose District, Plan 6725 (183 McVickers Street) for the period of September 1, 2009 to and including August 31, 2012 at an annual rent of six thousand (\$6,000.00) dollars subject to Section 4.6 of the Lease Agreement.



FRED C. MANSON, C.G.A.
Chief Administrative Officer

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PROPERTY LEASE

183 McVickers Street Parksville, B.C.

THIS LEASE, dated for reference the 1st day of June, 2009 is made and entered into by the Landlord and Tenant named herein who, in consideration of the covenants herein contained, agree as follows:

1. BASIC TERMS, SCHEDULES, and DEFINITIONS

1.1 Basic Terms

(a) Landlord:

City of Parksville
Address: PO Box 1390, 100 E. Jensen Avenue, Parksville BC V9P 2H3

(b) Tenant:

Detlef Joe Friede
German Ju Jutsu Systems
121 Wallis Street
Parksville, BC
V9P 1K7

(c) Leased Property:

Civic Address – 183 McVickers Street, Parksville, BC
Legal Description – Part E ½, Lot 11, Plan 6725, District Lot 4, Land District 33
PID: 000-276-596

(d) Term:

See Clause 3

(e) Commencement Date:

September 1, 2009

(f) Annual Base Rent:

\$6,000 per annum

(g) Permitted Use:

For the purpose of a private German Ju Jutsu School, and accessory uses, subject to the P2 zoning category and any Building Code requirements.

The parties approve the foregoing Basic Terms. 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	Definitions	1.3

1.3 Definitions

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

2. Property

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed, and performed, the Landlord hereby demises and leases to the Tenant, and the Tenant leases from the Landlord, the Landlord's interest in the Leased Property.

3. TERM

The term of this Lease is for a period of thirty-six (36) months, commencing on September 1, 2009 and ending on August 31, 2012, unless terminated sooner as provided in this Lease.

4. RENT

4.1 Rent

The Tenant shall yield and pay for the Leased Property to the Landlord during the Term in lawful money of Canada without any setoff, abatement (except as provided in clause 7.3), compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in subclauses (a) and (b) below:

(a) Annual Base Rent

Annual Base Rent in the amount per annum set out in subclause 1.1(f) for each respective Lease Year, subject to the adjustment provisions of clause 4.2 and 4.6; and

(b) Additional Rent

Such other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord pursuant to this Lease in addition to Annual Base Rent.

4.2 Payment of Rent

The Tenant shall pay the Rent provided for in this Article 4 as follows:

(a) **Annual Base Rent**

The Annual Base Rent shall be paid in equal consecutive monthly installments in advance on the first day of each and every month during the Term. The Tenant shall pay the first monthly installment of the Annual Base Rent on the Commencement Date.

(b) **Basis of Determining Rent**

The Tenant acknowledges that the Annual Base Rent is calculated and payable on the basis of the Leased Property, being as set out in subclause 1.1(c) and at the rate set out in subclause 1.1(f) for the entire property.

(c) **Post-dated Cheques**

If requested by the Landlord from time to time, the Tenant will provide to the Landlord without prejudice to any other right or remedy of the Landlord 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 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 Rent for such irregular period.

4.4 Waiver of Offset

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

4.5 Application of Payments

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

4.6 Waiver of Annual Base Rent

The Landlord hereby waives the Annual Base Rent monthly installments for each month that the Family Resource Association Ripple Effect Program is in operation from the Leased Property.

5 TENANT'S COVENANTS

The Tenant covenants with the Landlord 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 Tenant to the Landlord or to others under this Lease.

(b) Occupancy and Permitted Use

To take possession of and occupy the Leased Property, to use the Leased Property only for the purpose set out in subclause 1.1(g) and not to use or permit to be used the Leased Premises or any part thereof for any other purpose.

(c) Waste and Nuisance

Not to commit or permit; any waste or injury to the Building or the Leased Premises including any Leasehold Improvements; any conduct which, could constitute a nuisance to the Landlord anyone else; or any other use or manner of use which in the opinion of the Landlord acting reasonably, may have an adverse impact on the reputation of the Landlord.

(d) Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Leased Premises anything which would cause the Landlord's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant shall pay to the Landlord 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 Leased Premises to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein.

(f) Compliance with Laws

To comply at its own expense with all municipal, provincial, and federal sanitary, fire, and safety laws, bylaws, regulations, and requirements pertaining to the operation and use of the Leased Premises, the condition of any Leasehold Improvements, and the making by the Tenant of any repairs, changes or improvements therein.

(g) Installations

To permit the Landlord during the Term, at the Landlord's cost, to install any equipment in or make alterations to the Leased Premises necessary to comply with the

requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in subclause 5(f).

(i) Overholding

That if the Tenant shall continue to occupy the Leased Premises after the expiration of this Lease without any further written agreement and without objection by the Landlord, the Tenant shall be a monthly tenant at a monthly base rent equal to 120% of the monthly installment of Annual Base Rent payable by the Tenant as set forth in Article 4 during the last month of the Term and (except as to length of tenancy) on and subject to the provisions and conditions herein set out; provided however, that in the event an agreement is reached between the Landlord and the Tenant renewing this Lease then:

- (i) if the annual base rent payable by the Tenant under the renewed Lease is less than the Annual Base Rent payable by the Tenant hereunder then the Tenant will be entitled to a credit against the Tenant's first monthly payment under the renewed Lease in an amount equal to the difference between the annual base rent actually paid by the Tenant during the overholding period and the annual base rent that would have been paid during that period at the rental rate as agreed in the renewal Lease; and
- (ii) if the annual base rent payable by the Tenant under the renewed Lease is greater than the Annual Base Rent payable by the Tenant hereunder then the Tenant must pay to the Landlord at the time of the Tenant's first Annual Base Rent payment under the renewed Lease an additional amount equal to the difference between the annual base rent that would have been paid during the over holding period at the rental rate as agreed in the renewal Lease and the annual base rent actually paid by the Tenant during that during period.

In the event that before the expiration of the term of the lease either party does not wish to renew the lease or in the event an agreement to renew the lease cannot be reached either before the term expires or during any overholding period, then the parties agree that a minimum of three (3) months notice shall be given for termination of the lease and that during the notice period all other terms and conditions of the lease shall be in effect.

(j) Signs

Not to paint, display, inscribe, place, or affix any sign, symbol, notice, or lettering of any kind anywhere outside the Leased Premises (whether on the outside or inside of the Building) or within the Leased Premises so as to be visible from the outside of the Leased Premises without the express written approval of the Landlord.

(k) Inspection and Access

To permit the Landlord at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Leased Premises for the purpose of inspection or making repairs, alterations, or improvements to the Leased Premises or the Building pursuant to the Landlord's obligations under this Lease, or to

have access to utilities and services, and the Tenant 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 Landlord in exercising its rights hereunder shall proceed to the extent reasonably possible so as to minimize interference with the Tenant's use and enjoyment of the Leased Premises.

(l) Access to Municipal Infrastructure

To permit the Landlord at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Leased Premises for the purpose of inspection or making repairs, alterations, or improvements to municipal infrastructure located along the southern and western boundaries of the Leased Premises and the Tenant shall provide free and unimpeded access for the purpose, and shall not be entitled to compensation for any removal or damage to Leasehold Improvements, inconvenience, nuisance, or discomfort caused thereby, but the Landlord in exercising its rights hereunder shall proceed to the extent reasonably possible so as to minimize interference with the Tenant's use and enjoyment of the Leased Premises.

6. LANDLORD'S COVENANTS

The Landlord covenants with the Tenant as follows:

(a) Quiet Enjoyment

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

7 REPAIR, DAMAGE, AND DESTRUCTION

Notwithstanding the remainder of this section the Tenants acknowledges:

- (a) that the Tenant has viewed the Building and Leased Property on or around July 30, 2008 and agree that Tenant is leasing the Building and Lease Property in the state and condition they observed as at that date.
- (b) that the Landlord has advised the Tenant that the Leased Property is surplus to the Landlords needs and that the Leased Property is in the process of being sold.
- (c) that the Landlord has advised the Tenant and the Tenant agrees that the Lease Property is being leased in the state and condition as viewed by the Tenant outline in subclause 7(a).
- (d) that the Tenant agrees that the Tenant will be responsible for **all** operating costs, repairs and/or maintenance required on the Building and/or the Leased Premises, and shall keep the Building and Leased Premises, including the foundation, roof,

and exterior walls, in a good and reasonable state of repair consistent with the general standards of comparable buildings and properties of similar age and character in Parksville.

7.1 Landlord's Repairs

The Landlord covenants with the Tenant:

- (a) Subject to subclause 7.3(b) and 7(d), to keep the Building including the foundation, roof, and exterior walls in a good and reasonable state of repair consistent with the general standards of comparable buildings of similar age and character in Parksville; and
- (b) To repair defects in construction performed or installations made by the Landlord in the Leased Premises and Insured Damage.

7.2 Tenant's Repairs

The Tenant covenants with the Landlord:

- (a) Subject to subclause 7.3(b), to keep in a good and reasonable state of repair and consistent with the general standards of comparable buildings of similar age and character in Parksville, the Leased Premises including all Leasehold Improvements and all trade fixtures therein but with the exception of structural members or elements of the Leased Premises, defects in construction performed or installations made by the Landlord and Insured Damage therein;
- (b) That the Landlord may enter and view the state of repair, and that the Tenant will repair according to notice in writing, and that the Tenant will leave the Leased Premises in a good and reasonable state of repair, subject always to the exceptions referred to in subclause 7.2(a); and
- (c) That if any part of the Building, of this Lease becomes out of repair, damaged, or destroyed through the negligence or misuse of the Tenant or its employees, invitees, or others over which the Tenant can reasonably be expected to exercise control, the expense of repairs or replacements necessitated thereby shall be reimbursed to the Landlord promptly upon demand.

7.3 Abatement and Termination

It is agreed between the Landlord and the Tenant that in the event of damage to the Leased Premises or to the Building:

- (a) if the damage is such that the Leased Premises or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of 10 days, then:
 - (i) unless the damage was caused by the fault or negligence of the Tenant or its employees, invitees, or others under its control, from and after the date of occurrence of the damage and until the Leased 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 Leased Premises not reasonably capable of use and occupancy; and

- (ii) unless this Lease is terminated as hereinafter provided, the Landlord or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with all reasonable diligence, but to the extent that any part of the Leased Premises is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of Rent to which the Tenant is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence; and

(b) if either:

- (i) the Leased Premises, or
- (ii) any of the Total Building Area

is substantially damaged, destroyed, or is found to be unsafe for occupancy by any cause to the extent such that in the reasonable opinion of the Landlord they cannot be repaired or rebuilt (based on standard hours of construction work) within 120 days after the occurrence of the damage or destruction, then the Landlord may at its option, exercisable by written notice to the Tenant given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Leased Premises to the Landlord with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under subclause 7.3(a) by reason of the Leased Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

8 TAXES

8.1 Tenant's Tax Obligations

The Tenant covenants with the Landlord, to pay when due, all taxes.

8.2 Goods and Services Tax

The Tenant shall pay to the Landlord 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 Landlord under the terms of this Lease or upon demand at such other time or times as the Landlord from time to time determines. The Landlord will provide the Tenant with

its goods and services tax registration number. Notwithstanding any other section of this Lease, the amount payable by the Tenant under this clause shall be deemed not to be Rent, but the Landlord shall have the same remedies for and rights of recovery of such amount as it has for recovery of Rent under this Lease.

9. UTILITIES AND ADDITIONAL SERVICES

9.1 Utilities

The Tenant shall be responsible for all utilities.

9.2 Additional Services

If the Tenant wishes to make repairs or alterations within the Leased Premises, or requires other service in the Leased Premises, then the Landlord, may at its option, by way of Additional Services, provide or have its designated agents or contractors provide such service, provided that the designated agent or contractor and the estimate of the cost of the service is approved in advance by the Tenant. The Cost of Additional Services provided shall be paid to the Landlord by the Tenant from time to time promptly upon receipt of invoices therefore from the Landlord.

10 LICENSES, ASSIGNMENTS, AND SUBLETTING

10.1 Licensing, Assigning and Subletting

The Tenant shall not assign this Lease in whole or in part, and shall not sublet all or any part of the Leased Premises and shall not licence all or any part of the Leased Premises without the Tenant obtaining the prior written consent of the Landlord in each instance, which consent may be unreasonably withheld if the operation and business undertaking of the assignee, subtenant or licensee, as the case may be, is not substantially the same as the operation and business undertaking of the Tenant, but will not be unreasonably withheld otherwise. In requesting the Landlord's consent to an assignment, sublease or licence, the Tenant must provide the Landlord with all information requested by the Landlord. The Tenant must, if required by the Landlord, enter into sub-leases, assignment agreements or licences on terms required by the Landlord, including requirements for insurance and indemnities.

11 FIXTURES AND IMPROVEMENTS

11.1 Installation of Fixtures and Improvements

The Tenant will not alter the Building or make, erect, install, any Leasehold Improvements on the building or in the Leased Premises, without having requested and obtained the Landlord's prior written approval, which the Landlord shall not unreasonably withhold. In making, erecting, installing, or altering any to the Building or the Leased Premises, the Tenant shall comply with the tenant construction guidelines as established by the Landlord from time to time, shall obtain all required building and occupancy permits, shall not alter or interfere with any installations which have been made by the Landlord without the prior written approval of the Landlord. The Tenant's request for any approval hereunder shall be in writing and accompanied by a

reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications thereof. Any out-of-pocket expense incurred by the Landlord in connection with any such approval shall be deemed incurred by way of Additional Services. All work to be performed on the building or in the Leased Premises shall be performed by competent contractors and subcontractors of whom the Landlord shall have approved (such approval not to be unreasonably withheld). All such work shall be subject to inspection by and the reasonable supervision of the Landlord as an Additional Service and shall be performed in accordance with any reasonable conditions or regulations imposed by the Landlord and completed in good and workmanlike manner in accordance with the description of the work approved by the Landlord.

11.2 Liens and Encumbrances on Fixtures and Improvements

In connection with the making, erection, installation, or alteration of any Leasehold Improvements in the Leased Premises and all other work or installations made by or for the Tenant in the Leased Premises, the Tenant shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the Landlord to take all steps to enable the Landlord to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Tenant shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and amendments thereto, or other encumbrance in respect of its Leasehold Improvements, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Leased Premises. If and when any builders' or other lien for work, labour, services, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefore shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Tenant shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies hereunder avail itself of its remedy under clause 15.1 and may make any payments required to procure the discharge of any such liens or encumbrances, and shall be entitled to be reimbursed by the Tenant as provided in clause 15.1, and its right to reimbursement shall not be affected or impaired if the Tenant shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, setoff, or defense.

11.3 Removal of Leasehold Improvements

All Leasehold Improvements in or upon the Leased Premises shall immediately upon affixation be and become the Landlord's property without compensation therefore to the Tenant. Except to the extent otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements shall be removed by the Tenant from the Leased Premises either during or at the expiration or sooner termination of the Term. The Tenant shall, in the case of every

removal either during or at the end of the Term, immediately make good any damage caused to the Leased Premises by the installation and removal.

11.4 Alterations by Landlord

The Landlord reserves the right from time to time to:

- (a) make any deletions, changes, and additions to the facilities of every kind throughout the Leased Premises;
- (b) make alterations and additions to the Building;

and in exercising any such rights, the Landlord will take reasonable steps to minimize any interference caused to the Tenant's operations in the Leased Premises, but by exercising any such rights, the Landlord shall not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease.

12 INSURANCE AND LIABILITY

12.1 Landlord's Insurance

The Landlord 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 Landlord in the Leased 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 Landlord, and whose written opinion shall be conclusive. Upon the request of the Tenant from time to time the Landlord will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Building. The Landlord may maintain such other insurance in such amounts and upon such terms as would normally be carried by a prudent owner.

12.2 Tenant's Insurance

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

- (a) comprehensive general liability (including bodily injury, death, and property damage) insurance on an occurrence basis with respect to the Tenant's use and occupancy of the Leased Premises, of not less than \$5,000,000 per occurrence, which insurance shall include the Landlord as a named insured and shall protect the Landlord in respect of claims by the Tenant as if the Landlord were separately insured; and
- (b) insurance in such amounts as may be reasonably required by the Landlord in respect of fire and such other perils, as are from time to time defined in the usual extended coverage endorsement covering the Tenant's trade fixtures and the furniture and equipment of the Tenant and (except as to Insured Damage) all Leasehold Improvements in the Leased Premises, and which insurance shall include the Landlord

as a named insured as the Landlord'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 shall be payable to the Landlord, but the Landlord agrees to make available such proceeds toward the repair or replacement of the insured property if this Lease is not terminated under any other provision hereof.

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

12.3 Limitation of Landlord's Liability

The Tenant agrees that the Landlord shall not be liable to the Tenant for any bodily injury to or death of, or loss or damage to any property belonging to the Tenant or its employees, invitees, or licensees or any other person or for any interruption of any business carried on in the Leased Premises unless wholly caused by reason of the Landlord's breach of any of the Landlord's covenants under this Lease or by reason of the negligence of the Landlord or anyone for whose conduct the Landlord is responsible.

12.4 Limitation of Tenant's Liability

The Landlord releases the Tenant from all claims or liabilities in respect of any damage that is Insured Damage, to the extent of the cost of repairing such damage, but not from injury, loss, or damage which is consequential thereto or which arises therefrom where the Tenant is negligent or otherwise at fault.

12.5 Indemnity of Landlord

Except as provided in clause 12.4, the Tenant agrees to indemnify and save harmless the Landlord in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Tenant or any assignee, subtenant, agent, employee, contractor, invitee, or licensee of the Tenant, and in respect of all costs, expenses, and liabilities incurred by the Landlord 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 Landlord arising from any breach by the Tenant of any of its covenants and obligations under this Lease. This indemnity shall survive the expiry or termination of this Lease.

13 SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES

13.1 Tenant's Covenants

The Tenant agrees with the Landlord that:

(a) Sale or Financing of Building

The rights of the Landlord 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 Landlord 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 Leased Premises, the Tenant agrees to attorn to and become the tenant 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 Tenant 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 Tenant, whenever required by any mortgagee (including any trustee under a trust deed or trust indenture), shall attorn to such mortgagee as the tenant upon all of the terms of this Lease. The Tenant agrees to execute and deliver promptly whenever requested by the Landlord or by such mortgagee an instrument of subordination or attornment, as the case may be, as may be required of it, and if the Tenant fails to do so within seven days after receiving the instrument, the Tenant hereby irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the instrument for, on behalf of, in the name of, and as agent of, the Tenant.

(c) Registration

The Tenant agrees that the Landlord shall not be obliged to deliver this Lease in form registerable under the *Land Title Act*, R.S.B.C. 1996, c. 250 and covenants and agrees with the Landlord not to register this Lease.

(d) Certificates

The Tenant agrees with the Landlord that the Tenant shall promptly whenever requested by the Landlord from time to time execute and deliver to the Landlord and, if required by the Landlord, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Landlord) 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 Landlord and Tenant, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the Landlord shall request a certificate. If the Tenant fails to do so within seven days after the Tenant

receives the form of certificate, the Tenant hereby irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Tenant.

(e) Assignment by Landlord

In the event of the sale by the Landlord of the Building or a portion thereof containing the Leased Premises or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the Landlord hereunder, the Landlord 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 Landlord or the Tenant 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 fulfill 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 Landlord will use reasonable efforts to maintain services essential to the use and enjoyment of the Leased Premises.

14.2 No Admission

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

14.3 Part Payment

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

15 TENANT'S DEFAULT, REMEDIES OF LANDLORD, AND SURRENDER

15.1 Remediating by Landlord, Non-payment, and Interest

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

- (a) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Leased Premises to do any work or other things therein, and in such event all expenses of the Landlord in remedying or attempting to remedy such default together with an administrative charge equal to 15% of the total of such expenses shall be payable by the Tenant to the Landlord forthwith upon demand;
- (b) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent;
- (c) if the Tenant shall fail to pay any Rent promptly when due, shall be entitled, if it shall demand it, to interest thereon at a rate of 3% per annum in excess of the Prime Rate; and
- (d) shall be entitled to be reimbursed by the Tenant, and the Tenant shall forthwith pay the Landlord, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the Landlord in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies, to which the Landlord is or may be entitled hereunder.

15.2 Remedies Cumulative

The Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, 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 Landlord by statute or the general law.

15.3 Right of Re-entry on Default

Provided and it is expressly agreed that if and whenever the Rent hereby reserved or other moneys payable by the Tenant or any part thereof, whether lawfully demanded or not, are unpaid and the Tenant shall have failed to pay such Rent or other moneys within five days after the Landlord has given to the Tenant notice requiring such payment; or if the Tenant 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 Tenant to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Landlord has given the Tenant notice thereof; or if without the written consent of the Landlord the Leased

Premises shall be used by any other persons than the Tenant or its permitted assigns or permitted subtenants or for any purpose other than that for which the Leased Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or if the Leased Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or if the Term or any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment; or if a receiver or receiver-manager is appointed of the business or property of the Tenant; or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or if any policy of insurance upon the Building from time to time effected by the Landlord shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Leased Premises by the Tenant or any assignee, subtenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Leased Premises and the Tenant after receipt of notice in writing from the Landlord shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Landlord to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or if the Landlord 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 Landlord thereafter to enter into and upon the Leased 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 Landlord may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Leased Premises, and the Tenant hereby releases the Landlord 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 Landlord becomes entitled to re-enter upon the Leased Premises under any provision of this Lease, the Landlord, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Tenant or by leaving upon the Leased Premises notice in writing of such termination. Thereupon, this Lease and the Term shall terminate, and the Tenant shall immediately deliver up possession of the Leased Premises to the Landlord in accordance with clause 15.8.

15.5 Certain Consequences of Termination and Re-entry

If the Landlord re-enters the Leased Premises or if this Lease is terminated by reason of any event set out in clause 15.3, then without prejudice to the Landlord's other rights and remedies:

- (a) The provisions of this Lease, which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions, which occurred prior to the termination, shall all survive such termination;
- (b) In addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three

months shall immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and

- (c) The Tenant or person then controlling the affairs of the Tenant shall pay to the Landlord on demand such reasonable expenses as the Landlord has incurred, and a reasonable estimate of the Landlord of expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Leased Premises in good order, and the expenses of repairing the Leased Premises and preparing them for re-letting.

15.6 Waiver of Distress and Bankruptcy

The Tenant waives the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term shall be exempt from levy by distress for rent in arrears. The Tenant will not sell, dispose of, or remove any of the fixtures, goods, or chattels of the Tenant from or out of the Leased Premises during the Term without the consent of the Landlord, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Tenant's purposes; and the Tenant will be the owner of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Tenant agrees that it will not, without the Landlord'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, reorganization, or other proceeding or court application, and, if required by the Landlord, waives in favour of the Landlord 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 Landlord becomes entitled to re-enter upon the Leased Premises under any provision of this Lease, the Landlord, in addition to its other rights, shall have the right as agent of the Tenant to enter the Leased 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 therefore, and as the agent of the Tenant to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Leased Premises upon account of the rent due and to become due under this Lease, and the Tenant shall be liable to the Landlord 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 Tenant shall vacate and deliver up possession of the Leased Premises in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Leased Premises, but subject to the Tenant's rights and obligations in respect of

removal in accordance with clause 11.3. At the same time the Tenant shall surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices which provide access to the Leased Premises, the Building, or any part thereof and shall inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Leased 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 Landlord, either delivered to an executive officer of the Landlord or delivered or mailed (by prepaid registered mail) to the Landlord at the address set out in subclause 1.1(a), or if the Landlord has given the Tenant notice of another address in Canada to which notices to the Landlord under this Lease are to be given, then to the last such address of which the Tenant has been given notice; and if to the Tenant, either delivered to the Tenant personally (or to a partner or officer of the Tenant if the Tenant is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Tenant at the Leased 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 Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease or the Leased Premises save as expressly set out in this Lease and in any agreement to lease in writing between the Landlord and the Tenant pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may not be modified except by an agreement in writing executed by the Landlord and the Tenant.

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

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 Tenant 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 Landlord or Tenant of any default, breach, or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant herein in respect of any such continuing or subsequent default or breach, no acceptance of rent by the Landlord subsequent to a default by the Tenant (whether or not the Landlord knows of the default) shall operate as a waiver by the Landlord, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant 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 Vancouver, British Columbia as long as such venue is permitted by law, and the Tenant shall consent to any application by the Landlord to change the venue to Vancouver, British Columbia of any proceedings taken elsewhere. The Landlord and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

16.8 Captions

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

16.9 Acceptance

The Tenant accepts this Lease of the Leased Premises, to be held by it as tenant, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Leased Premises shall be conclusive evidence as against the Tenant that at the Commencement Date of the Term the Landlord had duly completed all work required to be

completed by the Landlord prior to the Commencement Date of the Term and the Leased Premises were in good order and satisfactory condition for the commencement of the work and business of the Tenant.

IN WITNESS WHEREOF the parties have executed this Lease.

CITY OF PARKSVILLE

Per: _____
Mayor

Per: _____
Corporate Administrator

**DETLEF JOE FRIEDE
GERMAN JU JUTSU SYSTEMS**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

SCHEDULE A

To Lease of Premises at 183 McVickers Street, Parksville, British Columbia

DEFINITIONS

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

"Additional Rent" means all sums of money to be paid by the Tenant, whether to the Landlord or otherwise under this Lease, except for Annual Base Rent and goods and services tax payable by the Tenant;

"Additional Services" means the services and supervision supplied by the Landlord and referred to in clause 9.2 or in any other provision hereof as Additional Services; any other services which from time to time the Landlord supplies to the Tenant and which are additional to other services that the Landlord has agreed to supply under this Lease and to like provisions of other leases of the Building, or that the Landlord may elect to supply as included within the standard level of services available to tenants generally and in addition to those normally supplied; the provision of labour and supervision in connection with the moving of any furniture or equipment of the Tenant; the making of any repairs or alterations for the Tenant; and the provision to the Tenant or the Leased Premises of maintenance or other services not normally furnished to tenants or other leaseable premises generally; and "Additional Service" means any such service;

"Annual Base Rent" means the annual rent set out in subclause 1.1(f) and payable by the Tenant as set forth in subclause 4.1(a);

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

"Building" means that certain building and those certain areas and improvements situate on the Land and all additions and replacements thereto;

"Commencement Date" means the date the Term commences as set out forth in subclause 1.1(f);

"Cost of Additional Services" shall mean in the case of Additional Services provided by the Landlord a reasonable charge made therefore by the Landlord which shall not exceed the cost of obtaining such services from independent contractors, and in the case of Additional Services provided by independent contractors the Landlord's total cost of providing Additional Services to the Tenant including the cost of all labour (including salaries, wages, and fringe benefits) and materials and other direct expenses incurred, the cost of supervision and other indirect expenses capable of being allocated thereto (such allocation to be made upon a reasonable basis) and all other out-of-pocket expenses made in connection therewith including amounts paid to independent contractors, plus an administration fee equal to 10% of each component thereof;

"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 Landlord or the Tenant from time to time in respect of the Rent payable by the Tenant to the Landlord under this Lease or the rental of the Leased Premises or the provision of any goods, services, or utilities whatsoever by the Landlord to the Tenant under this Lease, whether characterized as a goods and services tax, sales tax, value added tax, business transfer tax, or otherwise;

"Insured Damage" means that part of any damage occurring to any portion of the Leased Premises for which the Landlord is responsible, of which the entire cost of repair is actually recoverable by the Landlord under a policy of insurance in respect of fire and other perils from time to time effected by the Landlord, or, if and to the extent that the Landlord has not insured and is deemed to be a co-insurer or self-insurer under clause 12.1, would have been recoverable had the Landlord 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, in Parksville, B.C., more particularly described as Part E ½, Lot 11, Plan 6725, District Lot 4, Land District 33 (183 McVickers Street, Parksville, BC)

"Landlord" means the City of Parksville, and includes its successors and assigns;

"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;

"Leased Premises" means that property having the municipal address as set out in subclause 1.1(c).

"Leasehold Improvements" means all fixtures, improvements, installations, alterations, and additions now or from time to time hereafter made, erected, or installed, whether by the Tenant, the Landlord or anyone else, in the Leased Premises or in other premises in the Building with the exception of trade fixtures and furniture and equipment affixed so as to be readily removable without damage;

"Prime Rate" means that rate of interest declared from time to time by the main branch in Vancouver, British Columbia, of the TD Canada Trust to the Landlord as the annual rate of interest used by such bank as its reference rate in setting interest rates for commercial loans of Canadian dollars in Canada and commonly referred to by such bank as its "prime rate";

"Rent" means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the Landlord under this Lease except for goods and services tax payable by the Tenant; and

"Term" means the term of this Lease set forth in article 3 and any renewal or extension thereof and any period of permitted overholding.