



REQUEST FOR PROPOSALS

OPERATOR FOR HARBOUR GREEN RESTAURANT

RFP No. PS20150448

Issue Date: April 29, 2015

Issued by: City of Vancouver (the "City")

as represented by its Board of Parks and Recreation

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
TABLE OF CONTENTS**

TABLE OF CONTENTS

PART A - INFORMATION AND INSTRUCTIONS	Pages A-1 to A-13
1.0 The RFP	
2.0 Harbour Green Park and the New Restaurant	
3.0 Key Dates	
4.0 Contact Person	
5.0 Contract Requirements - License and Lease	
6.0 Financial Proposals / Rent	
7.0 Submission of Proposals	
8.0 Changes to the RFP and Further Information	
9.0 Evaluation of Proposals	
10.0 Sustainability	
11.0 Certain Applicable Legislation	
12.0 Legal Terms and Conditions	
13.0 Definitions	
APPENDIX A1 - INFORMATION MEETING ATTENDANCE FORM	Page A1-1
PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS	Pages B-1 to B-5
1.0 City Requirements	
2.0 Items to be Addressed in Proposals	
APPENDIX B1 - SUSTAINABILITY DEFINITIONS	Page B1-1
PART C - PROPOSAL FORM	Page C-1
APPENDIX C1 - LEGAL TERMS & CONDITIONS	Pages C1-1 to C1-6
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT	Pages D-1 to D-23
PART E - FORM OF LEASE AGREEMENT	Pages E-1 to E-44
ANNEX 1 - SCHEDULE OF DETAILED REQUIREMENTS	Pages 1-1 to 1-3
ANNEX 2 - CERTIFICATE OF EXISTING INSURANCE	Page 2-1
ANNEX 3 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE	Page 3-1
ANNEX 4 - VENDOR SUSTAINABILITY LEADERSHIP QUESTIONNAIRE	Pages 4-1 to 4-4

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS**

1.0 THE RFP

- 1.1 This Request for Proposals (the “RFP”) provides an opportunity for qualified and experienced Proponents to submit proposals for review by the City of Vancouver, as represented by its Board of Parks and Recreation (“City”) and, depending on the City’s evaluation of Proposals, among other factors, to potentially negotiate with the City to enter into Agreements. Except where expressly stated otherwise in Appendix C1 to Part C of the RFP: (i) no part of the RFP consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFP is legally binding on the City.
- 1.2 The RFP concerns the City’s interest in entering into Agreements with a Proponent, under which the Proponent would construct (at its cost) and operate as a lessee, a new restaurant located at Harbour Green Park (the “Premises”), as further described herein. Details of the City’s objectives and requirements to which the RFP relates are set out in Part B of the RFP, Annex 1 to the RFP, and information made available in the Information Meeting. The City welcomes Proposals respecting innovative or novel approaches to the City’s and City’s objectives and requirements.
- 1.3 The City is interested in selecting a single Proponent with the capability and experience to efficiently and cost-effectively meet the objectives and requirements described in the RFP. The City currently expects to select such a Proponent and then enter into negotiations with that Proponent, which will conclude in the execution of Agreements between the Proponent and the City. However, the City may: (i) decline to select any Proponent; (ii) decline to enter into any Agreements; (iii) select multiple Proponents for negotiation; or (iv) enter into one or more agreements respecting the subject matter of the RFP with one or more Proponents or other entities at any time. The City may also terminate the RFP at any time.
- 1.4 The City currently intends that Proposals will be evaluated by the City in relation to their overall value, which will be assessed in the City’s sole and absolute discretion. In assessing value, the City expects to consider the factors described in Section 9 below, among others.
- 1.5 **NO BID SECURITY IS REQUIRED FROM PROPONENTS IN CONNECTION WITH THE SUBMISSION OF PROPOSALS BECAUSE NO PROPOSAL WILL BE DEEMED TO BE AN IRREVOCABLE OR OTHERWISE BINDING LEGAL OFFER BY A PROPONENT TO THE CITY. THE LEGAL OBLIGATIONS OF A PROPONENT THAT WILL ARISE UPON THE SUBMISSION OF ITS PROPOSAL WILL BE LIMITED TO THE TERMS AND CONDITIONS STATED UNDER THE HEADING “LEGAL TERMS & CONDITIONS” IN APPENDIX C1 TO THE PROPOSAL FORM (PART C).**
- 1.6 The execution of any Agreement may be contingent on the relevant Proposal being approved, by Vancouver City Council and/or the Vancouver Board of Parks and Recreation. In addition, City background, reference and security checks must be completed satisfactorily prior to the City entering into any Agreement with a (successful) Proponent.
- 1.7 Certain capitalized terms used herein but not defined where first used are defined in Section 13 below.
- 1.8 The RFP consists of five parts:
- (a) **PART A - INFORMATION AND INSTRUCTIONS:** This part is intended to serve as a guide to the RFP process for Proponents.
 - (b) **PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN EACH PROPOSAL:** This part describes the subject matter of the RFP, in respect of which the City invites

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS**

Proposals. This part also stipulates the information that should be contained in each Proposal.

- (c) **PART C - PROPOSAL FORM:** This part consists of the Proposal Form to be completed by each Proponent in connection with its Proposal. Each Proposal must be submitted under the cover of a duly completed and executed Proposal Form.
- (d) **PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT:** This part contains a model construction license agreement. A construction license agreement in this form may be entered into between the City and a successful Proponent.
- (e) **PART E - FORM OF LEASE AGREEMENT:** This part contains a model lease agreement. A lease agreement in this form may be entered into between the City and a successful Proponent.

2.0 HARBOUR GREEN PARK AND THE NEW RESTAURANT

2.1 Harbour Green Park

Harbour Green Park is one of Vancouver's newest parks, and is situated in Coal Harbour. It is 10 acres which is three city blocks in width. The park was developed using funds provided by Marathon Developments Inc. as a requirement for the development of the adjacent lands. The park has a major water feature (fountains and a children's water park) and is bordered by a seawall linking Stanley Park to the Trade and Convention Centre and Cruise Ship Terminal. On the water side of the park there is 350 feet of public dock space with two ramps.

2.2 The New Restaurant

The proposed new restaurant has been designed by Acton Ostry Architects Inc. and is to be constructed by the successful Proponent within Harbour Green Park.

Development Permit **DE412233** (the "Development Permit") for the restaurant has been obtained:

<http://former.vancouver.ca/commsvcs/planning/dpboard/2008/PDF/1101%20West%20Waterfront%20Road%20-%20DE412233.pdf>

and drawings (HGR-08.11.27-A3.01 - Elevations; and HGR-A4.02a - Aerial View) will be made available to Proponents attending the Information Meeting.

Approximate floor sizes are as follows:

Level	Square Footage	Seats	
		Indoor	Outdoor
1	3,000	70	36
2	3,000	100	32
3	400	0	60
TOTAL	6,400	170	128

There will be six (6) dedicated parking spaces in the existing City parkade.

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS**

2.3 Architectural Design

Proponents should take note that the unique location and geometry of the site, in conjunction with the integration at Harbour Green Park, public open space, and specificity of City of Vancouver Planning requirements, necessitated the generation of a highly specific and distinctive design to achieve Development Permit approval for the project.

By means of the required conditions stated in the Development Permit, the City's Planning Department intends to ensure that subsequent development of the approved design meets the intent conveyed by Acton Ostry Architects Inc.

Modifications to the original design and any amendment to the Development Permit (if required) will be at the Proponent's sole cost and risk. Changes to the interior design, however, are acceptable, subject to the terms and conditions set out in the License and the Lease.

2.4 Options regarding the Development Permit

Proponents have the following options regarding the Development Permit:

Option 1: proceed with the current approved Development Permit with the current design, resulting in minimal delay to commencement of construction;

Option 2: modify the current design within specified parameters (while maintaining the current footprint or smaller footprint), requiring City of Vancouver Planning Department approval for a minor variance, which may result in a delay to commencement of construction, depending on the extent of the required modifications; or

Option 3: make a new development permit application to City of Vancouver Planning Department for a completely new design, which will require a full evaluation and approval process, which may result in a longer delay to commencement of construction, compared to Options 1 or 2.

2.5 Good Neighbour Agreement

The City and the successful Proponent will enter into a Good Neighbour Agreement that will address potential areas of concern relating to the nearby residential community. Proponents should identify the following issues and ways to mitigate any possible disruption to the community in their Operations and Management Plan:

- 1.1 prospective hours of operation;
- 1.2 delivery schedule;
- 1.3 external noise (outdoor seating and customers exiting restaurant);
- 1.4 maintenance of building and grounds; and
- 1.5 other criteria suggested by the Proponent.

3.0 KEY DATES

3.1 Potential Proponents should note the following key dates:

Event	Time and Date
Deadline for submission of Information	3:00 PM [PST] May 8, 2015

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS

Meeting registration form (Appendix A1 to this Part A)	
Information Meeting Address: Coal Harbour Community Centre, 480 Broughton Street, Vancouver V6G 3H4	1:00 PM - 3:00 PM [PST] May 12, 2015
Deadline for Enquiries	3:00 PM [PST] June 16, 2015
Closing Time	3:00 PM [PST] June 23, 2015

3.2 All references to time in the RFP are references to the time in the City of Vancouver, as shown on the clock used by the City for the purposes of requests for proposals.

4.0 CONTACT PERSON

4.1 All enquiries regarding the RFP must be addressed to:

Diana Chan, Contracting Specialist
diana.chan@vancouver.ca

4.2 All enquiries must be made in writing. In-person or telephone enquiries are not permitted.

4.3 **IF A POTENTIAL PROPONENT BELIEVES THAT THE CITY MAY BE UNABLE TO SELECT IT DUE TO A CONFLICT OF INTEREST, BUT IS UNCERTAIN ABOUT THIS, THE POTENTIAL PROPONENT IS URGED TO CONTACT THE ABOVE-MENTIONED INDIVIDUAL AS SOON AS POSSIBLE WITH THE RELEVANT INFORMATION SO THAT THE CITY MAY ADVISE THE POTENTIAL PROPONENT REGARDING THE MATTER. SEE SECTION 12.2(l), (m) and (n) BELOW FOR AN INDICATION OF THE TYPES OF CONFLICTS OF INTEREST THAT OFTEN ARISE.**

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS

5.0 CONTRACT REQUIREMENTS - CONSTRUCTION LICENSE AND LEASE

- 5.1 Any successful Proponent will be requested to enter into a construction license agreement (the "License") with the City substantially in accordance with the form of construction license agreement in Part D of this RFP. As described in the form of construction license agreement, the successful Proponent will construct the Premises at its sole cost and risk and will be responsible for obtaining a building permit for such construction and carrying out any conditions required prior to the issuance thereof and any conditions that apply during construction. The License is required to be entered into prior to the commencement of construction of the Premises by the successful Proponent and allows the successful Proponent to access the Site and construct the Premises thereon in accordance with the terms and conditions of the License. If a Proponent wishes to propose modifications to the form of construction license agreement, the Proponent should so indicate in its Proposal and include its proposed contract language.
- 5.2 Upon completion of the construction of the Premises and the acceptance of the Premises by the City, as further set out in the construction license, the successful Proponent is expected to enter into a lease agreement for the Premises (the "Lease") with the City substantially in accordance with the form of lease agreement in Part E of this RFP. The City will at all times own the site and the Premises, provided that all trade fixtures and furnishings installed in the Premises by the successful Proponent may be removed in accordance with the Lease. If a Proponent wishes to propose modifications to the form of lease agreement, the Proponent should so indicate in its Proposal and include its proposed contract language.
- 5.3 The initial term of the Lease is currently expected to be for ten (10) years, with one (1) option to renew for a further term of ten (10) years, for an expected total possible lease term of twenty (20) years. If a Proponent wishes the City to consider a different term, the Proponent must so indicate in its Proposal.
- 5.4 Each Proponent should particularly review the following requirements set out in the form of construction license and lease agreements attached as Parts D and E and satisfy itself that they can comply with the terms and conditions in those Agreements (or else specify in its Proposal that it cannot comply with one or more of them):
- (a) Security deposit requirements (Section 1.12 of the form of lease agreement);
 - (b) Security agreement requirements (Section 11.08 of the form of lease agreement);
 - (c) Insurance requirements (Section 13 of the form of construction license and Article 6 of the form of lease agreement);
 - (d) Bonding requirements (Section 11 of the form of construction license); and
 - (e) Indemnification requirements (Section 18 of the form of construction license and section 4.03 of the form of lease agreement).

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS**

5.5 The execution of any Agreement will be subject to the successful Proponent having a valid City of Vancouver business license.

6.0 FINANCIAL PROPOSALS / RENT

6.1 The structure for the payment of rent in the Lease is intended to be comprised of:

- (a) a fixed annual basic rent ("**Basic Rent**") payable annually or monthly as specifically defined in Section 1.03 of the Form of Lease Agreement;
- (b) a set percentage of gross revenues from food and beverage sales after taxes ("**Gross Revenues**", as more particularly defined in the Lease) ("**Percentage Rent**") payable monthly; and
- (c) a payment in lieu of property taxes as if levied, to be set by the City,

all as further described in Part B of this RFP and in Section 1.03 of the form of lease agreement attached as Part E.

¹In evaluating the overall value of Proposals, the City will consider a Basic Rent of no less than \$150,000.

6.2 Each Proponent is to set out in its Proposal its proposed Basic Rent and its proposed Percentage Rent for each year of the term of the Lease.

6.3 When considering rent, Proponents should take into account the possible costs of site improvements and all costs related to the construction of the Premises and site improvements, all of which will be borne by a successful Proponent. See Part B for more information.

6.4 Payments must be in Canadian currency.

7.0 SUBMISSION OF PROPOSALS

7.1 Proponents should submit their Proposals in writing on or before the time and date specified in the bottom row of the table in Section 3.1 above (the "**Closing Time**").

7.2 Each Proponent should submit its Proposal in an envelope clearly marked with the Proponent's name and the RFP title and number ("Operator for Harbour Green Restaurant; PS20150448") to the following address:

City of Vancouver
Supply Chain Management Department
Vancouver City Hall
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Notwithstanding the foregoing, envelopes submitted by courier or otherwise in-person should be delivered to:

Information Desk, Main Floor Rotunda,
Vancouver City Hall
453 West 12th Avenue
Vancouver, British Columbia
Canada, V5Y 1V4

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS**

- 7.3 To be considered by the City, a Proposal must be submitted under the cover of a Proposal Form, completed and duly executed by the relevant Proponent, including Appendix C1 thereto.
- 7.4 Amendments to a Proposal may be submitted via the same methods, at any time prior to the Closing Time.
- 7.5 Proposals must not be submitted by fax or email.
- 7.6 The City requests that one hard copy and one electronic copy (on a flash drive or memory stick) of each Proposal (or amendment) be submitted. The electronic copy should be in one file (not multiple files), and in the same order as the hard copy.
- 7.7 Proposals should be bound in three-ring binders.
- 7.8 Proposals are revocable and may be withdrawn at any time before or after the Closing Time.
- 7.9 All costs associated with the preparation and submission of a Proposal, including any costs incurred by a Proponent after the Closing Time, will be borne solely by the Proponent.
- 7.10 Unnecessarily elaborate Proposals are discouraged. Proposals should generally be limited to the items specified in Part B of the RFP.
- 7.11 The City is willing to consider any Proposal from two or more Proponents that wish to form a consortium solely for the purpose of submitting a joint Proposal in response to the RFP, provided that they disclose the names of all members of the consortium and all members complete and execute a Proposal Form (Part C). Nonetheless, the City has a strong preference for Proposals submitted by a single Proponent.
- 7.12 Proposals that are submitted after the Closing Time or that otherwise do not comply in full with the terms hereof may or may not be considered by the City and may or may not be returned to the Proponent, in the City's sole discretion.
- 8.0 CHANGES TO THE RFP AND FURTHER INFORMATION**
- 8.1 The City may amend the RFP or make additions to it at any time.
- 8.2 It is the sole responsibility of Proponents to check the City's website at: <http://vancouver.ca/doing-business/open-bids.aspx> regularly for amendments, addenda, and questions and answers in relation to the RFP.
- 8.3 Proponents must not rely on any information purported to be given on behalf of the City that contradicts the RFP, as amended or supplemented in accordance with the foregoing Section 8.2.
- 8.4 An information meeting (the "**Information Meeting**") will be held to enable Proponents to seek clarification with respect to any aspect of the RFP in a group forum. The details are as follows:
- Date: as specified in Section 3.1 above.
- Time: as specified in Section 3.1 above.
- Location: Coal Harbour Community Centre (480 Broughton Street, Vancouver V6G 3H4).
- A site visit to the Harbour Green Park (1199 West Cordova Street (at Bute Street)) will follow after the Information Meeting.

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS

NOTE: It is strongly advised that Proponents attend the Proponents' Information Meeting, as additional plans and a model of the building will be displayed.

- 8.5 Potential Proponents are encouraged to read the RFP and submit any questions relating to the RFP to the Contact Person prior to the Information Meeting.
- 8.6 Potential Proponents interested in attending the Information Meeting should pre-register for the Information Meeting by completing and submitting the form contained in Appendix A1 to this Part A, by e-mail to the Contact Person, on or before the time and date specified in Section 3.1 above.
- 8.7 The City will in good faith attempt to give accurate oral responses to questions posed during the Information Meeting but Proponents are advised that they may only rely on the written information contained herein or in documents posted to the City's website, as described in Section 8.2 above.

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS

9.0 EVALUATION OF PROPOSALS

- 9.1 The City may open or decline to open Proposals in such manner and at such times and places as are determined by the City.
- 9.2 The City currently intends that all Proposals submitted to it in accordance with the RFP will be evaluated by City representatives, using quantitative and qualitative tools and assessments, as appropriate, to determine which Proposal or Proposals offer the overall best value to the City. In so doing, the City expects to examine not only financial terms, but also (i) Proponents' skills, knowledge, reputations and previous experience(s), including experience(s) with the City (if any); (ii) Proponents' capabilities to meet the City's Requirements (as defined in Part B) as and when needed, (iii) quality and service factors, (iv) innovation, (v) environmental or social sustainability impacts; (vi) transition costs or challenges; and (vii) proposed uses of sustainable sources of ingredients/supplies. Certain other factors may be mentioned in Part B or elsewhere in the RFP.
- 9.3 The City will retain complete control over the RFP process at all times until the execution and delivery of an Agreement or Agreements, if any. The City is not legally obligated to review, consider or evaluate Proposals, or any particular Proposal, and need not necessarily review, consider or evaluate Proposals, or any particular Proposal in accordance with the procedures set out in the RFP. The City may continue, interrupt, cease or modify its review, evaluation and negotiation process in respect of any or all Proposals at any time without further explanation or notification to any Proponents.
- 9.4 The City may, at any time prior to signing any Agreement, discuss or negotiate changes to the scope of the RFP with any one or more of the Proponents without having any duty or obligation to advise the other Proponents or to allow the other Proponents to vary their Proposals as a result of such discussions or negotiations.
- 9.5 The City may elect to short-list Proponents and evaluate Proposals in stages. Short-listed Proponents may be asked to provide additional information or details for clarification, including by attending interviews, making presentations, supplying samples, performing demonstrations, furnishing technical data or proposing amendments to a form of agreement. The City will be at liberty to negotiate in parallel with one or more short-listed Proponents, or in sequence, or in any combination, and may at any time terminate any or all negotiations.
- 9.6 Prior to approval of a Proposal, the City must be satisfied as to the Proponent's financial stability. Proponents may be asked to provide financial statements prepared by an accountant and covering at least the prior two years.
- 9.7 The City may request that any proposed subcontractors undergo evaluation by the City.
- 9.8 The City is not under any obligation to approve any Proposal and may elect to terminate the RFP at any time.
- 9.9 For the avoidance of doubt, notwithstanding any other provision in the RFP, the City has in its sole discretion, the unfettered right to:
- (a) accept any Proposal;
 - (b) reject any Proposal;
 - (c) reject all Proposals;
 - (d) accept a Proposal which is not the highest-rent proposal;

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS**

- (e) accept a Proposal that deviates from the Requirements or the conditions specified in the RFP;
- (f) reject a Proposal even if it is the only Proposal received by the City;
- (g) accept all or any part of a Proposal;
- (h) split the Requirements between one or more Proponents; and
- (i) enter into one or more agreements respecting the subject matter of the RFP with any entity or entities at any time.

Without limiting the foregoing, the City may reject any Proposal by a Proponent that has a conflict of interest, has engaged in collusion with another Proponent or has otherwise attempted to influence the outcome of the RFP other than through the submission of its Proposal.

10.0 SUSTAINABILITY

- 10.1 The City's Procurement Policy, Ethical Purchasing Policy and related Supplier Code of Conduct found at <http://vancouver.ca/doing-business/selling-to-and-buying-from-the-city.aspx> align the City's approach to procurement with its corporate social, environmental and economic sustainability values and goals. They evidence the City's commitment to maximize benefits to the environment through product and service selection, and to ensure safe and healthy workplaces, where human and civil rights are respected. Each Proponent is expected to adhere to the supplier performance standards set forth in the Supplier Code of Conduct. The Ethical Purchasing Policy shall be referred to in the evaluation of Proposals, to the extent applicable.
- 10.2 Proponents are to provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Proponent supply materials, and where such materials may cause adverse environmental effects, the Proponent is to indicate the nature of the hazard(s) in its Proposal. Furthermore, the Proponent is to advise the City of any known alternatives or substitutes for such materials that would mitigate such adverse effects.

11.0 CERTAIN APPLICABLE LEGISLATION

- 11.1 Proponents should note that the City of Vancouver is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's consultants or contractors to protect all personal information acquired from the City in the course of providing any service to the City.
- 11.2 Proponents should note that the *Income Tax Act* (Canada) requires that certain payments to non-residents be subject to tax withholding. Proponents are responsible for informing themselves regarding the requirements of the *Income Tax Act* (Canada), including the requirements to qualify for any available exemptions from withholding.

12.0 LEGAL TERMS AND CONDITIONS

- 12.1 The legal obligations of a Proponent that will arise upon the submission of its Proposal are stated in Appendix C1 to the Proposal Form (Part C). Except where expressly stated in such Appendix C1: (i) no part of the RFP consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFP is legally binding on the City.
- 12.2 Potential Proponents should review Appendix C1 to the Proposal Form carefully before submitting a Proposal. Among other things, potential Proponents should note that:

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS

- (a) Except for limited duties in respect of the protection of confidential information and the resolution of legal disputes (as fully specified in Appendix C1 to the Proposal Form), the City does not have, and will not have, any legal obligations to a Proponent or to any proposed subcontractor of that Proponent in respect of the RFP or that Proponent's Proposal until such time as an Agreement is entered into with that Proponent.
- (b) The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP process, or any contract or tort law duty to preserve the integrity of the RFP process.
- (c) Except only and to the extent that the City is in breach of its duties with respect to a Proponent's confidential information, each Proponent is required to broadly release the City, its officials, its agents and its employees from liability for any losses incurred by the Proponent.
- (d) Except only and to the extent that the City is in breach of its duties with respect to a Proponent's confidential information, each Proponent is required to broadly indemnify and hold harmless the City, its officials, its agents and its employees from and against losses in respect of any claim or threatened claim against any of them.
- (e) Except with respect to the City's duties in respect of a Proponent's confidential information, even to the extent the city is found to have breached any duty to the Proponent, if any, the liability of the City, its officials, its agents and its employees to the Proponent will be limited to \$100.
- (f) With limited exceptions set forth in such Appendix C1 to the Proposal Form, any dispute between the City and a Proponent will be subject to arbitration.
- (g) All RFP-related documents provided to any Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.
- (h) The documentation containing any Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.
- (i) The City will treat any Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information, subject, however, to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), other applicable legal requirements, and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the Vancouver City Council or announcing the results of the RFP to Proponents.
- (j) Proponents must not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City, which have been or are in the future provided or communicated to a Proponent at any time (whether before, during or after the RFP process). Furthermore, each Proponent must agree to not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.
- (k) Each Proponent must waive any rights to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and must agree that under

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS**

no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions), including, without limitation, records relating only to the Proponent.

- (l) Each Proponent must disclose whether any officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest is:
- i. an elected official or employee of the City; or
 - ii. related to or has any business or family relationship with an elected official or employee of the City,

in each case such that there could be any conflict of interest or an appearance of a conflict of interest in the evaluation or consideration of the Proponent's Proposal by the City. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.

- (m) Each Proponent must disclose whether any person having an interest (as defined above) is a former official, former employee or former contractor of the City who has non-public information relevant to the RFP obtained during his or her employment or engagement by the City. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.
- (n) Each Proponent must disclose whether the Proponent or any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or services to a third party such that entering into an agreement with the City in relation to the subject matter of the RFP would create a conflict of interest or the appearance of a conflict of interest between the Proponent's duties to the City and the Proponent's or its subcontractors' duties to such third party. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.
- (o) Each Proponent is required to disclose whether the Proponent is competing for purposes of the RFP with any entity with which it is legally or financially associated or affiliated. Each Proponent must also disclose whether it is cooperating in any manner in relation to the RFP with any other Proponent responding to the RFP. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.
- (p) Each Proponent is required to disclose whether it or any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors: (1) is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; or (2) has engaged in any form of political or other lobbying whatsoever with respect to the RFP or sought, other than through the submission of its Proposal, to influence the outcome of the RFP process. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS

- (q) A Proponent must not disclose or promote any relationship between it and the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures, web sites or other written materials (whether in print, digital, electronic or other format) without the express prior written consent of the City. Each Proponent must undertake not to use the name, official emblem, mark, or logo of the City without the express prior written consent of the City.
- (r) Any Proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP, or which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion. The City may also invite a Proponent to adjust its Proposal to remedy any such problem, without providing the other Proponents an opportunity to amend their Proposals.

13.0 DEFINITIONS

13.1 In the RFP, the following capitalized terms have the following meanings:

- (a) **"Agreement"** means each contract entered into between the City and a successful Proponent, if any, following the conclusion of the RFP process; provided that two such contracts are expected to be entered into: (1) a License substantially in accordance with the form of construction license agreement in Part D of this RFP; and (2) a Lease substantially in accordance with the form of lease agreement in Part E of this RFP;
- (b) **"City"** means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter, as represented by the Vancouver Board of Parks and Recreation;
- (c) **"Forms of Agreement"** means the forms of agreement contained in Part D and Part E of this RFP;
- (d) **"Proponent"** means an entity, which is not, by the terms hereof, restricted from submitting a Proposal, and which does submit a Proposal;
- (e) **"Proposal"** means a proposal submitted in response to the RFP; and
- (f) **"Proposal Form"** means the form contained in Part C of the RFP.

13.2 All other capitalized terms used in the RFP have the meanings given to them elsewhere in the RFP.

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART A - INFORMATION AND INSTRUCTIONS (APPENDIX C1)

APPENDIX A1 TO PART A



FINANCIAL SERVICES GROUP
Supply Chain Management

Re. Request for Proposals No. PS20150448, Operator for Harbour Green Restaurant

It is highly recommended that interested Proponents attend the Information Meeting.

To acknowledge your intent to attend the May 12, 2015 Information Meeting at Coal Harbour Community Centre (480 Broughton Street, Vancouver V6G 3H4) and to ensure that you receive the required information, **please submit this form, and any questions you wish to be addressed during the Information Meeting, to the Contact Person on or before May 8, 2015:**

Diana Chan, Contracting Specialist
City of Vancouver
Email: diana.chan@vancouver.ca

Proponent's Name: _____

Address: _____

Key Contact Person: _____

Telephone: _____ Fax: _____

E-mail: _____ Incorporation Date: _____

Our company WILL / WILL NOT attend the information meeting for Request for Proposals No. PS20150448, Operator for Harbour Green Restaurant.

Signature

Name of Authorized Signatory

E-mail Address

Date

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS

1.0 CITY REQUIREMENTS

1.1 The City has the following objectives and requirements (together, the "Requirements"):

- (a) The Proponent must be an experienced and competent food service operator with the experience and capability to construct and operate a first-class restaurant in Harbour Green Park (the "Premises");
- (b) The following are pre-conditions of Proponents intending to submit a Proposal:
 - (i) The Proponent must have demonstrated experience in operating a first-class restaurant such as that described by this RFP;
 - (ii) The Proponent must be willing to construct the Premises at the Proponent's own risk and cost, and enter into a license agreement (the "License"), substantially in the form found in Part D - Form of Construction License Agreement, for the construction of the Premises; and
 - (iii) The Proponent must be willing to enter into a lease for the Premises (the "Lease"), substantially in the form found in Part E - Form of Lease Agreement, upon completion of the Premises.
- (c) Any successful Proponent is expected to comply with:
 - (i) Part A Section 2.3 Architectural Design;
 - (ii) Part A Section 2.4 Options regarding the Development Permit; and
 - (iii) Part A Section 2.5 Good Neighbour Agreement.
- (d) Further information regarding the Requirements, including the Work Scope, is contained in Annex 1 to the RFP, and in information made available to Proponents attending the Information Meeting.

1.2 The Requirements stated herein are current as of the date hereof, but they may change or be refined in the course of the evaluation of Proposals or otherwise.

2.0 ITEMS TO BE ADDRESSED IN EACH PROPOSAL

2.1 Each Proposal should have: (i) a title page that clearly indicates the name of the Proponent and the general nature of the Proposal; (ii) a detailed table of contents; and (iii) an executive summary no more than one page long.

2.2 Each Proposal should contain a section titled "Management Proposal," which should address the Requirements. This section of the Proposal should include the following:

- (a) Proponent Overview (refer to section 2.4, below);
- (b) Key Personnel (refer to section 2.5, below);
- (c) References (refer to section 2.7, below);
- (d) Subcontractors (refer to section 2.8, below);

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS

- (e) Work Plan (refer to section 2.10, below);
- (f) Sustainability (refer to section 2.11, below);
- (g) Deviations & Variations (refer to section 2.12, below);
- (h) Conflicts; Collusion; Lobbying (refer to section 2.13, below);
- (i) Annex 2 - Certificate of Existing Insurance (refer to section 2.14, below);
- (j) Letter from Insurance Broker (refer to section 2.14, below);
- (k) WorkSafe BC clearance letter (refer to section 2.15, below);
- (l) Proposal Form (refer to section 2.16, below);
- (m) Appendix C1 to Proposal Form (refer to section 2.16, below);
- (n) Ability to provide a cash security deposit or demand letter of credit in the amount of \$50,000 (refer to section 2.17, below); and
- (o) Detailed responses to: Annex 1 - Schedule of Detailed Requirements.

2.3 Each Proposal should contain a section titled "Commercial Proposal," which should contain full details of the Proponent's proposed financial proposal / rent, which should be in accordance with Part A, Section 6 of the RFP:

- (a) a proposed amount of fixed annual Basic Rent payable annually or monthly as specifically defined in Section 1.03 of the Form of Lease Agreement;
- (b) a proposed set Percentage Rent, payable monthly;
- (c) at least three (3) years' audited financial statements (note: If the Proponent is unable to provide audited financial statements, the Proponent must state a reason.);
- (d) a five (5) year financial forecast (proforma financial statements) for the restaurant; and
- (e) anticipated capital investment.

As noted in Part A, Section 6, in evaluating the overall value of Proposals, the City will consider a Basic Rent of no less than \$150,000. The City will set the amount of the payment in lieu of property taxes.

2.4 Each Proposal should contain a section titled "Proponent Overview," which should include:

- (a) Full corporate name, incorporation date and number;
- (b) location of head office, number and location of branches;
- (c) current directors and officers;
- (d) a description of the Proponent's company, purpose and history of successes;
- (e) number of years of operation;

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS

- (f) history of any closures of operation since the date of incorporation;
 - (g) a valid City of Vancouver business license (or, if available, a Metro West Inter-municipal Business License);
 - (h) customer base - Canadian and worldwide;
 - (i) relevant experience in providing first-class food service operations; and
 - (j) relevant experience overseeing restaurant development and/or construction projects, including information on any relationships or partnerships with contractors that would assist in the construction of the restaurant.
- 2.5 Each Proposal should contain a section titled "Key Personnel," which should identify and provide professional biographical information for the key personnel that would perform the Proponent's work, outlining their intended roles in meeting the Requirements. If appropriate, also include a complete organization chart, identifying all roles and areas of responsibility.
- 2.6 Preference may be given to Proponents and proposed personnel that demonstrate knowledge and experience involving the construction and operation of a first-class restaurant. Each Proponent should make clear in its Proposal its relevant knowledge and experience, and that of its proposed personnel.
- 2.7 Each Proposal should contain a section titled "References," which should provide names and contact information for approximately three parties, including previous landlords, for whom the Proponent has entered into contractual arrangements similar to that proposed in this RFP.
- 2.8 Each Proposal should contain a section titled "Subcontractors," which should list all of the subcontractors that the Proponent proposes to use in carrying out its work under an Agreement, or state that the Proponent does not propose to use any subcontractors. If selected to enter into an Agreement with the City, the Proponent may be limited to using subcontractors listed in its Proposal.
- 2.9 If the City objects to a subcontractor listed in a Proposal, the City may permit a Proponent to propose a substitute Subcontractor acceptable to the City.
- 2.10 Each Proposal should contain a section titled "Work Plan," which should detail the sequential process by which the Proponent proposes to undertake the work, and which should include a timeline as necessary. The Proponent's work plan should make reference to the Requirements as appropriate. This section of the Proposal may be completed by cross-referencing the "Management Proposal" section where appropriate.
- 2.11 The City is committed to environmental and socio-economic sustainability. Therefore, each Proposal should contain a section titled "Sustainability," wherein the Proponent should describe the environmental and social aspects of its Proposal, inclusive of the following:
- (a) acknowledgement that the new building must meet:
 - (i) LEED™ Gold Certification standards as required by **Development Permit DE412233**
<http://former.vancouver.ca/commsvcs/planning/dpboard/2008/PDF/1101%20West%20Waterfront%20Road%20-%20DE412233.pdf>;

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS

- (ii) 30% lower energy consumption than the current Vancouver Building Bylaw (ASHRAE 90.1 2010 or NECB 2011);
 - (b) a description of what waste management plan will be implemented during the operation of the restaurant to minimize waste generated and divert as much waste as possible from the landfill or incinerator through initiatives such as separating of waste streams, composting, and cooking oil recovery;
 - (c) a description of how the Operator would maximize the use of Sustainable Food ingredients and beverages in operating the restaurant (where Sustainable Food is defined in Appendix B1). As a Fair Trade Town, the City also wishes to encourage the Operator to serve Fair Trade Certified tea, coffee and sugar;
 - (d) a description of how the Operator would propose to use one or more Social Enterprises and/or directly hire persons with barriers to employment in the construction and/or operation of the restaurant (refer to Appendix B1 for definitions of Social Enterprises and persons with barriers to employment);
 - (e) a duly completed Declaration of Supplier Code of Conduct Compliance in the form of Annex 3; and
 - (f) a Vendor Sustainability Leadership Questionnaire in the form of Annex 4.
- 2.12 Notwithstanding any other provision hereof, the City welcomes Proposals respecting innovative or novel approaches to the City's objectives and requirements and may consider value-creating Proposals that derogate from the Requirements. Each Proposal should contain a section titled "Deviations and Variations," in which the Proponent should: (i) note proposed deviations or variations from the terms and conditions set out in the RFP or from the Requirements, even if such deviations or variation are also noted elsewhere in the Proposal; and (ii) detail proposed amendments to the Form of Construction License Agreement and the Form of Lease Agreement. If no amendments to the Form of Construction License Agreement or the Form of Lease Agreement are proposed, the Proponent should state that its Proposal is fully consistent with the Form of Construction License Agreement and the Form of Lease Agreement.
- 2.13 Each Proponent should note Section 9 of Appendix C1 to Part C and should include in its Proposal a section entitled "Conflicts; Collusion; Lobbying" as necessary.
- 2.14 Each Proponent should submit with its Proposal a Certificate of Existing Insurance, in the form of Annex 2 to the RFP, duly completed and signed by its insurance agent or broker as evidence of its existing insurance, along with a letter from its insurance broker or agent indicating whether or not (and, if not, then to what extent) it will be able to comply with the insurance requirements set out in the Form of Construction License Agreement and in the Form of Lease Agreement, should the Proponent be selected as a successful Proponent. Any successful Proponent will also be required to provide proof of the satisfaction of all insurance requirements prior to or concurrently with the City entering into any Agreement.
- 2.15 Each Proponent should submit with its Proposal proof of valid WorkSafeBC registration, in the form of a current clearance letter from WorkSafeBC confirming coverage. Such registration should be maintained as specified in the Form of Construction License Agreement and in the Form of Lease Agreement.
- 2.16 Each Proposal must be submitted under the cover of a completed Proposal Form, including Appendix C1 thereto.

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS

- 2.17 Each Proponent must include with its Proposal either confirmation that it will be able to provide a cash security deposit in the amount of fifty thousand dollars (\$50,000) as required by Section 1.12 of the form of lease agreement in Part E or a letter from a Canadian Chartered Bank, confirming that the Proponent has sufficient credit-worthiness to obtain from a Canadian Chartered Bank, an irrevocable, perpetual, demand letter of credit in the amount of no less than fifty thousand dollars (\$50,000).

APPENDIX B1 - SUSTAINABILITY DEFINITIONS

Sustainable Food

Sustainable food is food and beverages that have one or both of the following two qualities:

- a. Reduced Carbon Footprint (e.g. minimizing the distance travelled from farm to table)
- b. Ecological, Humane, and Socially Responsible as demonstrated by the following certifications:
 - I. Organic (e.g. CFIA or USDA Certified Organic)
 - II. Non-GMO (e.g. Non-GMO Project Verified, Food Alliance Certified, Protected Harvest Certified)
 - III. Humane (e.g. BC SPCA Certified)
 - IV. Sustainably Harvested (e.g. Ocean Wise Certified, Sea Choice - Green Rated Products, Marine Stewardship Council's Blue Eco-Label)
 - V. Socially responsible (e.g. Fair Trade Certified, Fair for Life Certified, Rainforest Alliance Certified)

Social Enterprise

Social enterprises are businesses owned by nonprofit organizations that are directly involved in the production and/or selling of goods and services for the combined purpose of generating income and achieving social, cultural, and/or environmental aims (Social Enterprise Council of Canada). In addition to having the aforesaid purpose, to qualify as a Social Enterprise for purposes hereof, an entity must:

- be a business operated by a registered non-profit or community services co-op;
- have a product or service that it sells to customers;
- have a defined social and/or environmental mandate.

Person with Barriers to Employment

A person with barriers to employment is someone who faces one or more circumstances that can lead to underemployment. There are a wide range of circumstances that can create barriers to employment including but not limited to: addictions, disabilities, mental health issues, and being a newcomer or refugee. For purposes hereof, to qualify as a person with barriers to employment, the employee or trainee must be participating in a recognized, pre-approved employment program for person(s) with barriers to employment. Examples include, but are not limited to: Access/BladeRunners; Potluck Café's *Recipes for Success Services*; and Coast Foundation's *Transition Employment Program* (TEP).

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART C - PROPOSAL FORM

PROPOSAL FORM

RFP No. PS20150448, Operator for Harbour Green Restaurant (the "RFP")

Proponent's Name: _____
"Proponent"

Address: _____

Jurisdiction of Legal Organization: _____

Date of Legal Organization: _____

Key Contact Person: _____

Telephone: _____ Fax: _____

E-mail: _____

The Proponent, having carefully examined and read the RFP, including all amendments and addenda thereto, if any, and all other related information published on the City's website, hereby acknowledges that it has understood all of the foregoing, and in response thereto hereby submits the enclosed Proposal.

The Proponent further acknowledges that it has read and agreed to the Legal Terms & Conditions attached as Appendix C1 hereto and has separately executed such Appendix C1.

IN WITNESS WHEREOF the Proponent has executed this Proposal Form:

Signature of Authorized Signatory for the Proponent

Date

Name and Title

Signature of Authorized Signatory for the Proponent

Date

Name and Title

APPENDIX C1 TO PROPOSAL FORM

LEGAL TERMS AND CONDITIONS

1 APPLICATION OF THESE LEGAL TERMS AND CONDITIONS

These legal terms and conditions set out the City's and the Proponent's legal rights and obligations only with respect to the RFP proposal process and any evaluation, selection, negotiation or other related process. In no event will the legal terms and conditions of this Appendix C1 apply to, or have the effect of supplementing, any Contract formed between the City and the Proponent, or otherwise apply as between the Proponent and the City following the signing of any such Contract.

2 DEFINITIONS

In this Appendix C1, the following terms have the following meanings:

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent as a result of the RFP.
- (c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.
- (e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix C1), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.
- (f) "Proposal Form" means that certain Part C of the RFP, completed and executed by the Proponent, to which this Appendix C1 is appended.
- (g) "RFP" means the document issued by the City as Request for Proposals No. PS20150448, as amended from time to time and including all addenda.

3 NO LEGAL OBLIGATION ASSUMED BY THE CITY

Despite any other term of the RFP or the Proposal Form, including this Appendix C1 (except only Sections 7, 8.2 and 10 of this Appendix C1, in each case to the extent applicable), the City assumes no legal duty or obligation to the Proponent or to any proposed subcontractor in respect of the RFP, its subject matter or the Proposal unless and until the City enters into a Contract, which the City may decline to do in the City's sole discretion.

4 NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT

The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART C - PROPOSAL FORM (APPENDIX C1)**

process, or any contract or tort law duty to preserve the integrity of the RFP process. The Proponent hereby waives and releases the City from any and all such duties and expressly assumes the risk of all Losses arising from participating in the RFP process on this basis.

5 EVALUATION OF PROPOSALS

5.1 Compliance / Non-Compliance

Any proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP, or which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion. The City may also invite a proponent to adjust its proposal to remedy any such problem, without providing the other proponents an opportunity to amend their proposals.

5.2 Reservation of Complete Control over Process

The City reserves the right to retain complete control over the RFP and proposal processes at all times. Accordingly, the City is not legally obligated to review, consider or evaluate the proposals, or any particular proposal, and need not necessarily review, consider or evaluate the proposals, or any particular proposal, in accordance with the procedures set out in the RFP, and the City reserves the right to continue, interrupt, cease or modify its review, evaluation and negotiation processes in respect of any or all proposals at any time without further explanation or notification to any proponents.

5.3 Discussions/Negotiations

The City may, at any time prior to signing a Contract, discuss or negotiate changes to the scope of the RFP, any proposal or any proposed agreement with any one or more of the proponents without having any duty or obligation to advise the Proponent or to allow the Proponent to vary its Proposal as a result of such discussions or negotiations with other proponents or changes to the RFP or such proposals or proposed agreements, and, without limiting the general scope of Section 6 of this Appendix C1, the City will have no liability to the Proponent as a result of such discussions, negotiations or changes.

5.4 Acceptance or Rejection of Proposals

The City has in its sole discretion, the unfettered right to: accept any proposal; reject any proposal; reject all proposals; accept a proposal which is not the lowest-price proposal; accept a proposal that deviates from the requirements of the RFP or the conditions specified in the RFP; reject a proposal even if it is the only proposal received by the City; accept all or any part of a proposal; enter into agreements respecting the subject matter of the RFP with one or more proponents; or enter into one or more agreements respecting the subject matter of the RFP with any other person at any time.

6 PROTECTION OF CITY AGAINST LAWSUITS

6.1 Release by the Proponent

Except only and to the extent that the City is in breach of Section 8.2 of this Appendix C1, the Proponent now releases the City, its officials, its agents and its employees from all liability for any Losses incurred in connection with the RFP or the Proposal, including any Losses in connection with:

- (a) any alleged (or judicially determined) breach by the City or its officials, agents or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART C - PROPOSAL FORM (APPENDIX C1)**

- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process;
- (c) the Proponent preparing and submitting the Proposal;
- (d) the City accepting or rejecting the Proposal or any other submission; or
- (e) the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

6.2 Indemnity by the Proponent

Except only and to the extent that the City breaches Section 8.2 of this Appendix C1, the Proponent indemnifies and will protect, save and hold harmless the City, its officials, its agents and its employees from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its proposed subcontractors or agents alleging or pleading:

- (a) any alleged (or judicially determined) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process, or
- (c) liability on any other basis related to the RFP or the proposal process.

6.3 Limitation of City Liability

In the event that, with respect to anything relating to the RFP or this proposal process (except only and to the extent that the City breaches Section 8.2 of this Appendix C1), the City or its officials, agents or employees are found to have breached (including fundamentally breached) any duty or obligation of any kind to the Proponent or its subcontractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Proponent or its subcontractors or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of \$100, despite any other term or agreement to the contrary.

7 DISPUTE RESOLUTION

Any dispute relating in any manner to the RFP or the proposal process (except to the extent that the City breaches this Section 7 or Section 8.2 of this Appendix C1, and also excepting any disputes arising between the City and the Proponent under a Contract (or a similar contract between the City and a proponent other than the Proponent)) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

- (a) The arbitrator will be selected by the City's Director of Legal Services;
- (b) Section 6 of this Appendix C1 will: (i) bind the City, the Proponent and the arbitrator; and (ii) survive any and all awards made by the arbitrator; and
- (c) The Proponent will bear all costs of the arbitration.

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART C - PROPOSAL FORM (APPENDIX C1)

8 PROTECTION AND OWNERSHIP OF INFORMATION

8.1 RFP and Proposal Documents City's Property

- (a) All RFP-related documents provided to the Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.
- (b) The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.

8.2 Proponent's Submission Confidential

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), other applicable legal requirements, and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the Vancouver City Council on the proposal results or announcing the results of the RFP, the City will treat the Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information.

8.3 All City Information Confidential

- (a) The Proponent will not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City which have been or are in the future provided or communicated to the Proponent at any time (whether before, during or after the RFP process). Furthermore, the Proponent agrees that it has not and must not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.
- (b) The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

9 NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING

9.1 Declaration as to no Conflict of Interest in RFP Process

- (a) The Proponent confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:
 - i. an official or employee of the City; or
 - ii. related to or has any business or family relationship with an elected official or employee of the City,

in each case, such that there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Proposal by the City, and, in each case, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART C - PROPOSAL FORM (APPENDIX C1)**

- (b) The Proponent confirms and warrants that there is no person having an interest (as defined above) who is a former official, former employee or former contractor of the City and who has non-public information relevant to the RFP obtained during his or her employment or engagement by the City, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply

The Proponent confirms and warrants that neither the Proponent nor any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or services to a third party such that entering into an agreement with the City in relation to the subject matter of the RFP would create a conflict of interest or the appearance of a conflict of interest between the Proponent's duties to the City and the Proponent's or its subcontractors' duties to such third party, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

9.3 Declaration as to No Collusion

The Proponent confirms and warrants that:

- (a) the Proponent is not competing within the RFP process with any entity with which it is legally or financially associated or affiliated, and
- (b) the Proponent is not cooperating in any manner in relation to the RFP with any other proponent responding to the RFP,

in each case, except as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal.

9.4 Declaration as to Lobbying

The Proponent confirms and warrants that:

- (a) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; and
- (b) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors has engaged in any form of political or other lobbying whatsoever with respect to the RFP or sought, other than through the submission of the Proposal, to influence the outcome of the RFP process,

in each case as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal.

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART C - PROPOSAL FORM (APPENDIX C1)**

10 NO PROMOTION OF RELATIONSHIP

The Proponent must not disclose or promote any relationship between it and the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures, web sites or other written materials (whether in print, digital, electronic or other format) without the express prior written consent of the City. The Proponent undertakes not to use the name, official emblem, mark, or logo of the City, including without limitation, "City of Vancouver", "Vancouver Police Board", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", or any other reference to any of the foregoing, without the express prior written consent of the City.

11 GENERAL

- (a) All of the terms of this Appendix C1 to this Proposal Form which by their nature require performance or fulfillment following the conclusion of the proposal process will survive the conclusion of such process and will remain legally enforceable by and against the Proponent and the City.
- (b) The legal invalidity or unenforceability of any provision of this Appendix C1 will not affect the validity or enforceability of any other provision of this Appendix C1, which will remain in full force and effect.
- (c) The Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the RFP process.
- (d) The Proponent consents to the City contacting any references named by the Proponent in the Proposal.

12 INDEPENDENT LEGAL ADVICE

THE PROPONENT ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE BEFORE SUBMITTING ITS PROPOSAL FORM, INCLUDING THIS APPENDIX C1.

IN WITNESS WHEREOF, AS EVIDENCE OF THE PROPONENT'S INTENT TO BE LEGALLY BOUND HEREBY, THIS APPENDIX C1 IS EXECUTED ON BEHALF OF THE PROPONENT BY ITS DULY AUTHORIZED SIGNATORY OR SIGNATORIES:

Signature of Authorized Signatory for the Proponent

Date

Name and Title

Signature of Authorized Signatory for the Proponent

Date

Name and Title

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

CONSTRUCTION LICENSE

THIS AGREEMENT is made effective as of _____, 20____ (the "Effective Date"),

BETWEEN:

CITY OF VANCOUVER
as represented by its
BOARD OF PARKS AND RECREATION
2099 Beach Avenue
Vancouver, BC V6G 1Z4

(the "Licensor")

AND: [INSERT NAME AND ADDRESS OF LICENSEE]

(the "Licensee")

BACKGROUND:

- A. The City is the owner of certain lands situate in the City of Vancouver, in the Province of British Columbia known as Harbour Green Park, which park includes the Land, and which park the Landlord has designated or intends to designate as a permanent public park to be under the exclusive jurisdiction and control of the Vancouver Board of Parks and Recreation (the "Park Board"), which currently manages the park.
- B. The Licensor issued the RFP for the construction of the Restaurant on the Site and, on completion of such construction to the satisfaction of the Park Board, for the operation of the Restaurant pursuant to a Lease for a term of ten (10) years, with one (1) option to renew for ten (10) years.
- C. The Licensee submitted a Proposal in response to the RFP and the City has accepted such Proposal subject to the modifications as agreed to by the City and the Licensee, which are as shown in the DP Drawings.
- D. The Licensor and the Licensee have agreed to enter into this Agreement in order to allow the Licensee to construct the Restaurant at the Site.

THE PARK BOARD AND THE LICENSEE NOW AGREE AS FOLLOWS:

1. Definitions

All capitalized terms in this license have the meaning ascribed to them in the RFP, except for the following:

- (a) "Acceptance" means written notice by the Parks General Manager pursuant to this Agreement that the Project has been completed in accordance with the Development Permit, Building Permit and the Approved Plans and Specifications except for the Deficiencies and that the Park Board accepts the Project;

**REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT**

- (b) "Approved Plans and Specifications" means the design and working drawings, plans and specifications for the Project prepared by the Licensee at its cost and approved by the Parks General Manager pursuant to Section 7(c), including any subsequent revisions proposed by the Licensee and the Consultant and approved by the Parks General Manager;
- (c) "Building Permit" means any building permit issued by the City for the Project;
- (d) "Certificate" means any certificate of inspection for the Project in form and content acceptable to the Parks General Manager and prepared, signed, sealed and issued by the Consultant, certifying that, based on the Consultant's periodic supervision, the Project has been constructed and completed in accordance with the Approved Plans and Specifications save and except for the listed Deficiencies;
- (e) "City" means the City of Vancouver;
- (f) "City Engineer" means the chief administrator from time to time of the City's Engineering Department and his successors in function and their respective nominees;
- (g) "Consultant" means the architect or professional engineer in good standing in the Province of British Columbia retained by the Licensee to ensure that the Project is completed in accordance with the Approved Plans and Specifications;
- (h) "Contaminants" means any deleterious, dangerous, hazardous, corrosive or toxic substances, pollutants, goods or waste the manufacture, storage, handling, treatment, generation, use or transport or release, disposal or discharge into the environment, of which any environmental laws control, regulate, license or prohibit or which are or may be deleterious, dangerous or hazardous to human, animal or plant health or life or the environment;
- (i) "Development Permit" means DE412233, issued by the City;
- (j) "Deficiencies" means with respect to the Project the conclusive list of defects and deficiencies from the Approved Plans and Specifications identified by the Consultant on the list attached to the Certificate for the Project as such list is amended by the Parks General Manager pursuant to Section 12(b);
- (k) "DP Drawings" means the drawings approved by the City of Vancouver for the issuance of development permit number DE412233;
- (l) "Effective Date" has the meaning set out above;
- (m) "Good Neighbour Agreement" means an agreement between the Licensee and the Licensor, that addresses specific issues that could impact the local residential community;
- (n) "Land" means land in the City of Vancouver municipally known as Harbour Green Park and legally described as:

Parcel Identifier: 023-686-952
Lot 21, Except Part in Plan BCP1695,

**REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT**

of the Public Harbour Burrard Inlet Plan LMP29892

as shown on the plan attached as Schedule A;

- (o) "Lease" means the lease from the City, as represented by the Park Board, to the Licensee for the Restaurant in the form attached as Schedule C, completed by the City of Vancouver's Director of Legal Services prior to execution by the parties;
- (p) "Losses" means, in respect of any matter, all
 - (i) direct and indirect, as well as
 - (ii) consequential,losses, damages, liabilities, deficiencies, costs and expenses (including without limitation, all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement, whether from a third person or otherwise);
- (q) "Material Change in the Restaurant" means a change or variation in the Approved Plans and Specifications with respect to the Restaurant which if implemented:
 - (i) would have the effect of materially adversely affecting the spatial relationship between the Restaurant and the remainder of Harbour Green Park or the surrounding neighbourhood;
 - (ii) would, in the sole opinion of the Park Board, impact the Good Neighbour Agreement;
 - (iv) would result in the issuance of a change order in the normal course of a construction management project undertaken in accordance with Standard Construction Document CCA 17 - 1996;
 - (v) would result in a change to the structural (including without limitation the roof), mechanical, plumbing, heating or electrical systems of the Restaurant, the elevator servicing the Restaurant, the exterior finishing of the Restaurant, or the square footage of the Restaurant;
 - (vi) would result in a change in the configuration of the Restaurant; or
 - (vii) would require an amendment to any building permit for the Project;
- (r) "Parks General Manager" means the General Manager of the Park Board and his or her successors in function and their respective nominees;
- (s) "Personnel" means any official, employee, contractor, subcontractor, agent, licensee, guest, invitee or visitor of a party, or anyone else for whom the party is responsible in law in connection with any matter governed by this Agreement;
- (t) "Project" means the construction of the Restaurant

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

- (u) "Project Work Requirements" means the requirements of the Park Board with respect to the manner in which the Licensee must carry out the Project, as set out in Schedule B;
- (v) "Restaurant" means the restaurant to be constructed by the Licensee on the Site as more particularly described in the DP Drawings;
- (w) "RFP" means request for proposals PS20150448 issued by the City on April 29, 2015, including all addenda;
- (x) "Schedule of Work" means a schedule of work for the Project, including dates for receipt by the Park Board of all drawings, plans and specifications, submitted by the Licensee to the Park Board and approved by the Park Board as set out in Schedule B; and
- (y) "Site" means that part of the Land on which the Restaurant is to be constructed, as shown in bold outline on the plan attached as Schedule A.

2. Grant of License

In consideration of the covenants and conditions contained in this Agreement on the part of the Licensee to be performed and observed and the license fee to be paid by the Licensee, and subject to Section 3 of this Agreement, the Licensor hereby grants to the Licensee a license to use the Site for the purpose only of carrying out the Project, from the Effective Date until the earlier of:

- (a) _____, 20__; and
- (b) the date of issuance by the Park Board of the Acceptance;

subject to earlier termination as provided in this Agreement.

3. Conditions Precedent to License

Despite anything to the contrary in this Agreement, the grant of license set out in Section 2 hereof by the Licensor is subject to the conditions that:

- (a) on or before _____, 20__, the Licensee has completed all working plans and specifications for the Project in conformance with the DP Drawings except for the working plans and specifications for the interior of the restaurant (which will be provided to the Parks General Manager for approval prior to the commencement of such work) and such working drawings and specifications have been approved by the Parks General Manager in accordance with Section 7(c); and
- (b) on or before _____, 20__, the Licensee has obtained:
 - (i) all required permits from the City of Vancouver in order to construct the Project on the Site; and
 - (ii) a firm and binding commitment from a lender to fund the Project, such commitment to be satisfactory to the Parks General Manager;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

provided that prior to the commencement of any work at the Site the Licensee will have obtained and provided to the Park Board the documents in subsections 3(b)(i) and (ii) and the Park Board will have confirmed in writing that same are satisfactory to the Park Board and this license will be deemed terminated and it will have no further force or effect if:

- (c) the Park Board does not notify the Licensee before 5:00 p.m. on the date in Section 3(a) that the Parks General Manager has approved the working drawings and specifications for the Project; or
- (d) the Licensee does not provide evidence to the Park Board before 5:00 p.m. on the date in Section 3(b) that the Licensee has obtained all required permits for the Project and a firm and binding commitment from a lender to fund the Project and the Parks General Manager has confirmed that such commitment is satisfactory.

4. License Fee

The Licensee agrees to pay the Park Board a license fee of one dollar (\$1.00), payable in advance (the receipt and sufficiency of which is hereby confirmed and acknowledged).

5. Site Licensed "As Is"

The Park Board makes no representations or warranties as to the safety, state, condition or fitness of the Site or the suitability of the Site for the purposes of the Project, and the Licensee acknowledges and agrees that it has been afforded all reasonable opportunity to inspect the Site and all relevant documentation in respect of the Site and to carry out such audits, investigations, tests and surveys as it considers reasonably necessary to ascertain:

- (a) the state of the Site;
- (b) the suitability of the Site for the Project and operation of the Restaurant;
- (c) the existence, nature or extent of any Contaminants on the Site; and
- (d) the need to take any remedial action in relation to any Contaminants on the Site;

and the Licensee agrees that the Site is being licensed to the Licensee on an "as is" basis.

6. Use of Site

The Licensee will use the Site only for the Project and the Licensee:

- (a) at its own risk and cost, may bring on to the Site any contractors, subcontractors, workers and professional advisors that may be required to carry out the Project;
- (b) will not release, dump, spill or place, or allow to be released, dumped, spilled or placed on the Site any Contaminants;
- (c) will maintain the Site in a sanitary, neat and safe condition and free from nuisance at all times;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

- (d) will not cut down or trim trees without the Park Board's prior written consent; and
- (e) will restore to the same condition existing prior to commencement of the Project any areas damaged or adversely affected by the construction or installation of the Project by the Licensee or its Personnel, including all lands used for access to and egress from the Site, such restoration to be to the satisfaction of the Parks General Manager and, in the case of City streets, the City Engineer.

7. Design of the Project

The Licensee covenants and agrees with the Licensor that:

- (a) the Licensee, at its cost, will undertake, or cause to be undertaken, detailed design of the Project in accordance with the DP Drawings as required to apply for a Building Permit;
- (b) all the detailed plans and specifications for the Project, sealed by the Consultant, will be submitted at the same time to the Parks General Manager for approval and the following will apply:
 - (i) such plans and specifications will include:
 - A. the Schedule of Work in compliance with the Project Work Requirements;
 - B. a sketch plan which defines within the Site a fenced construction area; a temporary office location; Site access points; temporary servicing locations; and seawalk relocation details;
 - C. identification of all trees on the Land that the Licensee will fence off during the Project;
 - D. detailed plans and specifications with respect to the service connections proposed for the Project;
 - E. detailed plans and specifications with respect to the geothermal heating for the Project; and
 - F. an affirmation by the Consultant that such plans and specifications are in accordance with the development permit number DE412233, except for those matters which are disclosed in detail in such affirmation as not being in accordance with such requirements;

provided that such plans and specifications need not include details concerning the interior finishings for the Restaurant except to the extent that such interior finishings impact the remainder of the plans and specifications;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

- (ii) on receipt of such detailed plans and specifications, the Parks General Manager will review and provide comments or grant his or her approval;
 - (iii) if the Parks General Manager provides comments, the Licensee will make such changes and amendments to such plans and specifications as are required by the Parks General Manager so that the Project meets the standards required as of the Effective Date by the Park Board for services, facilities, utilities and obligations of the nature or type of the Project, meets the Project Work Requirements, and will re-submit revised plans and specifications to the Parks General Manager for review; and
 - (iv) this process will continue until the Parks General Manager gives final approval to such plans and specifications; and
- (c) the Licensee will not:
- (i) contract for the construction of the Project or any part thereof; or
 - (ii) commence the construction of the Project, or cause, suffer or permit any such construction, or any part thereof, to commence;

until the Parks General Manager has given written confirmation of final approval of the detailed plans and specifications pursuant to Section 7(c) and until the Licensee has obtained all necessary approvals, licenses and permits for construction of the Project from all authorities having jurisdiction.

8. Construction of Project

The Licensee, at its cost and without cost to the Licensor, will complete the Project in accordance with the requirements of the RFP, the Proposal as modified by agreement between the parties, and this Agreement, all in accordance with the Development Permit and Building Permit issued by the City and in accordance with any further requirements of the Park Board and the following will apply:

- (a) the Licensee will cause the Project to be completed continuously and diligently and in a good and workmanlike manner and in accordance with:
 - (i) the Approved Plans and Specifications, including the Schedule of Work;
 - (ii) the Project Work Requirements;
 - (iii) the Building Permit; and
 - (iv) any other provision of this Agreement unless otherwise agreed to by the Park Board;
- (b) the Licensee will complete the Project in accordance with the Approved Plans and Specifications, provided that the Licensee may vary the Approved Plans and Specifications for the Restaurant at its sole cost and risk without the consent of the Park Board unless such variation is a Material Change in the Restaurant, in which case the Licensee will first give to the Park Board notice

**REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT**

of the intended variation and will obtain the Park Board's prior consent thereto in writing;

- (c) the Licensee will be responsible for keeping the Parks General Manager properly and adequately advised of the progress of construction of the Project, and for providing the Parks General Manager periodically, as she may require, with written progress reports, and for ensuring the overall coordination of construction of the Project with other works, if any, being undertaken by the Park Board or the City in the area surrounding the Land;
- (d) the Licensee will:
 - (i) comply with all applicable federal, provincial and municipal laws, regulations, bylaws, orders, guidelines and policies and this Agreement will in no way exempt the Licensee from any obligations created by any laws, bylaws and lawful orders which touch and concern the Site and the activities authorized by this Agreement;
 - (ii) obtain all necessary government approvals and permits concerning the Project and the construction, installation and warranty work with respect thereto, including, if applicable, all approvals and permits normally required by the City Engineer for work done on streets in the City of Vancouver (which includes the requirement for obtaining comprehensive general liability insurance and property insurance and providing the City with evidence of same and providing the appropriate confirmation of professional assurance); and
 - (iii) ensure that all required payments are made with respect to the Project, including without limitation, workers compensation assessments, employment insurance and federal and provincial taxes;
- (e) the Licensee will give the Parks General Manager not less than 7 days' written notice before commencing construction of the Project and will call for inspections, after giving the Parks General Manager not less than 3 days' written notice, at all important stages;
- (f) each party will ensure that any written comments or directions in accordance with this Agreement, including requests for a variation to the Approved Plans and Specifications, given or made by one party will be promptly responded to by the other party;
- (g) during construction of the Project, the Licensee will no later than 15 days following receipt of same, deliver to the Parks General Manager true copies of all inspection reports prepared during the construction of the Project and all such reports will have been accepted by the Consultant, provided however that the Owner will immediately notify the Parks General Manager of the results of any failed inspection;
- (h) the Park Board and its officers, servants and agents will have the right to inspect the Project and the Site at all times and, in furtherance of such right of inspection, the Park Board and its officers, servants and agents will have the right to bring upon the Site whomever or whatever they deem necessary for such purpose and the Licensee will make available to the Park Board, at any reasonable time and upon 24 hours written notice to the Licensee, those

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

records of the Licensee as requested by the Park Board for the purpose of ensuring compliance by the Licensee with this Agreement;

- (i) the Licensee will construct the Project so that it can and does connect, in a manner satisfactory to the City Engineer, with existing City streets, services and facilities, as the case may be, and all connection costs will be the responsibility of the Licensee;
- (j) the Licensee will pay when due all charges for any gas, electricity, light, heat, power, water and other utilities and services used in or supplied to the Site for construction of the improvements on the Site throughout the term of this Agreement;
- (k) on completion of the Project, the Licensee will obtain an occupancy permit the Restaurant; and
- (l) the Restaurant will be the absolute property of the Licensor, provided that all trade fixtures and furnishings installed in the Restaurant by the Licensee will be the property of the Licensee and may be removed by the Licensee in accordance with the Lease.

9. Design Responsibility

Notwithstanding that the Parks General Manager or his or her delegates may:

- (a) require the Licensee to make changes to the plans, drawings and specifications concerning the Project or any portions thereof;
- (b) inspect the Project, or portions thereof or supervise aspects of construction of the Project; and
- (c) approve or accept the plans, drawings and specifications concerning the Project,

all design and construction responsibility and supervisory responsibility will remain exclusively with the Licensee and no such responsibility will rest with the City, the Park Board, the Parks General Manager or his or her delegates or Park Board officials, officers, employees, servants or agents and the Park Board and its officials, officers, employees, servants or agents will not be liable to the Licensee for the safety, adequacy or soundness of the Project by reason of any changes required, inspections made or approvals given with respect to the Project, provided that this exclusion from liability will not apply to any variation made to the Project at the request of the Park Board where the Licensee or its Consultant advises the Park Board that the safety, adequacy or soundness of the Project will be compromised and the Park Board insists on the variation nonetheless. Any approval given by and any inspection carried out by the Park Board or its officials, officers, employees, servants or agents pursuant to this Agreement or concerning the Project will be for the purposes only of ensuring compliance with this Agreement from the point of view of the Park Board as contracting party, and no inspection or approval given by the Park Board or its officials, officers, employees, servants or agents will relieve the Licensee from its obligation to comply strictly with the terms of this Agreement nor will the giving of any approval or confirmation of satisfaction constitute a waiver or release by the Park Board of any duty or liability owed to the Park Board or of any indemnity given by the Licensee to the Park Board, its officials, officers, employees, servants or agents.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

10. Utility Work

- (a) Prior to submitting the detailed plans and specifications for the Project to the Parks General Manager for approval pursuant to Section 7(c), the Licensee will:
 - (ii) coordinate and submit to the City Engineer for approval the designs and specifications of utility companies installing utilities on City land, to ensure that the designs and specifications meet City standards and that the utilities are installed underground within such lands from the closest existing suitable service point; and
 - (iii) obtain the written approvals (and provide a copy of same to the City Engineer) from the applicable utility companies with respect to such installation of utilities.
- (b) Prior to commencing any work at the Site, the Licensee will:
 - (i) contact any applicable utility companies or City officials to identify any underground utility locations located on or adjacent to the Site and the Licensee will take any appropriate safety measures to ensure that any work does not damage or affect any utilities located on or adjacent to the Site; and
 - (ii) request the approval of the City Engineer for the construction of any off-site Road and Utility Works within City-owned property, which request will be accompanied by, without limitation, a traffic management plan, temporary works plan and construction schedule and if such off-site Road and Utility Works are not constructed within the construction schedule approved by the City Engineer, the construction may be stopped or completed by the City at the cost of the Licensee, at the sole discretion of the City Engineer.

11. As-Built Drawings, etc.

On completion of the Project, and prior to the issuance of the Acceptance, the Licensee covenants and agrees that it will, at its own cost, provide the Parks General Manager with:

- (a) as-built drawings for the Project (being a complete set of reproducible mylar "as built" drawings plus drawing files prepared on an autocad computerized drafting system compatible with that used by the Park Board and drawn to Park Board autocad standards), satisfactory to the Parks General Manager, prepared, signed and sealed by the Consultant;
- (b) a plan of survey prepared by a British Columbia Land Surveyor and to the satisfaction of the Parks General Manager, showing the final location of the Project;
- (c) 3 sets of operating manuals for all equipment in the Project;
- (d) 2 copies of all warranties concerning the construction, fitting, equipping and finishing of the Project; and
- (e) 4 sets of keys for the Project.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

12. Acceptance of Project

- (a) In addition to those items to be delivered or completed by the Licensee pursuant to Section 11, prior to the issuance of the Acceptance, the Licensee will deliver to the Parks General Manager:
 - (i) the Certificate; and
 - (ii) the Lease duly executed in registrable form by the Licensee as provided in Section 21.
- (b) Following the delivery to the Parks General Manager of the Certificate and the Lease executed by the Licensee, the Parks General Manager and the Consultant will inspect the Project covered by such Certificate, and if during such inspection, a defect or deficiency with respect to the Approved Plans and Specifications is observed which is not included in the list of Deficiencies attached to such Certificate, then the list of Deficiencies will be amended by the Licensee or its Consultant to include such defect or deficiency.
- (c) Following such inspection and amendment (if any) to such Certificate and subject to Section 12(d), the Parks General Manager, if the City Engineer confirms to the Parks General Manager that the Licensee has satisfactorily met its obligations with respect to City streets, services and utilities as set out in this Agreement and in particular the completion of the Road and Utility Works, will issue an Acceptance with the respective conclusive list of Deficiencies attached and will accept the Project covered by such Acceptance, as of the date set out in such Acceptance.
- (d) During the inspection referred to in Section 12(b), certain Deficiencies may be identified by the Parks General Manager to be of such significance that the Parks General Manager is not prepared to issue an Acceptance and, in such event, the Parks General Manager may delay the acceptance of the Project until such Deficiencies have been rectified or completed as confirmed by a subsequent inspection by the Parks General Manager, whereupon such Acceptance will be issued.
- (e) The Licensee will work diligently to complete the Deficiencies by the dates for completion of the Deficiencies as agreed to by the parties, acting reasonably, all as set out in the Acceptance.
- (f) The Licensee hereby acknowledges and agrees that the Acceptance is not a substitute for an occupancy permit and that the Licensee is responsible for applying for an obtaining an occupancy permit for the Project.

13. Insurance

Prior to the commencement of any work at the Site, the Licensee will obtain:

- (a) wrap up liability insurance issued in the joint names of the Licensee, the City and the Park Board protecting all participants, including contractors, subcontractors, their respective employees and agents in all activities pertaining to the Project with limits of not less than FIVE MILLION DOLLARS (\$5,000,000) on an occurrence basis for bodily injury, death and property damage claims including loss of use thereof. This insurance must be

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

maintained continuously throughout the entire term of the Project until final acceptance of the Project by the Park Board, and thereafter, in the case of completed operations coverage, for a further period of not less than 2 years, and will contain the following extensions of coverage:

- (i) Broad form Property Damage and Completed Operations;
- (ii) Personal Injury;
- (iii) Blanket Contractual Liability;
- (iv) Cross Liability and Severability of Interest Clause;
- (v) Contingent Employer's Liability;
- (vi) Non-Owned Auto Liability

and where such further risk exists, following extensions of coverage will be included:

- (vii) Shoring, blasting, excavating, underpinning, demolition, removal, pile driving and grading, as applicable;
- (viii) Hoist liability; and
- (ix) Operation of attached machinery;

- (b) all risks course of construction property insurance issued in the joint names of the Licensee, the City and the Park Board on the improvements at the Site (including building materials, equipment and machinery, labour and supplies of any nature belonging to the insured and others, for which the insured may have assumed responsibility), to be used both during and after construction, against fire, earthquake and all other perils from time to time customarily included in the usual all risks builder's form policy to the full replacement cost to cover the building under construction, which insurance will provide that all insurance proceeds will be applied to repairing and restoring any damage to the Restaurant ;
- (c) all insurance policies will be obtained and issued by insurance companies that are duly licensed or authorized to conduct business in the Province of British Columbia;
- (d) all insurance policies will contain a provision that coverages afforded will not be suspended, voided, reduced or materially altered or changed without the insurance company(s) giving at least 30 days prior written notice by registered mail to the Park Board;
- (e) all the forgoing insurance will be primary and any insurance or self-insurance maintained by the City or the Park Board will be in excess of this insurance and will not contribute to it; and
- (f) prior to commencement of this Agreement, the Licensee will provide to the Park Board evidence of each policy of insurance required to be taken out by the Licensee accompanied by certified copies of policies signed by the insurers.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

14. Bonds Required From Major Trades

Prior to commencement of any work at the Site, the Licensee will provide to the Licensor a copy of a performance bond and a labour and material bond obtained by the Licensee from each of the major trade contractors for the Project, including the trade contractors for the concrete/formwork, asphalt paving, steel reinforcing, structural steel, roofing, aluminium entrances/windows, steel stud and drywall, ceramic tile, mechanical and electrical, (provided that the aggregate of the contract prices for such bonded major trade contractors must be at least 75% of the total contract price for the Project), each of which will be in an amount equal to 50% of the contract price and will be issued by a surety company duly licensed to conduct business in the Province of British Columbia.

15. Warranties

- (a) The Licensee will ensure that all warranties with respect to the Project, including any equipment purchased for the Project, are issued in favour of the Park Board, provided that:
 - (i) the warranty for the roof will be for at least a 5 year term covering both material and installation;
 - (ii) the Licensee will, at its expense and without cost to the Park Board, enforce on behalf of the Park Board all warranties concerning the construction, fitting, equipping and finishing of the Project; and
 - (iii) the Park Board will cooperate with the Licensee in the enforcement on behalf of the Park Board of such warranties.
- (b) The Licensee will correct promptly, at its expense, any defects or deficiencies in the construction of the Project, including workmanship and materials which appear prior to and during the period of one year from the date of the Certificate, or such longer periods as may be specified for certain products or work. This warranty will apply to defects or deficiencies that arise even if the Work is carried out in a good and workmanlike manner. Provided that if, as a result of the failure of the Licensee to fulfill its obligations under this Agreement, there are any defects in the Project due to professional errors or omissions or defects in the Project which affect the Restaurant to such extent that a significant part of the Restaurant is unfit for the purpose intended, such one year limitation will not apply and the Park Board will be entitled to claim for any losses or damages suffered on or before the date which is five years from the date of the Certificate.

16. Builders Liens

- (a) Pursuant to Section 3(2) of the *Builders Lien Act*, the City may file in the Land Title Office notice of its fee simple interest. The Park Board may post notices on the Site in conspicuous places that it is not responsible for the supply of work or materials to the Site. The Licensee will not remove, deface or obscure such notices.
- (b) The Licensee will comply with the *Builders Lien Act*, including any provisions requiring or enabling the retention of any sum as a holdback.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

- (c) The Licensee will, at its cost and within 15 days after receipt of notice thereof, procure the discharge of any and all builders liens and other liens (including any certificate of pending litigation or other notation or charge) for labour, services or materials alleged to have been furnished with respect to the Project or the Site, which may be registered against or otherwise affect the Land, by payment or giving security or in such other manner as may be required or permitted by law, provided however that in the event of a bona fide dispute by the Licensee of the validity or correctness of any claim for any such lien, the Licensee will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first either:
- (i) paying into a court of competent jurisdiction the amount claimed or sufficient security therefor, and such costs as the court may direct; or
 - (ii) providing to the Park Board such security for eventual discharge of the lien as is satisfactory to the Licensor.
- (d) On completion of the Project, the Park Board may, prior to acceptance of the Project, require the Licensee to deliver to the Licensor a copy of a lien holdback release bond for the payment of all losses incurred by the Licensee arising from the payment of the builders lien holdback where there is no lien filed against title to the Land but a lien claimant has filed a writ in the court registry claiming a lien against the builders lien holdback amount including, without limitation, by way of example only, circumstances such as those which arose in the court decision *Shimco Metal Erectors Ltd. V. North Vancouver (District)* and the bond will be of a type and in a form issued by an institution and on terms and conditions satisfactory to the Park Board's solicitors.

17. Workers Compensation

- (a) The Licensee will require that the following *Workers Compensation Act* provision be a term and condition of each contract for the Project between the Licensee and each of its trade contractors and will require such trade contractors to comply with this provision and the Licensee will provide to the Park Board a copy of all documentation required to be provided to the Licensee by the trade contractors pursuant to this provision:

"The Trade Contractor agrees that it will, at its expense, procure and carry or cause to be procured and carried and paid for, full WorkSafeBC coverage for itself, its Trade Contractors and all employees engaged in or upon any Work.

The Trade Contractor will have a safety program that meets the requirements of the *Workers Compensation Act*, will provide first aid services, and will ensure that all WorkSafeBC safety rules and regulations are observed during performance of this contract, not only by the Trade Contractor but by all its Trade Contractors and all employees engaged in or upon any Work."

- (b) The Licensee will require that the following *Workers Compensation Act* provision be a term and condition of the contract for the Project between the Licensee and its construction manager and will require such construction manager to comply with this provision and the Licensee will provide to the Park

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

Board a copy of all documentation required to be provided to the Licensee by the construction manager pursuant to this provision:

“Prior to commencement of construction, the Construction Manager will complete and file a “Construction Notice of Project” with WorkSafeBC and will provide a copy of the same to the [Licensee] confirming that the Construction Manager will be responsible for co-ordination of safety and health for the Project.

The Construction Manager will appoint a designated qualified coordinator to ensure the coordination of health and safety activities for the work location, to provide assurance of a written safety program in accordance with the Occupational Health and Safety Regulation, and to conduct weekly toolbox safety meetings and monthly formal safety meetings with the minutes forwarded to the [Licensee]. The safety program, all written safe work procedures, and site maps are to be available at the Site prior to the commencement of the Project.

The Construction Manager will provide the [Licensee] with each Trade Contractor’s WorkSafeBC registration number and letter from WorkSafeBC confirming that the Trade Contractor is registered in good standing with WorkSafeBC and that all assessments have been paid to the date thereof prior to commencing any work.”

18. Release and Indemnification

Except for any negligence or wilful default of the Park Board or the City or their respective Personnel, the Licensee hereby releases the Park Board and the City and their respective Personnel from, and covenants with the Park Board to defend, indemnify and save harmless the Park Board and the City and their respective Personnel from, all Losses related to or arising from the Project or the Licensee’s occupation or possession of the Restaurant or the Site or the occupation or possession of the Restaurant or the Site by any of the Licensee’s Personnel, including all claims, demands, suits and judgments against the Park Board or the City or their respective Personnel:

- (a) by reason of the Park Board or the City and their respective Personnel reviewing, accepting or approving the design, specifications, materials and methods for construction of the Project, inspecting the Project, or performing any work in accordance with the terms of this Agreement or requiring the Licensee to perform any work pursuant to this Agreement; or
- (b) that arise out of, or would not have been incurred but for this Agreement or the design, construction and installation of the Project.

19. Damage or Destruction

In the event of damage or destruction of any improvements at the Site, the Licensee will repair and restore such damage or destruction so long as such be lawful and, if not, the Licensee will make reasonable efforts to have such repairs or restorations made lawful. If the Licensee is not successful in having such repairs or restorations made lawful, the insurance monies paid or payable on account of such damage or destruction will be paid or assigned to the Park Board, as the case may be. If there is a shortfall between the insurance monies available for such repair and restoration and the cost of such restoration, such shortfall will not

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

relieve the Licensee of its obligation to complete such repairs or restoration. Further, the Licensor is under no obligation to make good such shortfall.

20. Execution of the Lease

The Licensor and Licensee agree to execute the Lease and deliver same to the other as soon as the Project has been completed to the extent necessary to allow a British Columbia Land Surveyor to prepare an explanatory plan of the Premises (as defined in the Lease) acceptable to the Lower Mainland Land Title Office for the purpose of registering the Lease in accordance with the *Land Title Act* and the following will apply:

- (a) the Licensee, at its cost, will have a British Columbia Land Surveyor prepare the explanatory plan of the Premises and the License Areas and will provide a copy of such plan to the Parks General Manager for review and approval;
- (b) following delivery of such plan to the Parks General Manager, the Parks General Manager will promptly review such plan and will advise the Licensee if such plan is acceptable to the Park Board or what amendments, if any, are required;
- (c) once the plan is acceptable to the Parks General Manager and the Licensee, the Parks General Manager will instruct the City's Director of Legal Services to promptly complete the Lease in registrable form and to provide execution copies of the Lease to the Licensee;
- (d) the Licensee will execute and return the Lease to the Parks General Manager together with the Certificate as provided in Section 12(a);
- (e) following delivery to the Parks General Manager of the Lease executed by the Licensee and the Certificate, the procedure for issuance of the Acceptance in Section 12 will apply and, concurrently with issuance of the Acceptance, the Parks General Manager will deliver to the Licensee the Lease duly executed by the authorized signatory for the Park Board, which Lease will provide that the Commencement Date (as defined in the Lease) is the same as the date of issuance of the Acceptance;
- (f) the Licensee, at its cost, will promptly file the Lease for registration in the Lower Mainland Land Title Office in compliance with the *Land Title Act*; and
- (g) the parties agree that, subject to Section 22(c), this Section 21 constitutes a binding agreement to lease in respect of the Premises between the City as represented by its Board of Parks and Recreation and the Licensee as tenant on the terms and conditions of the Lease.

21. Default

- (a) Notwithstanding anything to the contrary contained in this Agreement, if the Parks General Manager is of the opinion that the Licensee is at any time in default of any of its obligations under this Agreement, the Parks General Manager will deliver written notice of such default to the Licensee (save in respect of emergencies occasioned by such default, in which case the Parks General Manager is not obligated to deliver notice), which notice will specify the default and include reference to the relevant section of this Agreement.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

- (b) From the date of delivery of the notice described in Section 22(a), the Licensee will have 30 days in which to remedy the default in accordance with the Approved Plans and Specifications and the requirements of this Agreement, to the satisfaction of the Parks General Manager, or to commence remedying the default and diligently and continuously proceed to completion with remedying the default, to the satisfaction of the Parks General Manager.
- (c) The Park Board will have the right to terminate this Agreement if:
- (i) subject to force majeure, the Licensee fails to undertake the Project by the date which is 180 days after the date of issuance of all permits required for the Project, or having undertaken the Project, the Licensee unreasonably delays the prosecution of or abandons the Project;
 - (ii) subject to force majeure, the Licensee fails to remedy the default specified in the notice described in Section 22(a) within the required time period;
 - (iii) the Licensee makes a general assignment for the benefit of creditors, or if the Licensee institutes proceedings to have itself adjudicated as bankrupt or insolvent, including, without limitation, any applications or orders under the *Companies' Creditors Arrangement Act* of British Columbia, or if the Licensee becomes the subject of bankruptcy or insolvency proceedings, or if a judgment, decree or order be entered by a court of competent jurisdiction judging the Licensee bankrupt or insolvent, or if the Licensee or its directors pass any resolution authorizing the dissolution or winding up of the Licensee, or if a receiver, interim receiver, manager, receiver-manager, trustee or liquidator of all or any part of the Licensee's property is appointed or applied for by the Licensee or by one or more of the Licensee's creditors; or
 - (ii) the Licensee fails to execute the Lease in registrable form prior to issuance by the Park Board of the Acceptance in accordance with Section 21;

and then it will be lawful for the Park Board at any time thereafter without notice or demand, with or without process of law and by forceable entry if necessary, to retake possession of the Site and take possession of the Project.

- (d) If the Site is part of a permanent public park within the meaning of Section 490 of the *Vancouver Charter*, S.B.C. 1953, C. 55, as amended, and ceases to be part of such a permanent public park, then this Agreement will be terminable at the option of the Park Board but all obligations of the Licensee up to the date of any such termination will survive such termination. Upon such termination, at the option of the Licensee and subject to the approval of Council, the City of Vancouver will enter into a license with the Tenant on the same terms and conditions of this Agreement.

22. No Assignment and Sublicensing

Under no circumstances whatever will the Licensee assign or transfer this Agreement, grant any sub-license or otherwise part with possession of the Site or let any third party into

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

possession of the Site, other than contractors, subcontractors, workers and professional advisors authorized to work in and on the Site.

23. Subordinate Rights

This Agreement will be subordinate to the rights of the Park Board and other utility companies to maintain and repair any and all public works and utilities within, about, beneath and above the Site and the Licensee will take all steps necessary, upon request of the Licensor, to ensure access to the Site for these purposes.

24. Park Board's Remedies Are Cumulative

The remedies provided to the Park Board in this license are cumulative and are in addition to any remedies of the Park Board available at law or equity including injunctive relief and no remedy will be exclusive and the Park Board may have recourse to any or all remedies simultaneously or at various times.

25. Park Board's Expenses

If any legal proceeding is brought by the Licensor for the recovery of possession of the Site because of the breach of any term, covenant or condition on the part of the Licensee to be kept or performed contained in this Agreement, the Licensee will pay to the Park Board, upon demand, all costs and expenses incurred therefor, including without limitation, all professional and consultant fees, and all legal fees on a solicitor and his own client basis, disbursements, and all court costs and expenses of any legal proceeding.

26. Force Majeure

Despite anything contained in this Agreement to the contrary, if the Park Board or the Licensee is, in good faith, delayed or prevented from doing anything required by this Agreement because of a strike, labour trouble, inability to get materials or services, power failure, restrictive governmental laws or regulations, an order of a court or other tribunal of competent jurisdiction, riots, insurrection, sabotage, rebellion, war, act of God, or any other similar reason, that is not the fault of the party delayed or of its officers, employees or agents, the doing of the thing is excused for the period of the delay and the party delayed will promptly do what was delayed or prevented within the appropriate period after the delay.

27. Notice

Any notice, approval or request required or permitted to be given under this Agreement will be in writing and may be given by delivering such notice, approval or request to a representative of the party for whom it is intended or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia and:

in the case of the Park Board addressed to it at:

Vancouver Board of Parks and Recreation
2099 Beach Avenue
Vancouver, BC V6G 1Z4
Attention: General Manager

with a copy to:

City of Vancouver

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

453 West 12th Avenue
Vancouver, BC V5Y 1V4
Attention: Director of Legal Services

and in the case of the Licensee addressed to it at:

Attention: _____

with a copy to:

(Licensee's solicitor)

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery or on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

28. Covenants Survive Termination

The covenants on the part of the Licensor and the Licensee in this Agreement which, as of termination of this Agreement whether by passage of time or otherwise, remain unfulfilled, undischarged or otherwise outstanding will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and permitted assigns so long as there is any liability or indebtedness by either party to the other or so long as any such covenant remains unfulfilled, undischarged or otherwise outstanding, whether in whole or in part, notwithstanding anything in this Agreement to the contrary.

29. Limitation

Nothing contained or implied in this Agreement will prejudice or affect the City's rights and powers in the exercise of its functions pursuant to the Vancouver Charter and the rights and powers of the City under all of its public and private statutes, by-laws and regulations, all of which may be as fully and effectively exercised in relation to the Project as if this Agreement had not been executed and delivered.

30. Time

Time will be of the essence of this license, save as otherwise specified in this Agreement.

31. Waiver

No waiver of or neglect to enforce this Agreement upon a default by the Licensee will be deemed to be a waiver of any such right upon any subsequent similar default.

32. No Registration of License

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

The rights and privileges granted by the Park Board are purely contractual and are not grants of an easement, right of way or any other interest in land and the Licensee will not register any instrument, claim or notice respecting this Agreement in any Land Title Office.

33. Relationship

It is the express intention of the Licensor and the Licensee that the granting of the license set out herein will not create between the Licensor and the Licensee a landlord and tenant relationship and it is specifically agreed that this Agreement does not grant any interest in the Restaurant to the Licensee.

34. No Promotion

The Licensee must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials, without the express prior written consent of the City of Vancouver (except as may be necessary for the Licensee to perform the Licensee's obligations under the terms of this Agreement).

35. Trade and Domain Names

The Licensee will not use any trade names for the Restaurant in any medium, including, without limitation, print, radio, internet or television advertisements, or register any internet domain names for the Restaurant, without the prior written approval of such trade or domain names by the Park Board, which approval will not be unreasonably withheld. If, at any time, the Park Board requests that the adopted trade or domain name for the restaurant be changed, the Licensee will promptly submit a detailed estimate of the costs of changing the trade or domain name to the Park Board for approval. Once the Park Board has approved the estimate, the Licensee will promptly comply with such request and will submit an invoice the Park Board for the actual costs of the change, which invoice will be paid by the Park Board within sixty (60) days of receipt. The Park Board reserves the right to refuse to reimburse for any actual costs that exceed the approved estimate by an amount equal to or greater than 10% of the approved estimate.

36. Entire Agreement

The Licensee acknowledges that there are no covenants, representations, warranties, agreements, terms or conditions expressed or implied relating to this Agreement or the Project or the Site except as expressly set out in this Agreement, and that this Agreement may not be modified except by an agreement in writing executed by both the Park Board and the Licensee.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

IN WITNESS WHEREOF this agreement has been duly executed by the authorized signatories of the parties on the day and year first written above.

CITY OF VANCOUVER as represented by its
BOARD OF PARKS AND RECREATION

Authorized Signatory

LICENSEE:

Authorized signatories:

Name:

Name:

Approved by the Vancouver Board of Park Board and Recreation on _____;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

SCHEDULE A
PLAN OF THE LAND AND THE SITE

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART D - FORM OF CONSTRUCTION LICENSE AGREEMENT

SCHEDULE B
PROJECT WORK REQUIREMENTS

1. The Licensee will fence off all trees within the Site with modulok or equivalent fencing at the drip line of each tree. No materials are to be stored within this area. No excavation within this area. Location of fencing to be confirmed with the Park Board arborist prior to erection.
2. The Licensee will not unload or store any materials outside of the Site.
3. The Licensee will not drive any vehicles on lawns outside the Site. No vehicles will be permitted on the seawall after 9:00 a.m. from May 15th to September 30th.
4. The Licensee will adhere to all government regulations and by-laws regarding construction on the Site, in particular the noise by-law.
5. The Licensee will post public information signs on the Site fencing to advise pedestrian/cycle to the satisfaction of the Park Board.
6. The Licensee will not locate construction washrooms outside of the Site.
7. Demolition materials will be removed from Site as quickly as possible and will not be stock piled on Site.
8. The seawalk and pedestrian/cycle route will be kept open at all times.

FORM OF LEASE AGREEMENT

BETWEEN:

CITY OF VANCOUVER, represented by its
BOARD OF PARKS AND RECREATION
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

(the "Landlord")

AND:

(the "Tenant")

Premises:

Harbour Green Park Restaurant

Term:

Ten (10) years, from _____, 20__ to _____, 20__.

Rent:

Basic Rent in an amount of _____ amount per annum, paid annually in advance and
Sales Rent, being ___% of Gross Revenue, paid monthly, plus payment in lieu of Property
Taxes.

Option to Renew:

One (1) option to renew for an additional term of ten (10) years.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

INDEX

<u>ARTICLE I</u>	<u>Section</u>
Term	1.01
License to Use License Areas - Intentionally Omitted	1.02
Rent	1.03
Payments Generally	1.04
Utilities	1.05
Use of Premises	1.06
Use of Deck	1.07
Conduct of Business	1.08
Prohibited Activities/Products	1.09
Install Tenant's Furniture, Furnishings, Equipment and Continuously Operate	1.10
Interest on Arrears	1.11
Security Deposit	1.12
Taxes	1.13
Goods and Services Tax	1.14
 <u>ARTICLE II</u>	
Revenue Report	2.01
Accounting Procedures and Controls	2.02
Audited Revenue Reports	2.03
 <u>ARTICLE III</u>	
No Damage	3.01
Snow Removal from the Leased Area and Sidewalks	3.02
Alterations	3.03
Maintenance	3.04
Repairs to Premises	3.05
Repairs to Building	3.06
Liens and Encumbrances	3.07
Signage	3.08
 <u>ARTICLE IV</u>	
Limitation of Liability	4.01
Exclusion of Liability	4.02
Indemnification	4.03
 <u>ARTICLE V</u>	
Definitions	5.01
Suitability of the Premises	5.02
Tenant's Inspection of the Premises	5.03
Release and Indemnification	5.04
Removal of Hazardous Substances	5.05
Breach of Laws Relating to Hazardous Substances	5.06
Enquiries Pertaining to Hazardous Substances	5.07
Landlord's Inspection of Goods	5.08
Ownership Remains with Tenant	5.09

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Environmental Covenants Survive Termination 5.10

ARTICLE VI

Tenant's Liability Insurance 6.01
Tenant's All Risk (Broadform) Property Insurance 6.02
General Requirements of Insurance 6.03
Evidence of Insurance 6.04
Mutual Insurance Covenant 6.05
Cost of Insurance - Intentionally Omitted 6.06

ARTICLE VII

Termination Damage or Destruction 7.01
Repair of Damage or Destruction 7.02
Abatement of Rent 7.03
No Effect on Repair Obligations 7.04
Tenant to Notify Promptly 7.05

ARTICLE VIII

Assignment 8.01
Subleasing 8.02
Assignment of Lease Rent 8.03
Mortgaging by Tenant 8.04
Tenant Liable for Rent, Property Taxes Notwithstanding Mortgage 8.05
Mortgage subject to Landlord's Rights under Lease 8.06
Notice to and Remedies of Mortgagee 8.07

ARTICLE IX

Bankruptcy 9.01

ARTICLE X

Statutes and By-laws 10.01
Quiet Enjoyment 10.02
Performance of Obligations 10.03
Registration of Lease 10.04
Landlord's Rules and Regulations 10.05

ARTICLE XI

Breach of Covenants 11.01
Distraint 11.02
Right to Re-let 11.03
Forfeiture 11.04
Remedies Generally 11.05
Expenses 11.06
Landlord May Remedy Tenant's Default 11.07
Security Agreement 11.08

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

ARTICLE XII

Vacant Possession	12.01
Trade Fixtures	12.02
Overholding	12.03

ARTICLE XIII

For Showings/Inspections	13.01
Landlord's Access to Records	13.02
Emergency Access	13.03

ARTICLE XIV

Option to Renew	14.01
-----------------	-------

ARTICLE XV

Landlord Released	15.01
Tenant's Covenant	15.02
Status Statement	15.03

ARTICLE XVI

Delivery of Notices	16.01
Administration of Lease	16.02
Covenants Survive Termination	16.03
Time is of the Essence	16.04
Captions and Headings	16.05
Interpretation	16.06
Joint and Several	16.07
Waiver	16.08
Entire Agreement	16.09
Governing Law	16.10
Severability	16.11
Relationship between Landlord and Tenant	16.12
Force Majeure	16.13
Permanent Public Park	16.14
Parking	16.15
No Promotion	16.16
Trade and Domain Names	16.17

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

WITNESSES THAT WHEREAS:

A. The Landlord is the owner of certain lands situate in the City of Vancouver, in the Province of British Columbia, which are legally described as:

Parcel Identifier: 023-686-952
Lot 21 Except Part in Plan BCP1695, of the Public Harbour of Burrard Inlet, Plan LMP29892

(the "Lands")

which Lands are part of a larger area generally known as Harbour Green Park, a 10 acre park, 3 city blocks in width, which park the Landlord has designated or intends to designate as a permanent park and which is managed by the Vancouver Board of Parks and Recreation;

B. In response to a request for proposals issued by the Landlord the Tenant submitted a proposal to construct a building on the Lands and the Landlord accepted the Tenant's proposal, modified as agreed by the Landlord and Tenant;

C. Pursuant to a construction license agreement (the "License Agreement") between the Landlord and the Tenant, the Tenant has constructed a three-storey building without a basement (the "Building") on the Lands, and the portion of the Building outlined in bold black on the plan of leasehold attached as Schedule A hereto (the "Premises") has been constructed for use as a restaurant, including sit down restaurant and bar service on all three levels with indoor and outdoor seating. The Building was given to the Landlord at the end of the License Agreement;

D. The Landlord has agreed to lease the Premises to the Tenant for an initial term of ten (10) years with one (1) option to renew for an additional term of ten (10) years, as hereinafter provided;

E. The Tenant has agreed to supply all furniture, furnishings and equipment required for the proper and efficient operation of the Premises as a restaurant in conjunction therewith; and

F. Vancouver City Council, by resolution made at its meeting on _____, 20__, and the Vancouver Board of Parks and Recreation, by resolution made at its meeting on _____, 20__, resolved to lease the Premises to the Tenant upon the terms and conditions hereinafter set out.

NOW THEREFORE 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 by these presents does demise and lease the Premises unto the Tenant and the Tenant does hereby take and rent the Premises upon and subject to the conditions set out hereunder.

ARTICLE I

Section 1.01 Term

In consideration of the rents, covenants and conditions herein on the part of the Tenant to be performed and observed, the Landlord hereby leases the Premises to the Tenant to have and to hold the same for and during a term of TEN (10) YEARS commencing on the __ day of ____, 20__ (the "Commencement Date") and expiring at 11:59 p.m. on the __ day of ____, 20__ (the "Term").

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Section 1.02 License to Use License Areas - Intentionally Omitted

Section 1.03 Rent

The Tenant hereby covenants and agrees with the Landlord that the Tenant will pay to the Landlord during the Term, without prior demand or any deduction or set off whatsoever, rent, which will be comprised of the following:

- (a) basic rent (the “**Basic Rent**”) for each lease year of the Term (a “**Lease Year**”) paid [annually or monthly] as follows:
 - (i) commencing on _____ and thereafter payable on _____ every next succeeding Lease Year, the sum of _____ Dollars (\$_____);
 - (ii) if the option to renew the lease is exercised then commencing on _____ and thereafter payable on _____ every next succeeding Lease Year, the sum of _____ Dollars (\$_____); and
- (b) sales rent (the “**Sales Rent**”) for each Lease Year, to be paid monthly, which will be the amount which is equal to _____ percent (____%) of Gross Revenue for each month of each Lease Year provided that:
 - (i) “Gross Revenue” means the entire amount of the total sale prices whether for cash or credit of all sales of food, beverages (including alcoholic beverages) and merchandise and the entire amount of all other receipts from all of the food service operations including any take out service operations, and includes all receivables whatsoever of all business conducted at, in, on or from the Premises by the Tenant and any affiliate of the Tenant, including receipts and receivables in respect of services provided at the Premises even though the orders for such services are not made at or through the Premises, but excluding:
 - (1) income derived from meals provided to staff;
 - (2) gratuities from patrons;
 - (3) all sums collected and paid out for any direct retail sales tax imposed by any government authority, including GST and PST;
 - (4) the “free” food portion of any bona fide coupon promotion, public relations or promotional program applicable to the food services operations, including Entertainment Book, Solid Gold, Gastronomic, Budget Rent-A-Car or any other discount promotion applicable to the food services operations; and
 - (5) proceeds of insurance in reimbursement of any losses, damages or claims suffered by the Tenant, except for reimbursement for loss of revenue which will be included in Gross Revenue; and
 - (6) refunds to patrons, excluding refunds to patrons for parking validation, which will not be deducted from Gross Revenue,

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

which Sales Rent will be paid monthly based on the Gross Revenue for the immediately preceding month, commencing on the ____ day of _____, 20__, and continuing on the ____ day of each remaining month during the Term and on the ___ day of the month following the month in which this lease is terminated, which payment will be accompanied by a Revenue Report prepared and submitted in accordance with Section 2.01.

The Basic Rent and the Sales Rent (collectively the "Rent") together with any additional rent payable by the Tenant is referred to as "rent" in this lease.

Section 1.04 Payments Generally

All payments by the Tenant to the Landlord of whatsoever nature required or contemplated by this lease will be:

- (a) paid to the Landlord by the Tenant in lawful currency of Canada;
- (b) made when due hereunder, without prior demand therefor and without any setoff, compensation or deduction whatsoever at the office of the Vancouver Board of Parks and Recreation specified in section 16.01 or such other place as the Landlord may designate from time to time in writing to the Tenant, provided that upon the request of the Landlord, the Tenant will deliver to the Landlord a series of post-dated cheques, each in the amount of the additional rent as reasonably estimated by the Landlord, for the next ensuing 12 months, and the Tenant will continue to do so upon each yearly anniversary thereafter during the Term. The failure of the Tenant to comply in any way with the provisions of this subsection will be deemed to be default under this lease and will entitle the Landlord to exercise any and all remedies available to the Landlord under this lease;
- (c) applied towards amounts then outstanding hereunder, in such manner as the Landlord may see fit;
- (d) deemed to be rent, in partial consideration for which this lease has been entered into, and will be payable and recoverable as rent, such that the Landlord will have all rights and remedies against the Tenant for default in making any such payment which may not be expressly designated as rent as the Landlord has for default in payment of rent; and
- (e) deemed to accrue from day to day, and if for any reason it becomes necessary to calculate for irregular periods of less than one month or at some other interval, an appropriate pro-rata adjustment will be made on a daily basis in order to compute rent for such irregular period.

Section 1.05 Utilities

The Tenant will promptly pay when due all charges, rates and levies on account of utilities including heat, electricity, gas, water, garbage collection, telephone, internet and cablevision and all other expenses and outgoings relating to the Premises which, wherever possible, are to be calculated and payable by way of separate meters or billing arrangements with the service provider and, upon request, the Tenant will provide the Landlord with receipts evidencing such payments. Invoicing of those utilities for which separate meters have been installed for the Premises will be based on actual consumption plus applicable taxes.

Section 1.06 Use of Premises

The Tenant will not use or occupy, nor suffer or permit the use of the Premises or any part thereof for any purpose other than for a restaurant with a liquor licence (the "Permitted Use").

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Without limiting the generality of the foregoing, the Tenant will not at anytime suffer, permit or allow any person to:

- (a) use the Premises and the Tenant's equipment on the Premises in connection with any operations not deemed by the Landlord, acting reasonably, to be part of the on-site operation of the restaurant; or
- (b) occupy the Premises for residential purposes.

The Tenant will not use, or suffer or permit the use of, any part of the Premises in such a manner as to cause, suffer or permit any annoying noises or offensive odours to emanate from any part of the Premises.

By agreeing to the Tenant using the Premises for the Permitted Use, the Landlord is agreeing as the owner of the Premises only and is not in any way (either in its capacity as landlord or as a regulatory public body) stating, warranting or representing that the Permitted Use is a permitted use under the City of Vancouver Zoning and Development By-law No. 3575 and amendments thereto and other relevant by-laws. Nothing in this section 1.06 affects the Tenant's obligations to comply at its sole expense with all such by-laws pursuant to section 10.01 of this lease.

Section 1.07 Use of Deck

The Tenant will not use or occupy, nor suffer or permit the use of:

- (a) the outdoor seating area (the "Deck") or any part thereof for any purpose other than for outdoor seating for the restaurant operated on upper level of the Premises, subject to the requirements of the Liquor Licensing and Control Branch;
- (b) any approval of the Landlord will be subject to the requirements of the Liquor Licensing and Control Branch.

Section 1.08 Conduct of Business

The Tenant agrees that the following will apply to the conduct of the business at the Premises:

- (a) the Tenant will manage and operate the restaurant in an efficient and professional manner, including maintaining an inventory of food, goods and supplies as may be necessary and appropriate for the efficient operation of the restaurant and supplying all necessary working capital for the effective operation of all services;
- (b) the Tenant will operate the restaurant in a manner that caters to people of all ages, and will obtain the prior written approval of the Landlord for any change to the style of service to customers;
- (c) the Tenant will not apply for nor request any change to any liquor licence for the restaurant without the consent of the Landlord, such consent not to be unreasonably withheld;
- (d) the Tenant will operate the restaurant year round with hours of operation consistent with other similar restaurants in the area;
- (e) the Tenant will ensure that its employees will be at all times of neat, clean and professional appearance;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (f) at the reasonable request of the Landlord, the Tenant will attend any meeting requested by the Landlord to deal with concerns of the surrounding neighbourhood; and
- (g) within 6 months of the third anniversary of the commencement date of the Term and within 6 months of every third anniversary thereafter, the Tenant, at its cost, will engage a professional inspection company approved by the Landlord acting reasonably to conduct a maintenance inspection of the Premises to determine the condition of the Premises, including without limitation, the structural, mechanical and electrical elements of the Premises and the finishes inside and outside of the Premises, and the Tenant will promptly provide to the Landlord a copy of that company's report, will promptly implement all of the recommendations contained in such report, and in any event will have implemented all of such recommendations within 6 months of the Tenant's receipt of such report, with the cost of such repairs being paid by the Landlord and Tenant in accordance with their respective repair and maintenance obligations as set out in Article III of this lease.

Section 1.09 Prohibited Activities/Products

The Tenant acknowledges and agrees that its business in the Premises is being conducted within a city park and that therefore the Tenant must conduct its business in and from the Premises in a manner consistent with the best interests of Harbour Green Park as a whole, as determined from time to time by the Landlord, and the following will apply:

- (a) the Tenant will not enter into any sponsorship agreements without obtaining the Landlord's prior written consent. The Tenant acknowledges that the Landlord has entered into or may enter into certain corporate sponsorship and supply agreements with various third parties for certain Vancouver parks, including Harbour Green Park and that the Tenant may be restricted in the types of cold beverage products it may carry. The Tenant acknowledges that the existing corporate sponsorship and supply agreement is a Supply Agreement (the "Coca-Cola Agreement") dated December 1, 2006 with Coca-Cola Bottling Ltd. with respect to all cold beverage products, including without limitation soda, juice and bottled water. As required by the Coca-Cola Agreement, the Tenant confirms and agrees that it will not sell or advertise cold beverage products contrary to such agreement. The Landlord will make reasonable efforts to ensure that the Tenant is provided with similar price advantages and levels of service that the Landlord receives from the sponsor for the product or service, excluding commissions, royalties, bonuses or other incentives which the Landlord receives as part of the Coca-Cola Agreement. On any extension or renewal of the Coca-Cola Agreement, the Landlord will seek to exclude the Premises from the application of such extended or renewed Coca-Cola Agreement.
- (b) the Tenant will not permit the use of the Premises for any of the following businesses or activities:
 - (i) sale of firecracker or fireworks of any kind;
 - (ii) any gambling device or game of chance or gambling whatsoever;
 - (iii) an auction, flea market, pawn shop, bulk sale, liquidation sale, distress sale, going-out-of-business sale, bankruptcy sale, sheriff's sale, receivership sale, or any other sale which in the Landlord's opinion suggests that business operations are to be discontinued in the Premises; and
 - (iv) the sale or supply of any service which would, in the Landlord's opinion reasonably held:
 - (1) tend to lower the high quality character of the Building;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (2) constitute unethical, deceptive or fraudulent advertising, dishonest procedures or practices;
 - (3) be objectionable; or
 - (4) be a nuisance; and
- (c) except for the Premises, the Tenant will not, without the prior written consent of the Landlord, use any part of Harbour Green Park, including any other area outside the Premises, for merchandising displays, decorations, signs, entertainment and structures (including, without limitation, kiosks, carts and other installations), permanent or otherwise, including for example, catering or special features of non-commercial or commercial activities.

Section 1.10 Install Tenant's Furniture, Furnishings, Equipment and Continuously Operate

The Tenant will occupy the Premises from and after _____, 20__ and from that date will continuously, actively and diligently install all furniture, furnishings and equipment required for the proper and efficient operation of the Premises, so that such furniture, furnishings and equipment will be installed and operational before _____, 20__ and then from and after _____, 20__, the Tenant will continuously, actively and diligently operate the restaurant in the Premises during the Term.

Section 1.11 Interest on Arrears

Whenever and so long as the rent or any other amounts payable hereunder by the Tenant to the Landlord will be in arrears, such amounts will bear interest at the rate of three percent (3%) per annum above the "prime rate" (hereinafter defined), per annum calculated monthly not in advance, from the date due until paid irrespective of whether or not the Landlord has demanded payment. In this lease, "prime rate" means the floating annual percentage rate of interest established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as its prime rate; provided that if a court declares or holds the prime rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder will be fourteen percent (14%) per annum calculated monthly not in advance from the date due until paid. The Landlord will have all the remedies for the collection of such interest as in the case of rent in arrears, but this provision for interest will not prejudice or affect any other remedy of the Landlord under this lease. The Tenant will also pay the Landlord's standard charge levied on N.S.F. cheques.

Section 1.12 Security Deposit

The Landlord may require that the Tenant will lodge with the Landlord a security deposit of FIFTY THOUSAND DOLLARS (\$50,000.00). At all times the deposit will stand charged with a lien in favour of the Landlord which will be in priority to any claims of the Tenant's trustee in bankruptcy or the Tenant's creditors, whether by execution, attachment, garnishing order or otherwise. The Landlord may satisfy any claims it may have against the Tenant arising hereunder, whether liquidated or otherwise, by forthwith applying the deposit or any portion thereof to payment of such claims. In the event that the Landlord appropriates all or any portion of the deposit in payment of such claims, the Tenant will forthwith replenish the deposit upon notice from the Landlord and failing such replenishment the Landlord may terminate this lease. Subject to any claims by the Landlord, upon termination of this lease the balance of the deposit will be remitted to the Tenant PROVIDED HOWEVER no interest will be payable on the deposit. The Landlord will not be obliged to apply any or all of the deposit to any claims it may have against the Tenant before terminating this lease or having recourse to any other remedy. The deposit will not be refundable upon assignment. The assignor and assignee between themselves will make whatever adjustment they deem appropriate.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Section 1.13 Taxes

Notwithstanding the preceding terms of this lease, in addition the Tenant will pay monthly as additional rent in each and every month of the Term a sum on account of the annual general, school and local improvement charges and taxes and any charges and taxes levied under or by virtue of the *Hospital District Finance Act*, R.S.B.C. 1996, c. 203, as amended or substituted from time to time, the *Municipal Finance Authority Act*, R.S.B.C., 1996, c. 325, as amended or substituted from time to time, and any and all other statutes, laws, enactments, regulations and ordinances of the federal or provincial governments or other competent authority, or any modifications or re-enactments thereof which, except for any exemption allowed by law, would in the ordinary course have been lawfully imposed against the Premises excluding the Deck, and against all machinery in and about the Premises for each year of the Term (the "Property Taxes"), as follows:

- (a) for the period between _____, 20__ and _____, 20__, \$[] per square foot of the Premises, prorated for the portion of the calendar year;
- (b) for the next 9 calendar years of the Term and the portion of the remaining calendar year until the expiry of the Term, the Landlord will review and, if necessary, revise effective January 1st in each such calendar year the rate for calculation of Property Taxes to reflect any change in property tax assessments for businesses in Vancouver;
- (c) Property Taxes will be paid monthly and the Tenant will, for each month of the Term, pay to the Landlord an amount equal to one-twelfth of the Property Taxes for the calendar year, such amount to be paid on or before the 1st day of the month;
- (d) at the option of the Landlord, the Landlord may require that the Property Taxes be paid semi-annually in two lump sums on dates to be specified by the Landlord; and
- (e) the parties agree that the square footage of the Premises for the purpose of calculation of the Property Taxes will be [] square feet.

Should the Premises or any portion thereof or any trade fixtures or chattels therein for any reason become subject to taxation, then the Tenant will pay all such taxes, provided that the Tenant will not be required to pay any portion of such taxes in addition to the Property Taxes if such portion is included in the calculation of the Property Taxes.

Section 1.14 Goods and Services Tax

The Tenant will pay when due all goods and services taxes, value-added taxes, sales taxes and consumption based taxes, rates, levies and assessments which are from time to time payable by the Tenant or the Landlord as a result of or that would not be payable but for the rights and obligations contained in this lease, including but without derogating from the generality of the foregoing, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Tenant to the Landlord, but excluding any taxes personal to the Landlord or dependant on the income or capital of the Landlord. Any loss, costs, charges and expenses which relate to such taxes, rates, levies and assessments suffered by the Landlord may be collected by the Landlord as additional rent with all rights of distress and otherwise as reserved to the Landlord in respect of rent in arrears.

ARTICLE II

Section 2.01 Revenue Report

The Tenant will deliver to the Landlord the following Revenue Reports during the Term:

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (a) commencing on the ___ day of _____, 20__ and continuing on the _____ day of each remaining month during the Term, a Revenue Report for the previous month, together with the Rent payable pursuant to Section 1.03;
- (b) a Revenue Report for each Lease Year, to be delivered on or before 90 days after the end of the Lease Year, together with the balance of the Rent payable if such Revenue Report indicates that, based on the Gross Revenue for the Lease Year, the amount owing on account of the Rent exceeds that paid for that Lease Year pursuant to Section 1.03;
- (c) within 60 days of the date of the expiry or earlier termination of this lease, a Revenue Report for the period between the most recently submitted Revenue Report for a Lease Year and the date of expiry or earlier termination, together with the balance of the Rent payable if such Revenue Report indicates that, based on the Gross Revenue for that period, the amount owing on account of the Rent exceeds that paid for such period pursuant to Section 1.03;
- (d) if any Revenue Report for a Lease Year indicates that, based on the Gross Revenue for that period, the amount owing on account of the Rent was less than that paid by the Tenant for such period pursuant to Section 1.03, the Landlord will forthwith reimburse to the Tenant the amount of such overpayment; and
- (e) "Revenue Report" means a report on revenue collected by the Tenant from the business at the Premises, provided by the Tenant to the Landlord, which report must:
 - (i) be in writing and certified by its author as being complete and true as to its contents;
 - (ii) indicate both the actual revenue and the Gross Revenue collected by the Tenant from the business at the Premises for all of the reporting period and separately indicate:
 - A. the value of all meals and other products and services at the Premises provided to staff of the Tenant;
 - B. the value of all meals and other products and services at the Premises provided for promotional purposes;
 - C. all refunds to patrons;
 - D. the Gross Revenue derived from the sit down restaurant service (if any); and
 - E. the Gross Revenue derived from the take out service; and
 - (iii) indicate the Rent for the reporting period based on the Gross Revenue from the business at the Premises.

Section 2.02 Accounting Procedures and Controls

The Tenant will maintain a commercially reasonable standard of internal accounting procedures and controls over all revenues collected by the Tenant in the operation of the business at the Premises and will ensure that all revenues collected with respect to the business at the Premises are clearly and accurately accounted for in accordance with the terms of this lease. The Tenant will maintain records for the business at the Premises which are separate from the records which the Tenant maintains for other businesses conducted by the Tenant.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Section 2.03 Audited Revenue Reports

The Tenant will, at its expense, prepare and submit to the Landlord an audited Revenue Report for each Lease Year during the Term and the following will apply:

- (a) such audited Revenue Report must be submitted on or before 90 days after the end of the Lease Year and for any partial Lease Year to the expiry or earlier termination of this lease, within 90 days of such expiry or earlier termination;
- (b) the audit must be certified by an independent Certified General Accountant or a Chartered Accountant who is in good standing in the Province of British Columbia and is acceptable to the Landlord acting reasonably;
- (c) the audit report must be unqualified and state that the auditor has examined the Revenue Report and that such examination included a general review of the Tenant's accounting procedures and such tests of the Tenant's books and records and other supporting evidence as the auditor considers necessary in the circumstances and must be in the form recommended by the Canadian Institute of Chartered Accountants for such an engagement;
- (d) the audit report must be supplemented by a management letter prepared by the auditor that states whether the Revenue Report presents fairly and accurately the Gross Revenue for that reporting period in accordance with the provisions of this lease and generally accepted accounting principles applied on a basis consistent with that used for the immediately preceding Lease Year, if any, or, if the Revenue Report is inaccurate, sets out the correct Gross Revenue for that reporting period and identifies and comments on any internal control weaknesses regarding the collection and reporting of revenue and, if no such weaknesses are identified, the audit report must be supplemented by a letter from the auditor in which this is indicated;
- (e) the Tenant will retain possession of all documents pertaining to the business at the Premises or at the Tenant's head office in the Province for not less than 7 years;
- (f) the Landlord reserves the right to:
 - (i) audit the books, records and accounts of the Tenant with respect to the business at the Premises at any reasonable time and the Tenant will make available to the Landlord, at any reasonable time, all documents pertaining to the operation of the business at the Premises; and
 - (ii) require that the Tenant submit audited financial statements of the Tenant for each Lease Year during the Term, and the requirements with respect to the audited Revenue Reports set out in this Section 2.03 will apply to such audited financial statements;
- (g) if any audit conducted by the Landlord discloses that the actual Gross Revenue for any Lease Year is greater by 2% or more than that disclosed by the audited financial statements provided by the accountant for the Tenant, the Tenant will pay the cost of such audit forthwith on demand by the Landlord; and
- (h) if any audit conducted by the Landlord discloses that the actual Gross Revenue for any Lease Year is greater by 5% or more than that disclosed by the audited financial statements provided by the accountant for the Tenant, if in the reasonable opinion of the General Manager of the Park Board the misstatement of Gross Revenue is intentional, the Landlord, in addition to its other rights in this lease, may terminate this lease on 30 days' written notice to the Tenant.

ARTICLE III

Section 3.01 No Damage

The Tenant will not suffer, cause nor permit any damage or injury to the Premises other than reasonable wear and tear.

Section 3.02 Snow Removal from the Premises and Sidewalks

The Tenant covenants that it will keep the Premises clear of snow and ice and will keep the adjacent sidewalks, if any, clear of snow and ice to comply with the requirements of the Street and Traffic By-law of the City of Vancouver and that it will indemnify and save harmless the Landlord from all costs, loss, damages, compensation and expenses suffered by the Landlord and sustained or caused by the Tenant's failure to remove snow and ice from the Premises PROVIDED THAT if the Tenant does not remove snow and ice as required by the Street and Traffic By-law, the Landlord may clear the sidewalks and the cost of such removal will be paid by the Tenant to the Landlord.

Section 3.03 Alterations

The Tenant will not carry out or cause to be carried out any additions, renovations or alterations to the Premises ("Alterations") without the Landlord's prior written consent and in the giving of such consent the Landlord may attach whatever conditions, directions, stipulations, prohibitions or deadlines as it deems appropriate and the same will be conditions of this lease, provided that the Tenant will not require the consent of the Landlord to redecorate the interior of the Premises from time to time if the Tenant does not carry out any Alterations. All such works will be wholly at the Tenant's expense but will be the Landlord's absolute property except to the extent that the same may be reasonably categorized as trade fixtures.

By consenting to any Alterations, the Landlord is not in any way (either in its capacity as landlord or as a regulatory public body) stating, warranting or representing that the Alterations are permitted under the City of Vancouver Zoning and Development By-law No. 3575 and amendments thereto, the City of Vancouver Building By-law No. 6134 and amendments thereto, and other relevant by-laws. No consent given by the Landlord (and no failure to enforce this section of this lease) will affect the Tenant's obligations to comply at its sole expense with all such by-laws pursuant to section 10.01 of this lease.

Section 3.04 Maintenance

The Tenant will maintain the Premises in a sanitary, neat, tidy and safe condition and free from nuisance at all times and will clean the Premises daily and will redecorate the interior of the Premises at reasonable intervals, and the following will apply:

- (a) the Tenant will not obstruct the hallways, entrances, stairways and driveways leading to the Premises or suffer same to be used by the Tenant's employees or invitees for any purpose other than ingress to and egress from the Premises, and the Tenant agrees not to place in the hallways, entrances, stairways and driveways any waste paper, dust, garbage, refuse or anything whatsoever that would tend to make such areas appear untidy or filthy;
- (b) the Tenant will employ the services of a commercial garbage and refuse removal company or that service provided by the City and will ensure that refuse, garbage and solid waste is removed as required in order to maintain the cleanliness of the Premises; and
- (c) the Tenant will follow good environmental practices whenever possible and conform to the Landlord's policies in use at other similar operations.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Section 3.05 Repairs to Premises

The Tenant will, at the Tenant's sole expense, keep and maintain the Premises in good repair as would a reasonable and prudent owner of such premises (including, without limitation, wiring, piping, lighting and plumbing fixtures, operating equipment, as well as the electrical, plumbing, sprinkler, sewage, heating, ventilating and air-conditioning systems within the Premises), reasonable wear and tear excepted, and the Landlord will have access to the Premises for purpose of inspection during normal business hours and the Tenant will repair according to notice. The Tenant will be responsible, at its cost, for installing and maintaining any systems, including fall protection systems, that may be required for the Tenant to carry out inspections, repairs and maintenance. Without limiting the generality of the foregoing, the Tenant will, at its sole expense, maintain and repair all materials and finishes in the interior of the Premises (excluding landscaping) and the building envelope, including without limitation painting, sealing, staining and weather-proofing the exterior of the Premises and promptly replacing all damaged glass, plate glass, doors and windows (whether exterior or interior) within the Premises unless such damage is caused by the negligence of the Landlord. If the Tenant fails to promptly commence repairs and diligently prosecute same to completion after receipt of notice from the Landlord requiring repairs, then the Landlord may carry out or cause to be carried out such repairs, the costs of which will be payable by the Tenant, and the Landlord and its employees, agents, contractors and subcontractors will not be liable to the Tenant for any inconvenience, annoyance, disruption, loss of income or liability suffered or incurred by the Tenant by reason of the Landlord effecting such repairs unless caused by the negligence of the Landlord or those for whom the Landlord is responsible in law.

Section 3.06 Repairs to Building

Without in any way limiting the Landlord's and Tenant's obligations, rights and remedies contained elsewhere in this lease, during the Term, the Tenant is responsible, at its sole cost, for:

- (i) all repairs to the structural elements of the Building, including, without limitation, the foundations, load-bearing walls and the roof
- (ii) adequately protecting the structural elements of the Building
- (iii) any repair to or replacement of the structural elements of the Building required due in whole or in part to the Tenant's failure to meet its obligations contained in subsection 3.06(b)(i) or due to defects arising from the construction of the Premises pursuant to the construction license agreement which are the subject of a warranty by the Tenant.

Section 3.07 Landlord Not Obligated to Repair

Pursuant to this lease, the Landlord will not be obliged to make any repairs or alterations to the Premises and the Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises and all expenses related thereto.

Section 3.08 Liens and Encumbrances

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

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

The Tenant will be entitled to grant in favour of a Mortgagee a security interest in this lease and the Tenant's leasehold improvements, inventory, fixtures, equipment and trade fixtures, in accordance with Article VIII.

If and whenever any builders lien 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 therefor arise or are filed against title to the Premises, the Tenant will, within thirty (30) days after receipt of notice thereof, procure the discharge thereof, including any certificate of pending litigation or other notation or charge registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law. Provided however, that in the event of a bona fide dispute by the Tenant of the validity or correctness of any claim for any such lien, the Tenant will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first paying into a court of competent jurisdiction the amount claimed or sufficient security therefor, and such costs as the court may direct, or otherwise posting security as may be satisfactory to the Landlord. This section will not prevent the Tenant mortgaging or encumbering its chattels, inventory, trade fixtures or equipment which are not fixtures.

Pursuant to Section 3(2) of the *Builders Lien Act*, the Landlord may file in the Land Title Office notice of its fee simple interest in the land on which the Premises are located, as is required by law to ensure that the Landlord's title does not become charged with liens related to this lease.

Section 3.09 Signage

The Tenant will not erect on the outside of the Building (or any part of the interior of the Premises which is visible from the outside), in Harbour Beach Park (other than the inside of the Premises), any sign, picture, device, photograph, marking, pole, tower or other structure without first having obtained the consent in writing of the Landlord, which consent may be unreasonably withheld.

Section 3.10 Permitted Encumbrances

The Tenant and the Landlord covenant and agree that, during the Term, the Tenant, at its expense, will perform and observe all of the obligations of the Landlord and may enjoy all of the rights of the City as Landlord (but not those rights of the City in its regulatory capacity) set out in those charges registered on title to the Lands as of the Commencement Date (the "Permitted Encumbrances") and any other charges specifically approved in writing by the Landlord or required to be entered into as a prior-to issuance condition of development permit or building permit issuance. None of the Permitted Encumbrances will merge or be deemed to have merged with the Landlord's title to the Lands, and accordingly all Permitted Encumbrances will be deemed to be in full force and effect. The Landlord will execute such documents as might reasonably be requested by the Tenant to enable it to comply with its obligations and to enjoy its rights in respect of the Permitted Encumbrances. The Tenant further covenants and agrees with the Lessor that if the City exercises any of its rights in its regulatory capacity under the Permitted Encumbrances, such exercise will not be a breach of the Landlord's covenant for quiet enjoyment.

ARTICLE IV

Section 4.01 Limitation of Liability

The Landlord and its officials, officers, employees and agents will not be responsible in any way for:

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (a) any personal injury, death or consequential damage of any nature whatsoever, however caused, that may be suffered or sustained by the Tenant or by any other person who may be in or about the Premises; or
- (b) any loss or damage of any nature whatsoever, however caused, to the Premises, any property belonging to the Tenant or to any other person while such property is in or about the Premises,

whether in the course of the performance of the Landlord's obligations under this lease or otherwise, unless resulting from the negligence of the Landlord or those for whom the Landlord is responsible at law.

Section 4.02 Exclusion of Liability

The Landlord and its officials, officers, employees and agents will not under any circumstances be liable or responsible in any way for:

- (a) any personal injury, death or consequential damage of any nature whatsoever, that may be suffered or sustained by the Tenant or by its officers, employees or agents or any other person who may be in or about the Premises, or any loss or damage of any nature whatsoever to the Premises or to any property belonging to the Tenant or to its officers, employees or agents or to any other person while such property is in or about the Premises,
 - (i) caused by failure, by reason of breakdown or any other cause, to supply adequate drainage, or by interruptions for any reason of any utility or other services, including without limitation heating, plumbing and electrical services, or by steam, water, rain, snow, or other substances leaking, entering, issuing or flowing onto or into any part of the Premises or by reason of breakage or want of repair of any pipes, plumbing, equipment or other machinery serving the Premises; or
 - (ii) however caused, if the Landlord or its officials, officers, employees or agents enter upon the Premises in the case of an emergency;
- (b) any loss or damage of any nature whatsoever, however caused, to books, records, files, money, securities, negotiable instruments, papers or other valuables of the Tenant or its officers, employees or agents;
- (c) any business, economic or indirect loss or damage suffered or sustained by the Tenant or its officers, employees or agents of any nature whatsoever, however caused; or
- (d) any loss which the Tenant is obligated to insure against hereunder or has insured against.

Section 4.03 Indemnification

The Tenant agrees to indemnify and save harmless the Landlord and its officials, officers, employees and agents 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, or relating to or arising from the occupation or possession of the Premises by 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 legal proceeding pertaining thereto and the liabilities or obligations incurred or sustained by or imposed upon the Landlord or in respect of any of its officials, officers, employees or agents, and in respect of any loss, cost, 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, PROVIDED HOWEVER the Tenant's covenant to indemnify and save harmless the Landlord and its officials, officers, employees and agents will not apply to the extent that the loss or damage is caused

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

by negligence or willful misconduct on the part of the Landlord or its officials, officers, employees and agents.

ARTICLE V

Section 5.01 Definitions

In this lease, the following words and expressions will have the following meanings:

- (a) "Environment" has the meaning given to it in the *Canadian Environmental Protection Act, 1999* (Canada) as of the date of this lease;
- (b) "Hazardous Substances" means any Substance capable of creating harm to people, property and/or the Environment including, without limitation, any flammable liquids, flammable or reactive solids, oxidizers, poisons, gases (compressed, liquefied or dissolved), explosives, radioactive materials, ureaformaldehyde, asbestos materials, underground tanks, compounds known as chlorobiphenyls or polychlorinated biphenyls (PCBs), Pollutants, contaminants, hazardous, corrosive or toxic Substances, Hazardous Waste, Waste or waste of any kind, including, without limitation, any Substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is prohibited, controlled, regulated or licenced by any federal, provincial or municipal authority;
- (c) "Hazardous Waste" has the meaning given to it in the *Environmental Management Act, S.B.C. 2003, c. 53*, as amended or substituted from time to time;
- (d) "Medium" means any land, water or air and includes the Premises;
- (e) "Pollute" is a verb which means to Release into or onto any Medium any Substance that:
 - (i) alters the physical, biological or chemical nature of that Medium;
 - (ii) alters the capacity of the Medium to support any living thing, whether animal or plant life;
 - (iii) injures or is capable of injuring the health or safety of a person in, on or near the Medium;
 - (iv) injures or is capable of injuring property or any life form in, on or near the Medium;
 - (v) interferes with or is capable of interfering with visibility or the dispersion of light or any photochemical activity within the Medium;
 - (vi) interferes with or is capable of interfering with the normal conduct of business in, on, near or from the Medium;
 - (vii) causes or is capable of causing physical discomfort to a person in, on or near the Medium;
 - (viii) damages or is capable of damaging the Environment; or
 - (ix) is Hazardous Waste,

and "Polluted" is an adjective, and "Pollution" and "Pollutant" are nouns, which have meanings that correspond to the meaning contained in this paragraph;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (f) "Release" includes release, spill, leak, pump, pour, dump, abandon, emit, empty, discharge, spray, inoculate, deposit, seep, throw, place, exhaust, inject, escape, leach, dispose, infuse or introduce;
- (g) "Substance" has the meaning given to it in the *Canadian Environmental Protection Act, 1999* (Canada) as of the date of this lease; and
- (h) "Waste" has the meaning given to it in the *Environmental Management Act*, S.B.C. 2003, c. 53, as amended or substituted from time to time.

Section 5.02 Suitability of the Premises

The Tenant acknowledges and agrees that the Landlord, either itself or through its officials, officers, employees or agents, has not made and the Tenant has not relied upon any representations or warranties from the Landlord or its officials, officers, employees or agents as to:

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

Section 5.03 Tenant's Inspection of the Premises

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

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

and the Tenant has independently made all such inspections, audits, investigations, tests and surveys as it regards as being necessary for the above purposes. It is understood and agreed that the Premises are being leased to the Tenant, and the Permission is being granted to the Tenant, on an "as is" basis.

The Tenant hereby assumes any and all duties, obligations or liabilities under any relevant law in respect of the Premises, including but not limited to any costs, expenses or liabilities for any remedial action for any Pollution of the Premises caused by the Tenant during the Term.

Section 5.04 Release and Indemnification

The Tenant hereby releases the Landlord and its officials, officers, employees and agents from any and all costs, expenses, damages, losses or liabilities that may be incurred or suffered by the Tenant by reason of or resulting from or in connection with or arising in any manner whatsoever out of:

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (a) the Premises not being suitable for use by the Tenant;
- (b) the Premises being, or being found to be at any time, Polluted; or
- (c) the need to take any remedial action and the taking of such action as a result of such Pollution on or off the Premises .

The Tenant will indemnify, defend and save harmless the Landlord in respect of all claims for bodily injury (including death), property damage or other loss or damage, including damage to property outside the Premises, arising out of or in any way connected with the manufacture, storage, transportation, handling and discharge of Hazardous Substances on or from the Premises by the Tenant or any one for whom the Tenant is responsible in law.

Section 5.05 Removal of Hazardous Substances

The Tenant will not bring upon the Premises or any part thereof, or cause or suffer the bringing upon the Premises or any part thereof, any Hazardous Substances, except those that are required by the Tenant for day to day maintenance of the Premises, and then only in reasonable quantities, only if such Hazardous Substances are not prohibited by any federal, provincial or municipal authority, and only if such use is in compliance with all statutes, by-laws, regulations or orders relating to Hazardous Substances. If at any time there is any Hazardous Substances upon the Premises or a part thereof in breach of this covenant, the Tenant will, at its own expense:

- (a) immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this Article;
- (b) promptly remove the Hazardous Substances from the Premises in a manner which conforms with all laws and regulations governing the movement of the same; and
- (c) if requested by the Landlord, obtain at the Tenant's cost and expense from an independent consultant designated or approved by the Landlord verification of the complete and proper removal of the Hazardous Substances from the Premises or, if such is not the case, reporting as to the extent and nature of any failure to comply with the foregoing provisions of this section 5.05.

Section 5.06 Breach of Laws Relating to Hazardous Substances

Without limiting the generality of section 5.05, the Tenant will immediately give written notice to the Landlord of the occurrence of any event on the Premises constituting an offence under or a breach of any statutes, by-laws, regulations or orders from time to time enforced relating to Hazardous Substances, and at its own cost and expense, comply with all laws and regulations from time to time in force relating to the Landlord, the Tenant, the activities carried out on the Premises relating to Hazardous Substances and the protection of the Environment and will immediately give written notice to the Landlord of the occurrence of any event on the Premises constituting an offence thereunder or a breach thereof and, if the Tenant will, either alone or with others, cause or suffer the happening of such event, the Tenant will, at its own expense:

- (a) immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this section 5.06;
- (b) promptly remove the Hazardous Substances from the Premises in a manner which conforms with all laws and regulations governing the movement of the same; and

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (c) if requested by the Landlord, obtain at the Tenant's cost and expense from an independent consultant designated or approved by the Landlord a report verifying the complete and proper removal thereof from the Premises or, if such is not the case, a report as to the extent and nature of any failure to comply with the foregoing provisions of this section 5.06.

The Tenant will, at its own expense, remedy any damage to the Premises caused by such event within the Premises or by the performance of the Tenant's obligations under this section 5.06 as a result of such occurrence.

If any governmental authority having jurisdiction will require the cleanup of any Hazardous Substances held, Released, spilled, abandoned or placed upon the Premises or Released into the Environment from the Premises during the Term, then the Tenant will, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the work and will keep the Landlord fully informed and provide to the Landlord full information with respect to proposed plans and comply with the Landlord's requirements with respect to such plans. AND the Tenant agrees that if the Landlord determines, in its sole discretion, that the Landlord, its property or its reputation is placed in any jeopardy by the requirement for any such work, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant, pursuant to section 11.07 of this lease.

Section 5.07 Enquiries Pertaining to Hazardous Substances

The Tenant hereby authorizes the Landlord to make enquiries from time to time of any government or governmental agency with respect to the Tenant's compliance with any and all laws and regulations pertaining to the Tenant, the Tenant's activities on the Premises and the Premises including without limitation laws and regulations pertaining to Hazardous Substances and the protection of the Environment; and the Tenant covenants and agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may require in order to facilitate the obtaining of such information.

Section 5.08 Landlord's Inspection of Goods

The Landlord may at any time and from time to time inspect the Tenant's goods upon the Premises and the Tenant's records relating thereto for the purpose of identifying the nature of the goods and the existence or absence of any Hazardous Substances and the Tenant will assist the Landlord in so doing.

Section 5.09 Ownership Remains With Tenant

If the Tenant will bring or create upon the Premises any Hazardous Substances or suffer the bringing or creation upon the Premises of any Hazardous Substances or if the conduct of the Tenant's business will cause there to be any Hazardous Substance upon the Premises then, notwithstanding any rule of law or equity to the contrary, such Hazardous Substance will be and remain the sole and exclusive property of the Tenant and will not become the property of the Landlord and notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance to the Premises and notwithstanding the expiry or earlier termination of this lease.

Section 5.10 Environmental Covenants Survive Termination

The obligations of the Tenant in this Article V will survive the expiry or earlier termination of this lease save only that, to the extent that the performance of those obligations requires access to or entry upon the Premises or any part thereof the Tenant will have such entry and access only at such times and upon such terms and conditions as the Landlord may from time to time specify; and the

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Landlord may, at the Tenant's cost and expense, undertake the performance of any necessary work in order to complete such obligations of the Tenant; but having commenced such work, the Landlord will have no obligation to the Tenant to complete such work.

ARTICLE VI

Section 6.01 Tenant's Liability Insurance

The Tenant will, without limiting any of its obligations or liabilities under this lease, obtain and continuously carry during the Term, at its own expense and cost, insurance coverage with minimum limits of not less than those specified, as follows:

- (a) Commercial General Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence or such higher limit of coverage as the Landlord's Director of Risk Management may require from time to time and the policy will:
 - (i) indemnify and protect the Tenant, its employees, agents and contractors against all claims for loss, damage, injury or death to any person or persons and for damage to the Premises or to any public or private property occurring within or about the Premises or arising by virtue of the Tenant's occupation or possession of the Premises;
 - (ii) contain a cross liability clause insuring the Tenant, the Landlord and their respective officers, employees and agents in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one party by the other or by any officer, employee or agent of one party and any breach of a condition of the policy by any party or by any officer, employee or agent of one party will not affect the protection given by the policy to any other party or to any officer, employee or agent of any party;
 - (iii) add the Landlord, its officials, officers, employees and agents as additional insureds;
 - (iv) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this lease: and
 - (v) provide for a limit of deductibility not greater than Five Thousand Dollars (\$5,000) or such other limit as the Landlord's Director of Risk Management may sanction from time to time.
- (b) Comprehensive Dishonesty Disappearance & Destruction Crime coverage with limits of not less than ten thousand dollars (\$10,000) Employee Dishonesty Form A, twelve thousand and five hundred dollars (\$12,500) Inside or Outside Hold-up, twelve thousand and five hundred dollars (\$12,500) Money Orders and Counterfeit Paper Currency and twelve thousand and five hundred dollars (\$12,500) Depositor's Forgery, with each policy providing for a limit of deductibility not greater than one thousand dollars (\$1,000) per occurrence.

Section 6.02 Tenant's All Risk (Broad Form) Property Insurance

- (a) Building Insurance

The Tenant will, at its cost, on terms and to limits as would a prudent owner of similar property, obtain and continuously carry during the Term a separate commercial broad form policy of insurance on the Building (the "Building Insurance") up to its full replacement value without a co-insurance clause, protecting the Landlord and the Tenant as herein provided for any loss or

**REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT**

damage to the Building against perils that are customarily included in an all risk property insurance policy, which may include without limitation earthquake, flood, tidal wave and by-law insurance. Such policy will name the Landlord and the Tenant as joint named insureds and the Tenant's lender as Loss Payee with a standard mortgage endorsement.

- (b) Tenant's Contents and Improvements Insurance, etc.

The Tenant will, at its cost, obtain and continuously carry during the Term All Risk (broad form) insurance on:

- (i) property of every description and kind owned by the Tenant or for which the Tenant is legally liable or installed by or on behalf of the Tenant (and which is located in the Premises), including without limitation furniture, fittings, installations, alterations, additions, partitions, fixtures, trade fixtures and any display model, project, prototype, tool, instrument or device within the Premises in an amount not less than ninety percent (90%) of the full replacement cost thereof;
- (ii) Boiler and Machinery Insurance protecting the Landlord and the Tenant against accidental damage to all boilers, pressure vessels (fired and unfired), refrigerating and air conditioning systems, piping and accessory equipment; and
- (iii) Business Interruption Insurance providing all risk coverage for loss of profits with a period of indemnity of not less than 12 months;

and these insurance policies will:

- (iv) provide for a limit of deductibility not greater than Five Thousand Dollars (\$5,000.00) per occurrence with respect to all perils except earthquake, and the deductible for any claim will be paid by the Tenant; and
- (v) carry a loss payable clause stating that the proceeds of any claim against the insurer will be payable to the Landlord and the Tenant as their interests appear.

Section 6.03 General Requirements of Insurance

The following will apply to all insurance policies:

- (a) the policies will be with insurers duly authorized to carry on business in the Province of British Columbia, in a form and in amounts satisfactory from time to time and acceptable to the Landlord's Director of Risk Management and will provide the Landlord with 60 days prior written notice of material change or cancellation. Notice will be given to the Board of Parks and Recreation. Notice must identify the name of the Tenant as set out in this lease and the location or address of the Premises;
- (b) neither the providing of insurance by the Tenant in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Tenant from any other provisions of this lease with respect to liability of the Tenant or otherwise;
- (c) the insurance coverage will be primary insurance as respects the Landlord and any insurance or self-insurance maintained by or on behalf of the Landlord, its officials, officers, employees or agents will be excess of this insurance and will not contribute with it; and

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (d) subject to the provisions of this Article VI, the Tenant will provide at its own cost any additional insurance which the Tenant is required by law to provide or which the Tenant considers necessary to protect its own interest or such further other insurance as deemed to be necessary and required by the Landlord's Director of Risk Management.

Section 6.04 Evidence of Insurance

Prior to the commencement of the Term, and from time to time during the Term within 10 days after demand by the Landlord, the Tenant will deliver to the Landlord, for each insurance policy the Tenant must obtain under this lease, a certificate of insurance, satisfactory to the Landlord, and a certified copy of the policy. If the Tenant fails to deliver to the Landlord any such certificate or policy of insurance within the stipulated time, the Landlord may obtain such insurance, and the Tenant will pay to the Landlord the cost of the premiums on demand by the Landlord from time to time.

Section 6.05 Appraisal Report

The Tenant covenants and agrees that it shall, at its sole cost and expense, have a professional building appraisal done by a qualified property appraiser satisfactory to the Landlord every three (3) years during the Term and any renewal term of the Sublease to determine the full replacement cost of the Premises for insurance purposes. The Tenant shall provide a copy of the appraisal to the Landlord's Director of Risk Management and the Insurance Administrator at the Board of Parks and Recreation within 30 days of receipt of the appraisal.

Section 6.06 WorkSafeBC Coverage

At all times during the Term, the Tenant will, and will cause its directors, as applicable, officers, employees, servants and agents and all others engaged in or upon any work on the Building or the Lands to, comply with the *Workers Compensation Act* (British Columbia) (the "WCA") and the requirements and regulations of WorkSafeBC in respect of the Premises and the Lands. Without limiting the generality of the foregoing, the Tenant will:

- (a) require as a condition of any agreement made with respect to construction, repair, renovation or demolition of the Building, whether with contractors, materialmen or otherwise, that there is full workers compensation insurance coverage in place in respect of all workmen, employees, servants and others engaged in or upon any work, and that all workmen, contractors or other workers require the same of their workmen and subcontractors. The Tenant will immediately notify the Landlord of any dispute involving third parties that arises in connection with obtaining and maintaining the workers compensation insurance coverage required hereby if such dispute results or may result in the required insurance coverage not being in place, and the Tenant will take all reasonable steps to ensure resolution of such dispute forthwith. The Tenant will further ensure that no amount payable pursuant to the WCA is left unpaid so as to create a lien on the Lands or the Building. If the workers compensation insurance coverage required by this section 6.05 is not in place, the Landlord will be entitled to have recourse to all remedies specified in this lease or at law or equity; and
- (b) be deemed to be, and is hereby designated and appointed by the Landlord as, the "Prime Contractor" as that term is defined in section 118 of the WCA for the purposes of the WCA and related regulations, including the Occupational Health and Safety Regulation (the "OHS Regulation"), and the requirements and regulations of WorkSafeBC, and will in that capacity strictly comply with all requirements applicable to that designation, including without limitation those set forth in Division 3 of Part 3 of the WCA and in sections 20.2 and 20.3 of the OHS Regulation, as they may be amended from time to time. Notwithstanding the foregoing, with the prior written consent of the Landlord, a contractor hired by the Tenant to perform

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

work on the Premises on its behalf may be designated as the Prime Contractor instead of the Tenant.

Section 6.07 Cost of Insurance - Intentionally Omitted

ARTICLE VII

Section 7.01 Rent not to Abate

Subject to the provisions of Section 7.05, the partial destruction or damage or complete destruction by fire or other casualty of the Building will not result in the termination of this lease or entitle the Tenant to surrender possession of the Premises or to demand any abatement or reduction of the Rent, additional rent or other charges payable under this lease, notwithstanding any law or statute now or in the future to the contrary.

Section 7.02 Tenant's Obligation When Building Partially Damaged or Destroyed

Subject to the provisions of section 7.05, the Tenant covenants and agrees with the Landlord that in the event of partial damage to or partial destruction of the Building, the Tenant will either:

- (a) replace any part of the Building damaged or destroyed with a new structure in accordance with any agreement which may be made by the Tenant with the Landlord; or
- (b) in the absence of any such agreement, repair or replace such damage or destruction to a standard comparable to the standard of the structure being repaired or replaced.

Section 7.03 Tenant's Obligations When Building Completely or Substantially Destroyed

Subject to the provisions of section 7.05, the Tenant covenants and agrees with the Landlord that in the event of complete or substantially complete destruction of the Building, the Tenant will either:

- (a) reconstruct or replace the Building with a new structure or structures in accordance with any agreement which may be made by the Tenant with the Landlord; or
- (b) in the absence of any such agreement, replace the Building with a new structure or structures comparable to the structure or structures being replaced.

Section 7.04 Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of the Building or any part thereof pursuant to the provisions of section 7.02 or 7.03 will be made or done in compliance with this lease including without limitation section 3.03, section 3.05 and section 3.06.

Section 7.05 Destruction or Damage During Last Two Years of Term

- (a) In the event of the complete or substantially complete destruction of the Building during the last two (2) years of the Term or any Renewal Term, the Tenant may, at its option, either reconstruct or replace the Building so destroyed or damaged in accordance with section 7.03 or decline to do so, and instead elect to terminate this

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Lease, provided that the Tenant makes such election within sixty (60) days after the date on which the Building was so destroyed and notifies the Landlord in writing of its election forthwith after making it;

- (b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Tenant pursuant to section 7.05(a), the Tenant will demolish and completely remove the Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 6, be distributed as follows:
- (ii) firstly, to reimburse the Tenant for all costs and expenses necessarily incurred by the Tenant in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;
 - (iii) secondly, to pay and satisfy the Mortgage, if any;
 - (iv) thirdly, to pay the balance of the insurance monies, if any, as follows:
 - (1) to the Landlord the amount calculated as follows:
$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days in expired portion of the Term} \div \text{total days in Term}); \text{ and}$$
 - (2) to the Tenant the amount calculated as follows:
$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days remaining in the Term} \div \text{total days in Term});$$
- (c) Notwithstanding anything contained herein, in the event the Tenant terminates this Lease in accordance with this section 7.05, this section 7.05 will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 7.05 or any part thereof remains unperformed.

Section 7.04 No Effect on Repair Obligations

Nothing in this Article VII will alter the parties' respective repair obligations as set out in Article III of this lease.

Section 7.05 Tenant to Notify Promptly

The Tenant will give immediate notice to the Landlord in the event of fire or accident or other damage or destruction to the Premises.

ARTICLE VIII

Section 8.01 Assignment

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

The Tenant shall not assign its leasehold interest in the Premises save and except upon the written consent of the Landlord, which consent the Landlord may not unreasonably withhold but nevertheless if there are personal covenants herein on the part of the Tenant which, in the opinion of the Landlord's solicitors will not run with the lease, then the Landlord may withhold its consent to assignment unless the prospective assignee covenants with the Landlord to be bound by such personal covenants as if such covenants had been made between the Landlord and the prospective assignee.

If the Tenant is a corporate entity, then any amalgamation of the Tenant with any other party, and any change of effective control of the Tenant, will constitute an assignment of the Tenant's interest under this lease and will be subject to all of the provisions of this section 8.01. Change of effective control of the Tenant includes any transfer, voluntary or involuntary, direct or indirect, which results in a change in the person or persons exercising or who might exercise effective control of the Tenant or the business required to be carried on in the Premises.

Section 8.02 Subleasing

The Tenant shall not sublease, license, set over or otherwise part with possession of the Premises or let any third party into possession of the Premises save and except upon written consent of the Landlord, which consent the Landlord may not unreasonably withhold.

Section 8.03 Assignment of Lease Rent

Notwithstanding section 8.02 hereof, the Tenant hereby assigns to the Landlord all rents and fees payable to the Tenant under any lease, license or occupation agreement with any third party, which assignment will supersede any provisions regarding the Tenant in bankruptcy and any claims of the creditors of the Tenant whether by execution, attachment, garnishing order or otherwise PROVIDED HOWEVER the Landlord agrees to refrain from enforcing the said assignment so long as the Tenant will not be in default in the payment of rent or the performance or observance of its covenants hereunder. Upon the Tenant falling into default in the payment of its rent or the performance or observance of its other covenants hereunder, the Landlord may forthwith direct the sublessee, licensee or such other third party to pay to the Landlord the lease rent, license fees or other monies as would otherwise be owing to the Tenant from time to time and the payment of such monies to the Landlord will pro tanto discharge the sublessee's, licensee's or other third party's obligations to the Tenant and the Landlord will apply such monies to the rent and the performance and observance of the Tenant's covenants hereunder notwithstanding any claims on the part of the Tenant's trustee in bankruptcy or the Tenant's creditors, whether by execution, attachment, garnishing order or otherwise. If the sublessee, licensee or other third party fails to abide by the Landlord's directions in this behalf then, at the Landlord's election, the lease, license or other third party agreement will cease and determine and the Landlord may forthwith re-enter the leased, licensed or occupied portion of the Premises and arrange for new occupants thereof whose occupation will be subject to the provisions of this paragraph.

Section 8.04 Mortgaging by Tenant

Subject to Sections 8.05 and 8.06 and subject to the Landlord's prior written consent, which consent may be unreasonably or arbitrarily withheld, the Tenant may mortgage its leasehold interest in the Premises to a Mortgagee for the purpose of financing or refinancing the costs of designing, developing, constructing, furnishing, repairing, or replacing the Premises, but not otherwise. For the purposes of this lease and in particular this Article VIII, the following definitions will apply:

- (a) "Mortgage" means a mortgage or mortgages upon or in respect of the interest of the Tenant in the Premises or any part thereof and the lease and includes any deed of trust and mortgage to secure any bonds or debentures issued thereunder; and

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (b) "Mortgagee" means an institutional mortgagee or mortgagees under a Mortgage and includes any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder.

Section 8.05 Tenant Liable for Rent, Property Taxes Notwithstanding Mortgage

Nothing contained in this lease will be construed to prevent or prohibit the assignment or subletting by the Tenant of this lease or the leasehold interest of the Tenant in the Premises by way of Mortgage as provided in section 8.04, subject to the prior written consent of the Landlord, provided however that in the event of and notwithstanding any such assignment or subletting, the Tenant will be and remain liable for the payment of all Rent, additional rent and Property Taxes and the performance of all the terms, covenants and conditions of this lease which are the Tenant's responsibility to perform.

Section 8.06 Mortgage Subject to Landlord's Rights under Lease

Subject to the provisions of Section 8.07, every Mortgage will be made expressly subject to the rights of the Landlord under this lease.

Section 8.07 Notice to and Remedies of Mortgagee

- (a) No re-entry, termination or forfeiture of this Lease by the Landlord will be valid against the Mortgagee who has filed with the Landlord notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article XVI, unless the Landlord has given to the Mortgagee prior written notice of the default or contingency entitling the Landlord to re-enter, terminate or forfeit this Lease, specifying the nature of that default or contingency, and stating the Landlord's intention to take such proceedings and requiring the Mortgagee:
- (i) to cure the default or contingency specified in the notice within a period of 30 days from the date of receipt of that notice by the Mortgagee; or
 - (ii) if the default or contingency is other than the failure to pay Rent or additional rent or Property Taxes or any other sums required to be paid to the Landlord by any provision of this lease, and if the default or contingency cannot reasonably be cured within such 30 day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency,

and the Landlord hereby grants the Mortgagee access to the Premises for that purpose. If the default or contingency is cured within the period specified, the Mortgagee will be entitled to continue as tenant of the Premises and licensee of the Licence Area for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of this lease until such Mortgagee as Tenant assigns its leasehold estate as permitted by this lease and delivers to the Landlord an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the effective date of the assignment and by which the assignee agrees with the Landlord to attorn as tenant to the Landlord and to be bound by and to perform the covenants and agreements of this lease. If the Mortgagee consists of more than one mortgagee each having a separate charge upon the Tenant's interest in this lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Landlord hereby agrees to permit curing of the default or contingency specified as aforesaid, by that mortgagee which is willing to cure the default or contingency and attorn as tenant as aforesaid and whose charge ranks in priority over the charge or charges held by the other mortgagee or mortgagees

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

willing to cure and assume as aforesaid; except that in the event any Mortgagee has commenced a foreclosure action, the provisions of section 8.07(b) will apply.

- (b) In the event the Mortgagee commences foreclosure proceedings against the Tenant, whether or not the Tenant is in default of the performance of its covenants and agreements with the Landlord under this lease at the time such foreclosure proceedings are commenced, the Landlord will not re-enter, terminate or forfeit this lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Landlord to re-enter, terminate or forfeit this Lease if the Mortgagee:
- (i) first gives to the Landlord written notice of the foreclosure proceedings;
 - (ii) is actively prosecuting the foreclosure proceedings without undue delay;
 - (iii) cures the default or contingency within a period of 30 days from the date of receipt of notice from the Landlord specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Rent or additional rent or Property Taxes or any other sums required to be paid to the Landlord by any provision of this lease and if such default or contingency cannot reasonably be cured within such 30 day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency; and
 - (iv) performs and observes all of the Tenant's covenants and agreements under this lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee.

In the event that the Mortgagee acquires the Tenant's leasehold interest in the Premises pursuant to the foreclosure proceedings, the Mortgagee will thereupon become subrogated to the rights of the Tenant under this lease, provided it attorns to the Landlord as tenant and undertakes to be bound by and perform the covenants and agreements of this lease until such Mortgagee as Tenant assigns its leasehold estate as permitted by this lease and delivers to the Landlord an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the effective date of the assignment and by which the assignee agrees with the Landlord to attorn as tenant to the Landlord and to be bound by and to perform the covenants and agreements of this lease. If the Mortgagee consists of more than one mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default or contingency granted by this Section 8.07(b) to a foreclosing Mortgagee will be deemed granted to them in the order of priority of the charges held by the foreclosing Mortgagees.

- (c) If this lease is subject to termination or forfeiture pursuant to Article IX by reason of the bankruptcy or insolvency of the Tenant and the Mortgagee has filed with the Landlord a notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article XVI, the Landlord will give to the Mortgagee notice of the bankruptcy or insolvency of the Tenant entitling the Landlord to terminate or forfeit this lease and stating the Landlord's intention to take such proceedings and requiring the Mortgagee to cure the Tenant's default and the Tenant's default will be deemed to have been sufficiently cured if the Mortgagee:
- (i) takes possession and control of the Premises, or causes a receiver to be appointed under the terms of the Mortgagee's charge or by a court of competent jurisdiction, who takes possession and control of the Premises, and the Landlord hereby grants the Mortgagee or such receiver access to the Premises for that purpose;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (ii) cures every default within a period of 30 days from the date of receipt by the Mortgagee of the notice from the Landlord of the bankruptcy or insolvency of the Tenant, or if such default or defaults are other than the failure to pay Rent or additional rent or Property Taxes or any other sums required to be paid to the Landlord by any provision of this lease and if such default or defaults cannot reasonably be cured within such 30 day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or defaults;
- (iii) attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of this lease until such Mortgagee as Tenant assigns its leasehold estate as permitted by this lease and delivers to the Landlord an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the effective date of the assignment and by which the assignee agrees with the Landlord to attorn as tenant to the Landlord and to be bound by and to perform the covenants and agreements of this lease.

If the Mortgagee consists of more than one mortgagee, the right to take possession and control, to cure any default and to assume the lease as aforesaid will be deemed granted to them in the order of the priority of their respective charges.

- (d) Any re-entry, termination or forfeiture of this lease made in accordance with the provisions of this lease as against the Tenant will be valid and effectual against the Tenant even though made subject to the rights of any Mortgagee to cure any default of the Tenant and to continue as tenant under this lease.
- (e) No entry into the Premises by the Mortgagee pursuant to this section 8.07 for the purpose of curing any default or defaults of the Tenant will release or impair the continuing obligations of the Tenant.

ARTICLE IX

Section 9.01 Bankruptcy

If during the Term, any of the goods or chattels of the Tenant are at any time seized or taken in execution by any creditor of the Tenant, or if the Tenant makes a general assignment for the benefit of creditors, or if the Tenant institutes proceedings to have the Tenant adjudicated as bankrupt or insolvent, or if the Tenant becomes the subject of bankruptcy or insolvency proceedings, or if a judgment, decree or order be entered by a court of competent jurisdiction adjudging the Tenant bankrupt or insolvent, or if the Tenant is unable to meet all debts as they fall due for a period of not less than three (3) months, or if the Tenant or its directors will pass any resolution authorizing the dissolution or winding-up of the Tenant, or if a receiver, interim receiver, manager, receiver-manager, trustee or liquidator of all or any part of the Tenant's property will be appointed or applied for by the Tenant or by one or more of the Tenant's creditors, then the Landlord will be so notified and the then current rent plus an additional three (3) months current rent will immediately become due and be paid and the Landlord may immediately claim the same together with any arrears of rent and, at the option of the Landlord, the Term is subject to termination forthwith. If the Tenant becomes defunct or amalgamates with any other body without obtaining the prior written consent of the Landlord or if a committee is appointed under the *Patients Property Act*, R.S.B.C. 1996, c.349, as amended or substituted from time to time, to lawfully deal with the Tenant's estate then at the option of the Landlord the Term will forthwith terminate. If the Tenant surrenders up its certificate of incorporation or otherwise ceases to exist the Term terminates as of such surrender or dissolution. If the Tenant is a natural person, at any time after the Tenant's death the Landlord may terminate the Term upon sixty (60) days notice to any executor or administrator of his estate.

ARTICLE X

Section 10.01 Statutes and By-laws

The Tenant covenants to promptly and faithfully observe and comply with all federal, provincial or civic statutes, by-laws, regulations and orders now or hereafter which are in force and in effect which touch and concern the Premises or the Tenant's activities within the Premises, including, without limitation any applicable environmental guidelines, and any amendments thereto, which deal with environmental protection and safety and/or Hazardous Substances. If any such statutes, by-laws, regulations, orders or guidelines are directed at owners, the Tenant will perform and observe same at its own expense in the place and stead of the Landlord.

Section 10.02 Quiet Enjoyment

Subject to the provisions of this lease and subject to the provision that nothing contained or implied herein will prejudice or affect the Landlord's rights and powers in the exercise of its functions pursuant to the *Vancouver Charter*, S.B.C. 1953, c.55, as amended or substituted from time to time, and the rights and powers of the Landlord under all of its public and private statutes, by-laws and regulations, all of which may be as fully and effectively exercised in relation to the Premises as if this lease had not been executed and delivered by the Landlord and the Tenant, the Landlord covenants with the Tenant for quiet enjoyment.

Section 10.03 Performance of Obligations

The Tenant covenants with the Landlord to faithfully and promptly pay the rent and perform and observe its obligations herein.

Section 10.04 Registration of Lease

The Landlord will deliver this lease in registrable form and the Tenant, at its cost, will have the right to register this lease in the Land Title Office.

Section 10.05 Landlord's Rules and Regulations

The Tenant shall at all times comply with all reasonable rules and regulations made by the Landlord in respect to the Tenant's use and occupation of the Premises which are not inconsistent with the terms of this Lease.

ARTICLE XI

Section 11.01 Breach of Covenants

The Landlord and Tenant agree that subject to the provisions of Section 8.07, if and whenever:

- (a) any Rent payment or any part thereof is not made on the day appointed for payment thereof and such default continues for 7 days following notice thereof; or
- (b) the Tenant is in default in the payment of any money, other than Rent, required to be paid by the Tenant under the terms of this lease and such default continues for ten (10) days following any specific due date on which the Tenant is to make such payment or, in the absence of such specific due date, for ten (10) days following notice requiring the Tenant to pay the same; or
- (c) the Tenant defaults in performing or observing any of the provisions of this lease other than those requiring payment of money to the Landlord and such default continues for a period of

**REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT**

twenty (20) days after notice thereof to the Tenant, except for a default which to be cured with all due diligence would require a longer period, then after such longer period, or if the Tenant fails to proceed promptly and diligently and continuously after the service of such notice to cure same; or

- (d) the Premises are vacated or unoccupied for ten (10) or more consecutive days while the Premises can be used for the Permitted Use, without the consent of the Landlord; or
- (e) the Premises are abandoned by the Tenant; or
- (f) this lease is terminated;

then and in every such case, it will be lawful for the Landlord at any time thereafter without notice or demand, with or without process of law and by forceable entry if necessary, to re-enter into and upon the Premises, and to terminate this lease by leaving upon the Premises notice in writing of such termination. If the Landlord terminates this lease pursuant to this section, or otherwise as a result of default of the Tenant, there will immediately become due and owing to the Landlord, in addition to any other sums payable to the Landlord hereunder as damages suffered by the Landlord as a result of the Tenant's breach, the then current month's rent, together with the rent accruing for the remainder of the Term. This provision for notice and termination will not be construed so as to delay or supersede any specific remedy to which the Landlord may have recourse in this lease.

Section 11.02 Distraint

The Tenant waives and renounces the benefit of any present or future law taking away or limiting the Landlord's rights against the property of the Tenant and, notwithstanding any such law, the Landlord may seize and sell all the Tenant's goods and property, whether within the Premises or not, and apply the proceeds of such sale towards any arrears of rent (including amounts deemed to be rent under this lease) and the costs of the seizure and sale. The Tenant further agrees that if it abandons the Premises and any arrears of rent remain unpaid, the Landlord, in addition to any remedy otherwise provided by law, may seize and sell the goods and property of the Tenant at any place to which the Tenant or any other person may have removed them from the Premises, in the same manner as if such goods and property had remained in, about or upon the Premises.

Section 11.03 Right to Re-let

If the Landlord becomes entitled to re-enter the Premises the Landlord will have the right, if it thinks fit, to enter the Premises as the agent of the Tenant either by force or otherwise without being liable for any prosecution therefor, and as agent of the Tenant to re-let the Premises or any part or parts thereof at the risk of the Tenant and, as agent for the Tenant, to receive the rent therefor and, as agent for the Tenant, to take possession of any furniture, equipment and other property therein and sell the same at public or private sale without notice. Such rent and proceeds from the sale of the furniture, equipment and other properties will be allocated first to the Landlord's cost of so entering and re-letting, then to interest on amounts due by the Tenant to the Landlord hereunder and unpaid, and then to the payment of such unpaid sums. The balance of such rent and proceeds, if any, may be applied by the Landlord on account of the rent due hereunder to the Landlord.

Section 11.04 Forfeiture

The Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event the Tenant will be evicted or dispossessed from the Premises for any cause, statutory or otherwise, or if the Landlord re-enters the Premises following the occurrence of any default by the Tenant hereunder, or if this lease is terminated before the expiration date thereof originally fixed herein.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Section 11.05 Remedies Generally

Mention in this lease of any particular right or remedy of the Landlord in respect of the default by the Tenant will not preclude the Landlord from any other right or remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this lease. No right or remedy will be exclusive or dependent upon any one or more of such rights or remedies independently or in combination, such rights or remedies being cumulative and not alternative. Whenever the Tenant seeks a remedy in order to enforce the observance or performance of any of the terms, covenants and conditions contained in this lease on the part of the Landlord to be observed or performed, the Tenant's only remedy (except where another remedy is expressly provided herein, in which event the Tenant will be restricted to that remedy) will be for such damages as the Tenant will be able to prove in a court of competent jurisdiction that the Tenant has suffered as a result of a breach (if established) by the Landlord in the observance and performance of any of the terms, covenants and conditions contained in this lease on the part of the Landlord to be observed and performed. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this lease, the relationship of the Landlord and the Tenant created hereby, the Tenant's use or occupancy of the Premises or any claim for any injury. In the event the Landlord commences any action or proceeding for non-payment of rent, the Tenant agrees not to interpose any counterclaim of any nature or description in any such action or proceeding. In the event of any breach or threatened breach by the Tenant of any of the terms and provisions of this lease, the Landlord will have the right to injunctive relief as if no other remedies were provided herein for such breach. The Tenant hereby expressly waives any right to assert a defense based on merger and agrees that neither the commencement of any action or proceeding, nor the settlement thereof, nor the entry of judgment therein will bar the Landlord from bringing any subsequent action or proceeding from time to time. If the Tenant will default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, whether by a renewal or extension option herein contained or by separate agreement, the Landlord may cancel such option or agreement for renewal or extension of this lease, upon written notice to the Tenant.

Section 11.06 Expenses

If any legal proceeding is brought for recovery of possession of the Premises, for the recovery of rent or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed, the Tenant will pay to the Landlord as additional rent, upon demand, all costs and expenses incurred therefor (including without limitation, all professional and consultant fees, and all legal fees on a solicitor and his own client basis, disbursements, and all court costs and expenses of any legal proceeding; and the term "proceeding" will include, without limitation, any arbitration, administrative, governmental, quasi-governmental or any other mediation proceeding and the term "costs" will include the pro-rata portion of the wages, salaries and all other remuneration of the Landlord's officers and employees reasonably attributed to the matter).

Without limiting the generality of the immediately preceding paragraph or any other provisions of this lease, the Tenant will pay to the Landlord, as additional rent upon demand, all costs and expenses (including, without limitation, those fees, disbursements, costs and expenses set out in the bracketed insert in the immediately preceding paragraph of this section 11.06) which the Landlord may incur or pay out by reason of, or in connection with:

- (a) any proceeding by the Landlord to terminate this lease or for the recovery of possession of the Premises or for the recovery of rent;
- (b) any other proceeding by the Landlord against the Tenant or any indemnitor;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (c) any distress levied by the Landlord against the Tenant's goods, chattels and inventory or any of them on the Premises for the recovery of rent;
- (d) any default by the Tenant in the observance or performance of any obligations of the Tenant under this lease whether or not the Landlord commences any proceeding against the Tenant or any indemnitor;
- (e) any proceeding brought by the Tenant against the Landlord (or any officer, employee or agent of the Landlord) in which the Tenant fails to secure a final judgment against the Landlord;
- (f) any other appearance by the Landlord (or any officer, employee or agent of the Landlord) as a witness or otherwise in any proceeding whatsoever involving or affecting the Landlord, the Tenant, this lease, the indemnity agreement (if any) or the Premises;
- (g) any amendment, modification or change in any of the terms of this lease or the indemnity agreement, if any (and any request or negotiations pertaining thereto, whether or not such amendment, modification or change is finally agreed on);
- (h) any renewal, extension, surrender, or release of this lease or the indemnity agreement, if any (and any request or negotiations pertaining thereto, whether or not such renewal, extension, surrender or release becomes effective);
- (i) any transfer of this lease (and any request or negotiations pertaining thereto, whether or not such transfer is approved and finally agreed on); and
- (j) any Alterations of or to the Premises (and any request or negotiations pertaining thereto, whether or not such Alterations are approved and finally agreed on).

The Tenant's obligations under this section 11.06 will survive the expiration or earlier termination of this lease.

Section 11.07 Landlord May Remedy Tenant's Default

If the Tenant fails to pay, when due and prior to the expiration of any curative period provided for in this Lease, any amount required to be paid by the Tenant pursuant to this lease, the Landlord, after giving two (2) days' notice in writing to the Tenant, may, but will not be obligated to, pay all or any part of it. If the Tenant is in default in the performance of any of its covenants or obligations hereunder (other than the payment of rent required to be paid by the Tenant pursuant to this lease) and the applicable curative period has expired, the Landlord may from time to time after giving such notice as it considers sufficient (or without notice in the case of an emergency) having regard to the circumstances applicable, perform or cause to be performed any of such covenants or obligations, or any part thereof, and for such purpose may do such things as may be required, including, without limitation, entering upon the Premises and doing such things upon or in respect of the Premises or any part thereof as the Landlord considers requisite or necessary. All expenses incurred and expenditures attributable to or made (including all employee, overhead and other internal costs) pursuant to this section 11.07, will be paid by the Tenant to the Landlord as additional rent upon demand. The Landlord will have no liability to the Tenant or any other person for any claims resulting from any such action, entry or performance of any work by the Landlord upon the Premises.

Section 11.08 Security Agreement

- (a) The Tenant hereby grants to the Landlord a security interest ("Security Interest") in all of the Tenant's personal property of any kind including, without limiting the generality of the foregoing, all goods, chattels, trade fixtures, furniture, equipment, inventory, stock-in-trade,

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

chattel paper, instruments, documents of title, supplies, securities, the business on the Premises, accounts receivable, book debts and intangibles (collectively, "Collateral") which are or may be at any time hereafter on the Premises or elsewhere, to secure the payment of all rent and the fulfillment of the other obligations of the Tenant under this lease. Except for the Security Interest, the Tenant agrees that all Collateral on the Premises shall be the unencumbered property of the Tenant. The Tenant agrees to enter into, on the Landlord's request, a separate security agreement, mortgage or similar other charge or security instrument, in addition to this security agreement, or to document separately the Security Interest hereby granted, containing such terms as the Landlord shall reasonably require, on all of the Collateral at any time during the Term, including all after-acquired items forming part of the Collateral, as security for the payment of rent and performance by the Tenant of all of its other obligations pursuant to this lease. Whether or not any additional or separate security agreement, mortgage, charge or other security instrument is requested by or given to the Landlord as aforesaid, the Tenant confirms and agrees that the Security Interest is complete and valid without the necessity of the Tenant's giving any other or further documentation in respect thereof. The Tenant agrees that the Security Interest shall attach to the Collateral immediately upon the execution of this lease and that, to the extent necessary to give full effect to this section 10.08, this lease is intended to constitute a security agreement as defined in the *Personal Property Security Act*, R.S.B.C. 1996 c.359 as amended or substituted from time to time. This security agreement is separate from and shall survive the termination, expiry or disclaimer of this lease.

- (b) On default by the Tenant under this lease, the Landlord may itself, or by its agents or employees, or by a receiver or any replacement thereof appointed in writing by Landlord, take possession of the Collateral, carry on the business on the Premises, in such manner as Landlord or such receiver determines, and realize upon the Collateral and enforce its rights under the Security Interest by any remedy or proceeding authorized or permitted hereby or at law including, without limitation, all rights and remedies available to a secured party under the *Personal Property Security Act* and any other similar statutes; included in such rights of the Landlord is the right to recover the reasonable expenses of retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral and all other reasonable expenses, including legal costs, incurred by the Landlord, the Landlord may exercise any rights as provided by this Section 10.08 on the Premises and for such purpose may lock the Premises, change any locks on the Premises and by any means exclude the Tenant from all or any parts of the Premises and the Landlord shall not thereby be terminating this lease in the absence of express written notice terminating this lease.
- (c) This Security Interest shall not be deemed to have been satisfied, discharged or redeemed by reason of the Tenant not being indebted to the Landlord at any time or from time to time and no payment shall reduce the amount secured by this Security Interest except to the extent expressly approved by the Landlord in writing.
- (d) This Security Interest is given in addition, and not as an alternative, and may be exercised by the Landlord without prejudice to any other rights of the Landlord under this lease or at law including, without limitation, the Landlord's right of distress.

ARTICLE XII

Section 12.01 Vacant Possession

Upon termination of the Term, whether by the passage of time or otherwise, the Tenant will deliver up vacant possession of the Premises and will leave the Premises in a sanitary, neat, tidy, safe and empty condition free from all nuisance, debris, rubbish and stock-in-trade and will ensure that the

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Premises are to the standard of repair and decoration required of the Tenant pursuant to Article II hereof.

Section 12.02 Trade Fixtures

- (a) If the Tenant is not in default hereunder at the expiration of the Term, the Tenant will have the right to remove its trade fixtures from the Premises but will make good any damage caused to the Premises resulting from the installation or removal thereof.
- (b) If the Tenant fails to remove any of its trade fixtures and restore the Premises as provided in section 12.02(a), all such trade fixtures will become the property of the Landlord except to the extent that the Landlord requires removal thereof pursuant to section 12.02(d).
- (c) If the Tenant abandons the Premises or this lease is terminated before the proper expiration of the Term due to a default on the part of the Tenant, as of the moment of such default by the Tenant, all trade fixtures and furnishings of the Tenant (whether or not attached in any manner to the Premises) will, except to the extent the Landlord requires the removal thereof pursuant to section 12.02(d), become and be deemed to be the property of the Landlord, without compensation to the Tenant but without prejudice to any other right or remedy of the Landlord at law or in equity.
- (d) Notwithstanding that any trade fixture is or may become the property of the Landlord, the Tenant will forthwith remove all or part of the same and will make good any damage caused to the Premises resulting from the installation or removal thereof, all at the Tenant's expense, should the Landlord so require by notice to the Tenant.
- (e) If the Tenant, after receipt of a notice from the Landlord pursuant to section 12.02(d), fails to promptly remove any trade fixture in accordance with such notice, the Landlord may enter into the Premises and remove therefrom all or part of such trade fixture and make good any damage caused to the Premises resulting from the installation or removal thereof, without any liability accruing against the Landlord and at the expense of the Tenant, which expense will forthwith be paid by the Tenant to the Landlord.

Section 12.03 Overholding

If the Tenant continues to occupy the Premises after the expiration of the Term, and the Landlord will accept rent, the new tenancy thereby created will be a tenancy from month to month and not from year to year, and will be subject to the covenants and conditions herein contained so far as may be applicable to a tenancy from month to month, and will be determined by one month's prior notice in writing.

ARTICLE XIII

Section 13.01 For Showings/Inspections

The Landlord or its agents have the right to enter the Premises at any reasonable time (and upon not less than forty-eight (48) hours written notice to the Tenant) to examine them (or within the last 60 days of the Term if not renewed or any renewal term if not further renewed, to show them to prospective purchasers or tenants) and to enter the Premises at times mutually agreed between the Landlord and the Tenant (or on reasonable prior notice but except in the case of emergency not less than 48 hours notice) to make such repairs as the Landlord may deem necessary or desirable and the Landlord will be allowed to take all required material into and upon the Premises without such entry constituting an eviction of the Tenant in whole or in part nor a breach of the Landlord's obligations and the rent reserved will in no way abate by reason of loss or interruption of the business of the Tenant or

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

otherwise while the repairs are being made, provided the Landlord takes all commercially reasonable steps to perform the work outside of the normal operating hours of the Tenant's business on the Premises and expeditiously and with as little inconvenience to the Tenant as is possible in the circumstances.

Section 13.02 Landlord's Access to Records

The Landlord may at any reasonable time and upon forty-eight (48) hours written notice to the Tenant enter (or permit governmental authorities to enter) the Premises or any other office of the Tenant's for the purpose of ensuring the Tenant's compliance with this lease, including without limitation, by auditing the Tenant's environmental and financial records and by conducting soil, water and other tests, provided that the Landlord takes reasonable steps to avoid interfering with the Tenant's use and occupation of the Premises.

Section 13.03 Emergency Access

If and when for any reason an emergency exists or is reasonably contemplated, the Landlord or its agents may enter the Premises by a master key, or may forcibly enter them, provided reasonable care is exercised, without rendering the Landlord or such agent liable, and without in any manner affecting the Tenant's obligations under this lease. However, despite the above, the Landlord has no obligation, responsibility or liability, for the care, maintenance or repair of the Premises except as otherwise specifically provided.

ARTICLE XIV

Section 14.01 Option to Renew

If:

- (a) the Tenant pays the rent as and when due and punctually observes and performs the terms, covenants and conditions to be observed and performed by it in accordance with the terms of this lease; and
- (b) the Tenant gives the Landlord not less than twelve (12) months and not more than eighteen (18) months written notice prior to the expiration of the Term of the Tenant's exercise of this option to renew;

then the Landlord shall grant to the Tenant a renewal lease upon the expiration of the Term for a period of ten (10) years (the "Renewal Term") on the same terms and conditions as set out in this lease except that:

- (c) there shall be no further right to renew;
- (d) with respect to such Renewal Term, the Landlord shall have no obligation to pay or provide to the Tenant any allowance, concession or inducement of any nature, or provide any free rent or discounted rent of any nature, or provide any fixturing period, or do or perform any Landlord's work in, on, to or for the Premises;
- (e) the parties will, by agreement in writing signed by both parties or their agents, determine the market rental value of the Premises and such determination shall be the Rent payable by the Tenant during the Renewal Term;
- (f) if the market rental value of the Premises for the Renewal Term has not been determined in the manner described in the immediately preceding subparagraph, on or before the commencement

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

date of the Renewal Term, then either of the parties may elect to arbitrate the issue by so notifying the other in writing of such election, whereupon each party shall forthwith appoint one (1) arbitrator and the two (2) arbitrators so appointed shall appoint a third arbitrator and the three (3) arbitrators shall determine the market rental value of the Premises, which will be the Rent payable by the Tenant for the Renewal Term, and the provisions of the *Commercial Arbitration Act*, R.S.B.C. 1996, c.55, as amended or substituted from time to time, shall apply to the selection of the arbitrators and the arbitration PROVIDED HOWEVER if the parties can agree upon a single arbitrator then the arbitration shall be conducted by a single arbitrator;

- (g) if the Rent reserved for the Renewal Term has not been determined on the first day of the Renewal Term, then, until such determination is made, the Tenant shall continue to pay monthly in advance and without deduction, the Rent applicable on the last day of the Term, PROVIDED HOWEVER that when the Rent reserved for the Renewal Term has been determined as aforesaid, the parties, within ten (10) business days of such determination having been made, shall make such payment or repayment as may be necessary to ensure that the Tenant has then paid the same amount that he would have paid if such determination had been made on the first day of the Renewal Term. Any amounts payable by the Tenant to the Landlord pursuant to this Section 14.01 shall bear interest at the rate of three percent (3%) per annum above the prime rate, per annum, calculated monthly not in advance, from the first day of the Renewal Term until paid; and
- (h) provided always that the Rent payable by the Tenant during the Term shall not be relevant in determining the market rental value of the Premises for the Renewal Term.

ARTICLE XV

Section 15.01 Landlord Released

In the event of the sale or lease by the Landlord of the Premises or the assignment by the Landlord of its interest in this lease, the Landlord will without further written agreement be released and relieved of and from such liabilities and obligations.

Section 15.02 Tenant's Covenant

The Landlord may sell, transfer or otherwise dispose of the Premises, or any portion of the Premises, to any party and upon the conveyance to such party of the Premises or any portion of them, the Tenant will, upon receipt of written acknowledgement from such party of this lease and the Tenant's rights under this lease, attorn to and become the Tenant of such party under the terms of this lease and the Tenant will provide such party with an acknowledgment in writing binding upon the Tenant that it will perform the obligations and satisfy the liabilities of the Tenant, and any indemnifier or covenantor will execute and deliver a new covenant or indemnity agreement to such party on the same terms as any existing agreement with the Landlord.

Section 15.03 Status Statement

The Landlord and the Tenant will provide to the other, within three (3) days of such party's request, a status statement confirming the particulars of the Lease, addressed to the other and any potential buyer or mortgagee, binding upon the Tenant or the Landlord, as the case may be, confirming:

- (a) in the case of the Tenant, that the Tenant has accepted possession of the Premises;
- (b) whether or not any party hereto has carried out all of its obligations pursuant to this lease;

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

- (c) that this lease constitutes the whole of the agreement between the parties (or setting out such other agreements);
- (d) that this lease is in full force and effect and that there are no defences or set offs which the Tenant claims against the Landlord (or setting out any such claims) or vice versa; and
- (e) such other matters as may be reasonably required by the requesting party or any potential or actual purchaser or mortgagee of the Premises.

ARTICLE XVI

Section 16.01 Delivery of Notices

Any notice required to be given hereunder must be in writing and the sender must deliver it by hand or by telecopier or by mail to the party to which it is to be given, as follows:

- (a) to the Tenant:

Attention:
Fax No.:

- (b) to the Landlord:

Vancouver Board of Parks and Recreation
2099 Beach Avenue
Vancouver, B.C.
V6G 1Z4
Attention: Director, Stanley District
Fax No.: 604-257-8501

or to such other address or telecopier number as the party may designate and will be deemed to have been received on the day of delivery or telecopying if within business hours on a business day and otherwise on the next succeeding business day and, if mailed, the fifth day after mailing, provided that if there is between the time of mailing and the actual receipt of the notice a mail strike, slow-down or other labour dispute which might affect delivery of such notice then such notice will only be effective if actually delivered.

Section 16.02 Administration of Lease

Where this agreement requires or permits on the part of the Landlord any authority, reservation, discretion, disallowance, approval or other act of supervision or the giving of any notice, such act or action will be well and truly performed on the part of the Landlord when performed by the Director, Stanley District of the Vancouver Board of Parks and Recreation or his nominee.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Section 16.03 Covenants Survive Termination

The covenants herein on the part of the Landlord and the Tenant which, as of termination of this lease or the Term whether by passage of time or otherwise, remain unfulfilled, undischarged or otherwise outstanding will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as there is any liability or indebtedness by either party to the other or so long as any such covenant remains unfulfilled, undischarged or otherwise outstanding, whether in whole or in part, notwithstanding anything herein to the contrary.

Section 16.04 Time is of the Essence

Time will be of the essence of this lease, save as herein otherwise specified.

Section 16.05 Captions and Headings

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

Section 16.06 Interpretation

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

Section 16.07 Joint and Several

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

Section 16.08 Waiver

No waiver of or neglect to enforce any provision of this lease upon a default by the Tenant will be deemed to be a waiver of any such right upon any subsequent similar default. Without limiting the generality of this Section 16.08, the acceptance by the Landlord of part payment of any sums, including rent, required to be paid under this lease will not constitute a waiver or release of the Landlord's right to payment in full of such sums.

Section 16.09 Entire Agreement

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, terms or conditions expressed or implied relating to this lease or the Premises except as expressly set out in this lease, and that this lease may not be modified except by an agreement in writing executed by both the Landlord and the Tenant.

Section 16.10 Governing Law

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

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Section 16.11 Severability

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

Section 16.12 Relationship between Landlord and Tenant

Nothing contained in this lease nor any acts of the Landlord or the Tenant will be deemed to create any relationship between the Landlord and the Tenant other than the relationship of landlord and tenant, and the Tenant will throughout the Term take all reasonable steps to inform the public that the Tenant is the operator of the Premises as an independent contractor and not as employee or agent of the Landlord.

Section 16.13 Force Majeure

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

Section 16.14 Permanent Public Park

Notwithstanding anything contained in this lease, if the Building is part of a permanent public park within the meaning of Section 490 of the *Vancouver Charter*, S.B.C. 1953, C. 55, as amended, and ceases to be part of such a permanent public park, then this lease will be terminable at the option of the Landlord but all obligations of the Tenant up to the date of any such termination will survive such termination. Upon termination pursuant to this Section 16.14, at the option of the Tenant, subject to the approval of Council, the City of Vancouver will enter into a lease with the Tenant on the same terms and conditions of this lease, including Rent and the right of renewal, for the balance of the Term or renewal term, as the case may be, that was remaining on this lease immediately prior to the effective date of termination.

Section 16.15 Parking

The Landlord agrees that during the Term it will not reduce the number of public parking stalls available in the public underground parking lot (the "Public Parking Lot") to less than the number of public parking stalls required for the use of the Premises as a restaurant as set out in development permit number _____.

Section 16.16 No Promotion

The Tenant must not disclose or promote its relationship with the City of Vancouver, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials, without the express prior written consent of the City of Vancouver (except as may be necessary for the Tenant to perform the Tenant's obligations under the terms of this lease).

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

Section 16.17 Trade and Domain Names

The Tenant will not use any trade names for the Restaurant in any medium, including, without limitation, print, radio, internet or television advertisements, or register any internet domain names for the Restaurant, without the prior written approval of such trade or domain names by the Park Board, which approval will not be unreasonably withheld. If, at any time, the Park Board requests that the adopted trade or domain name for the restaurant be changed, the Tenant will promptly submit a detailed estimate of the costs of changing the trade or domain name to the Park Board for approval. Once the Park Board has approved the estimate, the Tenant will promptly comply with such request and will submit an invoice to the Park Board for the actual costs of the change, which invoice will be paid by the Park Board within sixty (60) days of receipt. The Park Board reserves the right to refuse to reimburse for any actual costs that exceed the approved estimate by an amount equal to or greater than 10% of the approved estimate.

REQUEST FOR PROPOSAL NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
PART E - FORM OF LEASE AGREEMENT - DRAFT

IN WITNESS WHEREOF the parties hereto have executed this lease as of the day and year first above written.

CITY OF VANCOUVER

Authorized Signatory

CITY OF VANCOUVER as represented by its
BOARD OF PARKS AND RECREATION

Authorized Signatory

[INSERT TENANT NAME]

Authorized Signatory

Approved by resolution of the Landlord's Board of Parks and Recreation on _____, 20__.

Approved by resolution of Vancouver City Council on _____, 20__.

This is the signatory page of a Lease between the City of Vancouver as represented by its Board of Parks and Recreation as Landlord and _____ as Tenant concerning the Harbour Green Park Restaurant (the Premises).

SCHEDULE A

Plan of Leasehold of the Premises

SEE ATTACHED

ANNEX 1 - SCHEDULE OF DETAILED REQUIREMENTS

In preparing responses to Annex 1, Proponents should address, at minimum, the requirements detailed below.

Proponents should refer to the following:

- Development Permit DE412233
<http://former.vancouver.ca/commsvcs/planning/dpboard/2008/PDF/1101%20West%20Waterfront%20Road%20-%20DE412233.pdf> ;
- Part D - Form of Construction License Agreement; and
- Part E - Form of Lease Agreement.

The Proponent's Proposal shall include details corresponding to the following:

- (c) A detailed conceptual that aligns with the Development Permit DE412233, inclusive of:
 - (i) Restaurant use;
 - (ii) Design and layout (e.g. conceptual sketches), including what the décor would consist of;
 - (iii) Clientele;
 - (iv) Menu concepts (please include examples); and
 - (v) Sourcing of local, environmentally-friendly or sustainable food and beverage ingredients, and how the menu would incorporate these ingredients.
- (d) An Operations and Management Plan (see Note 1 below) for Harbour Green Park Restaurant:
 - (i) Which ensures that impacts on neighbouring properties is minimized;
 - (ii) Which must be approved by the City's Director of Planning;
 - (iii) Which should address, at minimum, the following:
 - (a) hours of operation (see Note 2 below);
 - (b) noise and odor management (see Note 3 below);
 - (c) maintenance of building and grounds (see Note 4 below) ;
 - (d) protocols for busking (see Note 5 below);
 - (e) safety and security provisions for patrons and park users (see Note 6 below);
 - (f) monitoring and communication protocols with local neighbours as required (see Note 7 below);
 - (g) cross reference with the Loading Management Plan (see Note 8 below);
 - (h) parking and traffic management (see Note 9 below); and
 - (i) restaurant self-promotion (see Note 10 below).

Notes:

Note 1 Operations and Management Plan: the objective is to ensure that any possible impacts on the nearby residential community from the operation of the proposed restaurant are minimized.

**REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
ANNEX 1 - SCHEDULE OF DETAILED REQUIREMENTS**

Note 2 Hours of Operation:

The maximum opening hours for the restaurant are from 10.00AM to 12.00AM daily and all patrons must exit the building by midnight.

The restaurant management will submit to the General Manager of the Park Board at least THIRTY (30) days in advance any request for special events requiring late closings. The General Manager can approve, reject or modify this schedule.

In the evenings all patrons will be encouraged to respect the tranquility of the neighborhood when departing.

Note 3 Noise and Odour Management:

Control of Noise

Any electronic sound system will be limited to the inside of the building. The sound level will be set to ensure the music cannot be heard on Green Harbour Park.

There will be no outdoor speakers, music or entertainment on the patio.

No live interior performance will use amplification.

Control of Odour

Cooking smells are to be neutralized by using an ultra violet or equivalent hood cleaning system. A regular cleaning schedule of hood and vent systems will be followed and regular checks will ensure that the chimney accelerator fans are operational in accordance with manufacturer's directions.

Note 4 Maintenance of Buildings and Grounds

The restaurant operator will be responsible for the cleanliness and condition of the service area and front ground level patio. The leased area will be litter-picked daily by the operator.

The Park Board will continue to maintain all surrounding park and all soft landscaping adjacent to the building.

Any graffiti on the building will be removed in accordance with the City's Anti-Graffiti Strategy. The restaurant operator will be responsible for the removal of any graffiti on the exterior of the restaurant.

The lease will include a provision that the building is inspected every five (5) years by a professional inspection company approved by the Board and that copies of the report are provided to the Board. The restaurant operator will implement the report recommendations within six (6) months of its receipt.

Note 5 Protocols for Busking

Interested musicians can visit the Park Board website:

<http://vancouver.ca/doing-business/busking-and-entertainment.aspx>

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
ANNEX 1 - SCHEDULE OF DETAILED REQUIREMENTS

Note 6 Safety and Security

The restaurant operator will provide a security plan to the Park Board which will be updated and approved annually.

Note 7 Monitoring and Communications Protocols with Local Neighbours, as required

There will be a 24-hour phone number with an identified name posted for the public to bring restaurant matters of concern to management and all calls will be recorded and returned by the next working day.

The Park Board may require the attendance of the restaurant operator at meetings called by the Park Board to deal with neighbour relations.

Note 8 Cross Reference with the Loading Management Plan

To be finalized as per Development Permit DE412233

<http://former.vancouver.ca/commsvcs/planning/dpboard/2008/PDF/1101%20West%20Waterfront%20Road%20-%20DE412233.pdf>

Vendors will be advised that the preferred times for deliveries are to be between the hours of 8.00 a.m. and 11.00 a.m. daily.

Every effort will be made to ensure that when delivery trucks stop on the lay-by on Beach Avenue that their engines are turned off at all times.

Note 9 Traffic and Parking Management

Staff will be encouraged to bike, walk or use public transit to work.

There will be clear signage identifying the delivery area

Note 10 Restaurant Self-Promotion

All signage will require the approval of the General Manager. This includes any signage on the restaurant, or along the seawall and 1199 W Cordova Street.

REQUEST FOR PROPOSALS NO. PS20150448
 OPERATOR FOR HARBOUR GREEN RESTAURANT
 ANNEX 2 - CERTIFICATE OF EXISTING INSURANCE



CERTIFICATE OF EXISTING INSURANCE
 TO BE COMPLETED AND APPENDED TO THE PROPOSAL/TENDER

Section 2 through 8 – to be completed and executed by the Insurer or its Authorized Representative

1. THIS CERTIFICATE IS ISSUED TO: City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
 and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.

NAMED INSURED (must be the same name as the proponent/bidder and is either an individual or a legally incorporated company)

BUSINESS TRADE NAME or DOING BUSINESS AS _____

BUSINESS ADDRESS _____

DESCRIPTION OF OPERATION _____

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**
 INSURER _____ Insured Values (Replacement Cost) -
 TYPE OF COVERAGE _____ Building and Tenants' Improvements \$ _____
 POLICY NUMBER _____ Contents and Equipment \$ _____
 POLICY PERIOD From _____ to _____ Deductible Per Loss \$ _____
4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**
 Including the following extensions: INSURER _____
 ✓ Personal Injury POLICY NUMBER _____
 ✓ Property Damage including Loss of Use POLICY PERIOD From _____ to _____
 ✓ Products and Completed Operations Limits of Liability (Bodily Injury and Property Damage Inclusive) -
 ✓ Cross Liability or Severability of Interest Per Occurrence \$ _____
 ✓ Employees as Additional Insureds Aggregate \$ _____
 ✓ Blanket Contractual Liability All Risk Tenants' Legal Liability \$ _____
 ✓ Non-Owned Auto Liability Deductible Per Occurrence \$ _____
5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles
 INSURER _____ Limits of Liability -
 POLICY NUMBER _____ Combined Single Limit \$ _____
 POLICY PERIOD From _____ to _____ If vehicles are insured by ICBC, complete and provide Form APV-47.
6. **UMBRELLA OR** **EXCESS LIABILITY INSURANCE** Limits of Liability (Bodily Injury and Property Damage Inclusive) -
 INSURER _____ Per Occurrence \$ _____
 POLICY NUMBER _____ Aggregate \$ _____
 POLICY PERIOD From _____ to _____ Self-Insured Retention \$ _____
7. **PROFESSIONAL LIABILITY INSURANCE** Limits of Liability
 INSURER _____ Per Occurrence/Claim \$ _____
 POLICY NUMBER _____ Aggregate \$ _____
 POLICY PERIOD From _____ to _____ Deductible Per Occurrence/Claim \$ _____
 If the policy is in a "CLAIMS MADE" form, please specify the applicable Retroactive Date: _____
8. **OTHER INSURANCE**
 TYPE OF INSURANCE _____ Limits of Liability
 INSURER _____ Per Occurrence \$ _____
 POLICY NUMBER _____ Aggregate \$ _____
 POLICY PERIOD From _____ to _____ Deductible Per Loss \$ _____
 TYPE OF INSURANCE _____ Limits of Liability
 INSURER _____ Per Occurrence \$ _____
 POLICY NUMBER _____ Aggregate \$ _____
 POLICY PERIOD From _____ to _____ Deductible Per Loss \$ _____

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE _____

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER _____ Dated _____

REQUEST FOR PROPOSALS NO. PS20150448
OPERATOR FOR HARBOUR GREEN RESTAURANT
ANNEX 3 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

ANNEX 3 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

Purpose: All proposed suppliers are to complete and submit this form to certify compliance with the supplier performance standards set out in the Supplier Code of Conduct.

The City of Vancouver expects each supplier of goods and services to the City to comply with the supplier performance standards set out in the City's Supplier Code of Conduct (SCC) <http://vancouver.ca/policy_pdf/AF01401P1.pdf>. The SCC defines minimum labour and environmental standards for City suppliers and their subcontractors.

Suppliers are expected to comply with the aforementioned standards upon submitting a tender, proposal, application, expression of interest or quotation to the City, or have a plan in place to comply within a specific period of time. The City reserves the right to determine an appropriate timeframe in which suppliers must come into compliance with these standards. To give effect to these requirements, an authorized signatory of each proposed vendor must complete the following declaration and include this declaration with its submission:

As an authorized signatory of _____ (*vendor name*), I declare that I have reviewed the SCC and to the best of my knowledge, _____ (*vendor name*) and its proposed subcontractors have not been and are not currently in violation of the SCC or convicted of an offence under national and other applicable laws referred to in the SCC, other than as noted in the table below (*include all violations/convictions that have occurred in the past three years as well as plans for corrective action*).

Section of SCC / title of law	Date of violation / conviction	Description of violation / conviction	Regulatory / adjudication body and document file number	Corrective action plan

I understand that a false declaration and/or lack of a corrective action plan may result in no further consideration being given to the submission of _____ (*vendor name*).

Signature: _____

Name and Title: _____

REQUEST FOR PROPOSAL NO. PS20150448
 OPERATOR FOR HARBOUR GREEN RESTAURANT
 ANNEX 4 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

ANNEX 4 - VENDOR SUSTAINABILITY LEADERSHIP QUESTIONNAIRE

Purpose: This document is designed to identify where suppliers are going above the minimum standards in the Supplier Code of Conduct and are demonstrating sustainability leadership in their own operations as part of the evaluation criteria of a bid process.

As part of the City's corporate Purchasing Policy and related Supplier Code of Conduct, all City vendors must meet minimum requirements related to ethical, social and environmental standards. Beyond these basic requirements, the City would also like to reward vendors that are demonstrating leadership and innovation in sustainability. In order to be able to do so, the City requires that all suppliers bidding on a City contract answer the following questions. The answers to the questionnaire will be evaluated as part of the bid evaluation process.

You will need to be able to verify all your answers to the City upon request. Please keep in mind that these questions relate to your company's internal operations and overall sustainability leadership.

Section 1: Workplace Health & Safety, Wage Rates and Diversity

1. Tell us how your company works to promote workplace health and safety.

a) We have a documented Health & Safety Policy and Program that is openly endorsed by senior management and is updated on an annual basis	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b) We have a Health & Safety Manual that includes safe work procedures, incident investigation process with the intent of prevention, workplace inspection process and emergency preparedness and response.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c) We conduct hazard assessments and job task-specific health & safety training on an annual basis	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d) We are registered with one or more of these Safety Management System/Program:		
OHSAS 18001	<input type="checkbox"/> Yes	<input type="checkbox"/> No
CAN/CSA Z1000	<input type="checkbox"/> Yes	<input type="checkbox"/> No
ANSI Z10	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e) We have a system registered, certified or recognized by another standard	Please specify _____	
f) We adhere to one or more of the ILO health and safety resolutions	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g) We have a non-registered audited health and safety management system	<input type="checkbox"/> Yes	<input type="checkbox"/> No

2. Tell us how you ensure fair wages and employee benefits.

a) We pay all of our staff a minimum wage that meets the	<input type="checkbox"/> Yes	<input type="checkbox"/> No
--	------------------------------	-----------------------------

REQUEST FOR PROPOSAL NO. PS20150448
 OPERATOR FOR HARBOUR GREEN RESTAURANT
 ANNEX 4 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

regional LICO (See <http://www.statcan.gc.ca/pub/75f0002m/2009002/tbl/tbl-2-eng.htm> for wage amounts)

b) We pay benefits to all of our full-time employees Yes No

3. Tell us about your strategy to address diversity in your workplace.

a) We have a policy or strategy to support hiring a diverse workforce Yes No

b) We have a policy or strategy to purchase from diverse contractors/suppliers Yes No

c) Our company participates in work/employment training programs for vulnerable/diverse populations (e.g. Social purchasing portal) Yes No

Section 2: Environmental Management & Stewardship

4. Tell us what policies and programs your company has in place to manage its environmental impact.

a) We have a documented Environmental or Sustainability Policy Yes No

b) We have an environmental management system registered to ISO 14001 Yes No

c) We have a system registered, certified or recognized by another standard (e.g. EMAS) Yes No

Please specify _____

d) We have a non-registered audited environmental management system Yes No

e) We conduct compliance audits to health, safety and environmental legislation Yes No

f) We produce a publicly available annual environmental, CSR, sustainability or accountability report Yes No

5. Tell us how your company works to reduce its greenhouse gas (GHG) emissions.

a) We measure our GHG emissions and have developed a reduction strategy Yes No

b) We publicly report our GHG emissions Yes No

c) We have set publicly available GHG reduction targets Yes No

d) We have set a target for the use of renewable or alternative Yes No

**REQUEST FOR PROPOSAL NO. PS20150448
 OPERATOR FOR HARBOUR GREEN RESTAURANT
 ANNEX 4 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE**

forms of energy and have developed a strategy to reach this target

Yes No

e) We have retrofitted our facility, our fleet and/or made process improvements to decrease GHG emissions and energy use

Yes No

f) We have an alternative transportation program for employees (e.g. public transit subsidy, cycling facilities, carpooling program)

Yes No

g) We purchase from shipping/delivery companies that have taken steps to reduce their GHG emissions

Yes No

h) We operate in third party verified green buildings and have developed a plan to meet third party verified standards (such as LEED, BREEAM, etc) in as many of our facilities as possible

Please specify the verification system: _____

6. Tell us how your company works to reduce waste in its daily operations.

Yes No

a) We conduct annual audits to measure the total amount of solid waste generated by our facilities and have a waste reduction strategy

Yes No

b) We have set publicly available waste reduction targets

Yes No

c) We have an office recycling program that includes office paper, beverage containers, batteries and printer cartridges

Yes No

d) We have other recycling programs in our operations

Please specify additional materials recycled: _____

7. Tell us how your company works to reduce the use of toxins and properly manage hazardous substances

Yes No

a) We are not in violation with any local, national or international laws related to the use of toxins and management of hazardous substances

Yes No

b) We have a Toxic Reduction Strategy/Policy that aims to reduce toxins across all operations

Yes No

c) We measure the implementation of our Toxic Reduction Strategy/Policy against a pre-determined set of performance metrics and verify performance with a third-party

Section 3: Back-up Documentation to Verify Responses

REQUEST FOR PROPOSAL NO. PS20150448
 OPERATOR FOR HARBOUR GREEN RESTAURANT
 ANNEX 4 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

The City reserves the right to verify responses on this questionnaire and may request some or all of the following documentation.

<i>Section</i>	<i>Question</i>	<i>Back-up Documentation</i>
Section 1: Workplace Health & Safety, Wage Rates and Diversity	Question 1	<ul style="list-style-type: none"> • A copy of policies • Proof of safety management system certification
	Question 2	<ul style="list-style-type: none"> • Documentation of employee benefit packages and a list of those who receive benefits
	Question 3	<ul style="list-style-type: none"> • A copy of policies
Section 2: Environmental Management & Stewardship	Question 4	<ul style="list-style-type: none"> • A copy of policies • Proof of environmental management system certification • A copy of public report
	Question 5	<ul style="list-style-type: none"> • A copy of public report • A copy of reduction targets and related results • A copy of LEED, BREEAM, etc. certification
	Question 6	<ul style="list-style-type: none"> • Total tonnes of solid waste generated • A copy of reduction targets
	Question 7	<ul style="list-style-type: none"> • A copy of policy or strategy • A copy of reduction targets and related results • A copy of third party audit/verification