

**LEASE FOR STALL SPACE  
CITY MARKET  
721360 N.B. Ltd.  
dba Slocum & Ferris**

**SCHEDULE "C"**

**ARTICLE I**

**DEFINITIONS**

**1.01 Definitions**

In this lease:

- a) "Additional Rent" means all and any monies required to be paid by the Lessee to the Lessor under or pursuant to the terms of this Lease, save only for Gross Rent;
- b) "Architect" shall mean the architect from time to time named by the Lessor or at the option of the Lessor, the Lessor's general contractor. Any certificate provided by the Architect and called for by the terms of this Lease shall be final and binding on the parties hereto;
- c) "Atrium Seating/Food Court" means those portions of the Common Areas designated by the Lessor from time to time for use in support of the operations of any group of premises providing quick food service to customers of the City Market and includes, without limiting the generality of the foregoing, public table and seating areas, waste collection facilities and other areas, facilities and equipment intended for such use;
- d) "City Market" means the lands and premises known by the civic address 47 Charlotte Street, Saint John, New Brunswick, as such lands and premises may be altered, expanded or reduced from time to time and the buildings, improvements, equipment and facilities erected thereon or situate from time to time therein;
- e) "Commencement Date" means a date determined in accordance with the provisions of Section 2.03;
- f) "Common Areas" means those areas, facilities, utilities, improvements, equipment and installations in the City Market which from time to time are not designated or intended by the Lessor to be leased to Lessees of the City Market, and those areas, facilities, utilities, improvements, equipment and installations which serve or are for the benefit of the City Market whether or not located in, adjacent to or near the City Market and which are designated from time to time by the Lessor as part of the Common Areas. Without limiting the generality of the foregoing, Common Areas includes all parking areas, all entrances and exits thereto and all structural elements thereof, access roads, truck courts, driveways, truckways, delivery passages, the roof, exterior weather walls, exterior and interior structural elements and bearing walls in the building and improvements comprising the City Market, package pick-up stations, loading and related areas, pedestrian stairways, ramps, electrical, telephone, meter, valve, mechanical, mail storage service and janitor rooms and galleries, fire preventions, security and communication systems, columns, pipes, electrical, plumbing, drainage, any central system for the provision of heating, ventilating or air conditioning to leaseable premises or any enclosed Common Areas and all other installations, equipment or services located therein or related thereto as well as the structures housing installations, including but not limited to all open and enclosed malls, courts and arcades, public seating and service areas, corridors, furniture, first aid and/or information stations, auditoria, conference rooms, nurseries, childcare play areas and related kitchen and storage facilities, escalators, elevators, public washrooms, music systems and any atrium seating/food court;
- g) "C.P.I." means the Consumer Price Index (All Items) for Canada (or any index published in substitution for the Consumer Price Index or any other replacement index reasonably designated by the Lessor, if it is no longer published) published by Statistics Canada (or by any successor thereof or any other governmental agency, including a provincial agency);
- h) "Gross Rent" means the annual Gross Rent payable by the Lessee pursuant to Section 3.01;
- i) "Hazardous Substances" means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, PCB's or any other substances or materials that are declared or defined to be hazardous, toxic, contaminants or pollutants in or pursuant to any applicable federal, provincial or municipal statute, by-law or regulation;

- j) “HST” means harmonized sales taxes, value-added taxes, multi-stage taxes, business transfer taxes or other similar taxes however they are characterized and any taxes in lieu thereof;
- k) “Lease” means this indenture of lease and includes any riders and schedules hereto and shall also include any agreements entered which have the effect of amending this indenture from time to time;
- l) “Leased Premises” means the premises leased to the Lessee as referred to and described in Section 2.01 hereof. Save as mentioned below, the boundaries of the Leased Premises shall extend from the top surface of the structural subfloor to the bottom surface of the structural ceiling. If the Leased Premises have no ceiling abutting the demising walls, but rather are open to the ceiling of the City Market building, the boundaries of the Leased Premises extend from the top surface of the structural subfloor to the height of the demising walls;
- m) “Lease Year” shall mean a period of time commencing on **January 26, 2021** and ending on **January 25** of the following year. Thereafter Lease Years shall consist of consecutive periods of twelve calendar months ending in each case on **January 25** save for the last Lease Year of the Term which shall terminate upon the expiration or earlier termination of this Lease, as the case may be.
- n) “Lessee” means the party named as Lessee in this Lease;
- o) “Lessor” includes the Lessor and its successors and assigns;
- p) “Operating Costs” means the total cost and expense incurred in owning, operating, maintaining, managing and administering the City Market and the Common Areas, specifically including without limiting the generality of the foregoing, any capital or place of ownership taxes levied against the Lessor or any owners of the City Market on account of their interest in the City Market, in an amount equitably allocated to the City Market by the Lessor; gardening and landscaping charges; the cost and expenses of taking out the insurance described in Section 9.03; cleaning, snow removal, garbage and waste collection and disposal; lighting, electricity, public utilities, loud speakers, public address and musical broadcasting systems and any telephone answering service used in or serving the City Market, and the cost of electricity and maintenance for any signs designated by the Lessor as part of the Common Areas; policing, security, supervision and traffic control; salaries and benefits of all supervisory and other personnel employed in connection with the City Market and management office rent imputed to the City Market by the Lessor, acting reasonably; Management Fee, the cost of providing additional parking or other Common Areas for the benefit of the City Market, whether such costs be Taxes or other type of costs; the costs and expenses of environmental site reviews and investigations, removal and/or clean-up of Hazardous Substances from the Common Areas; the cost of the rental of any equipment and signs and the costs of supplies used in the maintenance and operation of the City Market and the Common Areas; accounting and audit fees incurred in the preparation of the statements required to be prepared and supplied by the Lessor under the terms of this Lease; heating, ventilating and air conditioning of the Common Areas; all repairs and replacements to and maintenance and operation of the City Market and the Common Areas; depreciation or amortization of the costs, including repair and replacement, of all maintenance and cleaning equipment, master utility meters, and all other fixtures, equipment, and facilities serving or comprising the City Market or the Common Areas; which are not charged fully in the Lease Year in which they are incurred, from the earlier of the date when the cost was incurred or the Commencement Date, at rates on the various items determined from time to time by the Lessor in accordance with sound accounting principles;
- q) “Proportionate Share” means a fraction, the numerator of which is the Rentable Area of the Leased Premises and the denominator of which is the Rentable Area of the City Market;
- r) “Rent” means all Gross Rent and Additional Rent payable pursuant to the terms of this Lease;
- s) “Rentable Area of the City Market” means the area in square feet of all rentable premises in the City Market set aside for leasing by the Lessor from time to time, except for any occupancy as designated by the Lessor for which there is no Gross Rent payable. Provided however that the Lessor shall credit to Operating Costs any contributions received in respect of such Operating Costs from the occupants of any of the areas excluded from the Rentable Area of the City Market in accordance with this definition. Provided further that in determining the fraction that is the Lessee’s Proportionate Share, if the Leased Premises consists of any of the foregoing excluded categories, the Rentable Area of that category will be included in the Rentable Area of the City Market;
- t) “Rentable Area of the Leased Premises” means the area expressed in square feet of all floors of the Leased Premises measured from:

- i. the exterior face of all exterior walls, doors and windows;
- ii. the exterior face of all interior walls, doors and windows separating the Leased Premises from Common Areas; if any; and
- iii. the centre line of all interior walls separating the Leased Premises from adjoining leasable premises.

The Rentable Area of the Leased Premises includes all interior space whether or not occupied by projections, structures or columns, structural or non-structural, and if the store front is recessed from the lease line, the area of such recess for all purposes lies within the Rentable Area of the Leased Premises;

- u) “Rules and Regulations” means the rules and regulations adopted and promulgated by the Lessor from time to time acting reasonably, including those listed on Schedule “D”;
- v) “Taxes” means all duties, real property taxes, charges, assessments and payments, from time to time levied, assessed or imposed upon the City Market or any part thereof or upon the Lessor by reason of its ownership of the City Market, by any taxing authority. Taxes shall also include any penalties, late payment or interest charges imposed by any municipality or other taxing authority as a result of the Lessee’s late payments of any taxes or instalments thereof. For greater certainty “Taxes” shall exclude any penalties or interest incurred by the Lessor as a result of its failure to pay Taxes in a timely manner, except Taxes shall include any interest in respect of a deferral of payment in accordance with sound accounting practices if permitted by statute or pursuant to an agreement with the taxing authority; and (ii) income, profit or excess profits taxes of the Lessor; and
- w) “Term” means the period referred to in Section 2.03.

## ARTICLE II

### GRANT, TERM AND INTENT

#### 2.01 Leased Premises

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor demises and leases to the Lessee and the Lessee leases from the Lessor, the Leased Premises. The Leased Premises are presently designated as **Stalls No. “16” & “17”** as shown on Schedule “A” attached hereto and contain a Rentable Area of approximately **Fifteen Hundred and Eighty-Six (1586 ft<sup>2</sup>)** which is comprised of approximately **Nine Hundred and Thirty-Five (935 ft<sup>2</sup>)** of leasable retail area, approximately **Four Hundred and Ninety-Eight (498 ft<sup>2</sup>)** of mezzanine area. Also included in the leasable area is **One Hundred and Thirty-Three (133 ft<sup>2</sup>)** storage and approximately **Twenty (20 ft<sup>2</sup>)** of freezer area.

#### 2.02 Use of Common Areas

The use and occupation by the Lessee of the Leased Premises shall entitle the Lessee to the use in common with all others entitled thereto of the Common Areas, subject however, to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by the Landlord.

#### 2.03 Term of Lease

TO HAVE AND TO HOLD the Leased Premises for and during the term of **five (5) years** to be computed from **January 26, 2021** and fully to be completed and ended on **January 25, 2026** save as hereinafter provided for earlier termination.

PROVIDED THAT if there is any Lessor’s Work or Lessee’s Work to be performed prior to the Lessee opening for business in the Leased Premises or the Leased Premises are occupied by a third party as of the date of this Lease, the Commencement Date shall be the earlier of:

- a) **Ninety-five (95)** days after the Lessor has delivered vacant possession of the Leased Premises to the Lessee notwithstanding that the Lessor may still, during such **ninety-five (95)** day period, be completing its work; or
- b) the opening by the Lessee to the public of its business in the Leased Premises.

Notwithstanding any change in the Commencement Date calculated in accordance with the preceding provisions hereof, the Terms shall expire on the date set for such expiry in the first paragraph of this Section 2.03, subject always to earlier termination as provided for in this Lease.

PROVIDED THAT upon the Lessor or its Architect giving notice to the Lessee that the Leased Premises are available for the commencement of the Lessee’s Work, the Lessee shall immediately take

possession of the Leased Premises and shall occupy same for the purpose of fixturing and installing its inventory, at its own risk, for a period of **ninety-five (95)** days after receipt of such notice or until the Lessee opens for business to the public in the Leased Premises, free of the payment of Gross Rent, and Additional Rent save for the obligation of the Lessee to pay for all utility charges used by the Lessee or consumed in the Leased Premises during the period of such fixturing, and shall during the period from the giving of such notice until the Commencement Date be a tenant in the Leased Premises subject to the same covenants and agreements as are contained in this Lease, mutatis mutandis.

FURTHER PROVIDED THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY, if the Lessor is unable to deliver vacant possession of the Leased Premises to the Lessee for any reason, including but not limited to the holding over or retention of possession of any other lessee or occupant, or the lack of completion of any repairs, improvements or alterations required to be completed before the Lessee’s occupancy of the Leased Premises, then the time for commencement of the Term shall be extended to correspond with the period of delay and the Lessee shall not be entitled to any abatement or diminution of Rent (except that Rent shall not commence to be payable until possession of the Leased Premises is given by the Lessor to the Lessee) nor shall the validity of this Lease or the parties’ respective obligations hereunder be affected. However, if the Lessor does not give vacant possession of the Leased Premises to the Lessee within six (6) months of the date of this Lease, then the Lessor may, at its option, terminate this Lease by written notice to the Lessee and in such event this Lease shall be null and void and of no effect whatsoever. Any deposit paid by the Lessee to the Lessor shall be returned without interest or deduction, and neither party shall have any further liability to the other.

Forthwith, upon the Commencement Date being determined in accordance with the foregoing, the Lessee shall execute an acknowledgement of same on Lessor’s usual form.

The Lessee shall pay all Gross Rent and Additional Rent calculated on a per diem basis, from the end of the **ninety-five (95)** day rent-free period to the last day of the month in which the Commencement Date occurs and thereafter all payments of Rent shall be made on the first day of each month throughout the Term unless otherwise specified herein.

**2.04 Option to Renew**

The Lessee shall have the option to renew this Lease for a further one (1) term of five (5) years at the then prevailing market rate by providing written notice of its intention to renew to the Lessor no later than six (6) months prior to the expiration of the Initial Term. In the event that the Lessor and the Lessee do not agree on the then prevailing market rate, such rate may be determined by a single arbitrator appointed by the agreement between the Lessor and the lessee or pursuant to the *Arbitration Act*.

**ARTICLE III**

**RENT AND DEPOSIT**

**3.01 Gross Rent**

The Lessee shall pay annual Gross Rent to the average amount of **Thirty Dollars and Seventy Cents (\$30.70)** per square foot of leaseable retail area of the Leased Premises. The Gross Rent shall be paid in equal monthly instalments, monthly in advance. According to the following schedule:

Year	Retail Space Rate	Mezzanine Area Rate	Storage Space Rate	Freezer Space Rate	Promo/Advertising Fund
1	\$28.00	\$5.31	\$2.99	\$19.99	6%
2	\$28.00	\$5.31	\$2.99	\$19.99	6%
3	\$31.00	\$5.31	\$2.99	\$19.99	6%
4	\$32.50	\$5.31	\$2.99	\$19.99	6%
5	\$34.00	\$5.31	\$2.99	\$19.99	6%

Year	Retail Space		Mezzanine		Storage Space		Freezer Space		Promo/Advertising	
	935		498		133		20			
	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month
1	\$26,180.00	\$2,181.67	\$2,644.38	\$220.37	\$397.67	\$33.14	\$399.80	\$33.32	\$1,570.80	\$130.90
2	\$26,180.00	\$2,181.67	\$2,644.38	\$220.37	\$397.67	\$33.14	\$399.80	\$33.32	\$1,570.80	\$130.90
3	\$28,985.00	\$2,415.42	\$2,644.38	\$220.37	\$397.67	\$33.14	\$399.80	\$33.32	\$1,739.10	\$144.93
4	\$30,387.50	\$2,532.29	\$2,644.38	\$220.37	\$397.67	\$33.14	\$399.80	\$33.32	\$1,823.25	\$151.94
5	\$31,790.00	\$2,649.17	\$2,644.38	\$220.37	\$397.67	\$33.14	\$399.80	\$33.32	\$1,907.40	\$158.95

There shall be no Additional Rent payable under this Agreement, save and except monies to be paid under Article VI of this Lease.

### **3.02 Rent Past Due**

If the Lessee fails to pay, when the same is due and payable, any Gross Rent, Additional Rent or other amount payable by the Lessee under this Lease, such unpaid amounts shall bear interest from the due date thereof to the date of payment, compounded monthly at the rate equal to four (4) percentage points in excess of the Prime Rate.

### **3.03 Deposit**

The Lessor acknowledges receipt of **Zero Dollars (\$0.00)** which it will apply towards the payment of Gross Rent for the first and last months of the Term except that the Lessor may apply all or part of the amount retained for application towards the last month's Gross Rent as compensation for any loss or damage arising from the breach by the Lessee of any provisions of this Lease. This right will not be construed to limit the Lessor's other rights under this Lease or at law or to limit the amount recoverable by the Lessor for damages in respect of breaches by the Lessee of this Lease. If the Lessor uses all or part of the deposit for the last month's Gross Rent as provided above, the Lessee will, upon notification by the Lessor, pay to the Lessor the amount required to reimburse it for the amounts so applied. The Lessor will not be required to pay interest to the Lessee on any of the amounts paid to the Lessor or retained by it under this section. The Lessor may deliver the aforesaid deposit to any purchaser of the Lessor's interest in the City Market or any part thereof, whereupon the Lessor will immediately be discharged from any further liability with respect to the deposit. The Lessee will not assign or encumber its interest in the deposit except in connection with a permitted Transfer, in which case the Lessee's interest in the deposit will be deemed to have been assigned to the permitted Transferee as of the date of the Transfer.

### **3.04 Pre-Authorized Payments**

The Lessee shall participate in a pre-authorized payment plan whereby the Lessor will be authorized to debit the Lessee's bank account each month from time to time during each Lease Year in an amount equal to the Gross Rent and Additional Rent payable on a monthly basis, and, if applicable, generally any amount payable provisionally pursuant to the provisions of this Lease on an estimated basis. The Lessor shall sign a form of application which is the same or similar to Schedule “D-1”, or as may be required by the Lessee's bank, credit union or other financial institution.

## **ARTICLE IV**

### **TAXES**

#### **4.01 Taxes Payable by the Lessor**

The Lessor shall pay all Taxes which are levied, rated, charged or assessed against the City Market or any part thereof subject always to the provisions of this Lease regarding payment of Taxes by the Lessee. However, the Lessor may defer payment of any such Taxes or defer compliance with any statute, law, by-law, regulation or ordinance in connection with the levying of any such Taxes in each case to the fullest extent permitted by law, so long as it diligently prosecutes any contest or appeal of any such Taxes.

#### **4.02 Taxes Payable by Lessee**

- a) The Lessee shall during the Term pay, without any deduction, abatement or set-off whatsoever, all Taxes levied, laid or assessed on or against the Leased Premises;
- b) In the case of assessments for local improvements or betterments which are assessed or imposed during the term and which may by law be payable in instalments, the Lessee shall only be obligated to pay such instalments as same fall due during the Term, together with interest on deferred payments;
- c) In any suit or proceeding of any kind or nature arising or growing out of the failure of the Lessee to keep any covenant contained in this Article, the certificate or receipt of the department, officer or bureau charged with collection of the Taxes, showing that the tax, assessment or other charge affecting the Leased Premises is due and payable or has been paid, shall be prima facie evidence that such tax, assessment or other charge was due and payable as a lien or charge against the Leased Premises or that it has been paid as such by the Lessor;
- d) The Lessee, if allowed by the taxing authority, shall have the right to contest or review by legal proceedings or in such manner as the Lessee in its opinion shall deem advisable (which proceedings or other steps taken by the Lessee shall be conducted diligently at its own expense and free of expense to the Lessor) any and all Taxes levied, assessed or imposed

upon or against the Leased Premises or Taxes in lieu thereof required to be paid by the Lessee hereunder. No such contest shall defer or suspend the Lessee’s obligations to pay the Taxes as herein provided pending the contest, but if by law it is necessary that such payment be suspended to preserve or perfect the Lessee’s contest, then the contest shall not be undertaken without there being first deposited with the Lessor a sum of money equal to twice the amount of the Taxes that are the subject of the contest, to be held by the Lessor as an indemnity to pay such Taxes upon conclusion of the contest and all costs thereof that may be imposed upon the Lessor or the Leased Premises. Any costs associated with an appeal undertaken by the Lessor, the Lessee shall pay their proportionate share of such costs;

- e) The Lessee upon request of the Lessor will promptly exhibit to the Lessor all paid bills for Taxes which bills after inspection by the Lessor shall be returned to the Lessee.

#### **4.03 HST Payable by Lessee**

The Lessee shall pay to the Lessor all HST on Rent and any other HST imposed by the applicable legislation on the Lessor or Lessee with respect to this Lease, in the manner and at the times required by the applicable legislation. Such amounts are not consideration for the rental of space or the provision by the Lessor of any service under this Lease, but shall be deemed to be Rent and the Lessor shall have all of the same remedies for and rights of recovery of such amounts as it has for recovery of Rent under this Lease. If a deposit is forfeited to the Lessor, or an amount becomes payable to the Lessor due to a default or as consideration for a modification of this Lease, and the applicable legislation deems a part of the deposit or amount to include HST, the deposit or amount will be increased and the increase paid by the Lessee so that the Lessor will receive the full amount of the forfeited deposit or other amount payable without encroachment by any deemed HST portion.

#### **4.04 Business Taxes and Other Taxes of Lessee**

The Lessee shall pay to the lawful taxing authorities, when the same becomes due and payable:

- a) all taxes, rates, duties, assessments and other charges that are levied, rated, charged or assessed against or in respect of all improvements, equipment and facilities of the Lessee on or in the Leased Premises; and
- b) every tax and license fee which is levied, rated, charged or assessed against or in respect of any business carried on in the Leased Premises or in respect of the use or occupancy thereof

whether in any case any such taxes, rates, duties, assessments or license fees are rated, charged or assessed by any federal, provincial, municipal or other body.

### **ARTICLE V**

#### **UTILITIES**

##### **5.01 Utilities**

The Lessee shall pay all utilities directly to the utility company, on a metered basis. In the event that a Lessee leases cooler space with the Leased Premises, the Lessee shall pay to the Lessor the Lessee’s proportionate share of any utility consumed.

### **ARTICLE VI**

#### **MERCHANTS’ ASSOCIATION**

##### **6.01 Merchants’ Association**

If and when an association or corporation of merchants or lessees (the “Association”) is formed comprising tenants of the City Market, the Lessee shall forthwith become a member of such Association or if such an Association has already been formed, the Lessee shall forthwith become a member thereof and the Lessee shall retain its membership in such Association during the entire Term and shall abide by all rules, regulations, by-laws, decisions, directions, dues and assessments of the Association. Such Association shall in no way affect the rights of the Lessor and any by-laws, rules and regulations of such Association shall at all times be subject to the prior approval of the Lessor.

##### **6.02 Promotion Fund**

The Lessee shall pay to the Lessor an amount equal to 6% of annual Gross Rent to be paid in twelve (12) monthly instalments each instalment payable on the 1<sup>st</sup> day of each month during the Term.

## ARTICLE VII

### CONDUCT OF BUSINESS BY TENANT

#### 7.01 Use of Leased Premises

The Leased Premises shall be used continuously, actively and diligently for the sole purpose of **selling made-to-order hot and cold food items, catering, fresh and frozen baked goods, soups, ice cream and ice cream products, fresh pasta, pre-packaged salads and sandwiches, take home meals, take home meal kits, juices, maple syrup and maple products, Maritime produced gifts and products, coffee and locally produced/branded coffee beans.**

- a) The Lessee will not use or permit or suffer the use of the Leased Premises or any part thereof for any other business or purpose. In connection with the business to be conducted by the Lessee on the Leased Premises, the Lessee shall only use the advertised name “**Slocum & Ferris**” and will not change the advertised name of the business to be operated in the Leased Premises without the prior written consent of the Lessor.

The Lessee shall not introduce new product lines, or offer new services to its customers without first obtaining the written consent of the Lessor. The Lessee acknowledges that it would be reasonable for the Lessor to withhold its consent if the introduction by the Lessee of such product line or service would compete with the business of other tenants in the City Market or infringe on exclusive covenants granted by the Lessor.

Unless otherwise specifically set out in this Lease to the contrary, nothing contained in this Lease shall: (i) confer upon the Lessee the exclusive right to sell or provide in the City Market any of the products or services permitted to be sold or provided from the Leased Premises pursuant to this Section 7.01; nor (ii) prevent the Lessor from leasing any other premises in the City Market to any other tenant(s) carrying on a business which is similar in whole or in part to the business permitted to be carried on from the Leased Premises pursuant to this Section 7.01.

- b) The Lessee acknowledges that its continued occupancy of the Leased Premises and the regular conduct of business therein are of utmost importance to neighbouring tenants and to the Lessor in the renting of space in the City Market, the renewal of other leases therein, the efficient and economic supply of services and utilities, and in the character and quality of other tenants in the City Market. The Lessee therefore covenants and agrees that throughout the Term it will occupy the entire Leased Premises, comply strictly with the provisions of Section 7.01 and not vacate or abandon the Leased Premises at any time during the Term. The Lessee acknowledges that the Lessor is executing this Lease in reliance thereupon and that the same is a material element inducing the Lessor to execute this Lease. The Lessee further agrees that if it vacates or abandons the Leased Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Leased Premises for any purpose not specifically herein authorized and allowed, the Lessee will be in breach of the Lessee’s obligations under the Lease, and then, without constituting a waiver of the Lessee’s obligations or limiting the Lessor’s remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to the Lessor unless guaranteed to the satisfaction of the Lessor. The Lessor will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring the Lessee to comply with the provisions of this Section 7.01(b).

#### 7.02 Conduct and Operation of Business

The Lessee shall occupy the Leased Premises from and after the Commencement Date and thereafter shall conduct continuously and actively the business set out in Section 7.01, in the whole of the Leased Premises. In the conduct of the Lessee’s business pursuant to this Lease the Lessee shall:

- a) operate its business with due diligence and efficiency and maintain an adequate staff to properly serve all customers; own, install and keep in good order and condition free from liens or rights of third parties, fixtures and equipment of first class quality; and carry at all times such stock of goods and merchandise of such size, character and quality as will produce the maximum volume of sales from the Leased Premises consistent with good business practices;
- b) conduct its business in the Leased Premises during such hours and on such days as the Lessor from time to time requires or permits and at no other time. However, the Lessee is not required or permitted to carry on its business during any period prohibited by any law regulating the hours of business. If the Lessee fails to open during the days and/or hours required by the Lessor, then in addition to all other amounts of Rent payable under this Lease the Lessee shall pay as Additional Rent to the Lessor upon demand as liquidated damages

and not as a penalty, an amount equal to two hundred fifty dollars (\$250.00) per day for each and every day that the Lessee is in default. When not open for business the security of the Leased Premises is the sole responsibility of the Lessee;

- c) keep displays of merchandise in the display windows (if any) of the Leased Premises, and keep the display windows and signs (if any) in the Leased Premises well-lit during the hours the Lessor designates from time to time, acting reasonably;
- d) stock in the Leased Premises only merchandise the Lessee intends to offer for retail sale from the Leased Premises, and not use any portion of the Leased Premises for office, clerical or other non-selling purposes except minor parts reasonably required for the Lessee’s business in the Leased Premises;
- e) abide by all rules and regulations and general policies formulated by the Lessor, acting reasonably, from time to time relating to the delivery of goods to the Leased Premises;
- f) not allow or cause to be committed any waste upon or damage to the Leased Premises or any nuisance or other act or thing which disturbs the quiet enjoyment of any other lessee in the City Market or which unreasonably disturbs or interferes with or annoys any third party, or which may damage the City Market;
- g) not allow or cause to be done any act in or about the Common Areas or the City Market which in the Lessor’s opinion, acting reasonably, hinders or interrupts the City Market’s flow of traffic in any way, obstructs the free movement or parties doing business in the City Market;
- h) not allow or cause business to be solicited in any part of the City Market other than the Leased Premises, nor display any merchandise outside the Leased Premises at any time without the prior written consent of the Lessor;
- i) use the name designated for the City Market by the Lessor from time to time and all insignia or other identifying names and marks designated by the Lessor in connection with the advertising of the business conducted in the Leased Premises. Notwithstanding the foregoing the Lessee will not acquire any rights in such names, marks or insignia and upon the Lessor’s request the Lessee will abandon or assign to the Lessor any such rights which the Lessee may acquire by operation of law and will promptly execute any documents required by the Lessor to give effect to this subparagraph (i);
- j) not install or allow in the Leased Premises any transmitter device nor erect any aerial on the roof of any building forming part of the City Market or on any exterior walls of the Leased Premises or in any of the Common Areas. Any such installation shall be subject to removal by the Lessor without notice at any time and such removal shall be done and all damage as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- k) not use any travelling or flashing lights or signs or any loudspeakers, television, phonograph, radio or other audiovisual or mechanical devices in a manner so that they can be heard or seen outside of the Leased Premises without the prior written consent of the Lessor. If the Lessee uses any such equipment without receiving the prior written consent of the Lessor, the Lessor shall be entitled to remove such equipment without notice at any time and such removal shall be done and all damage as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- l) not install or allow in the Leased Premises any equipment which will exceed or overload the capacity of any utility, electrical or mechanical facilities in the Leased Premises or of which the Lessor has not approved. If the Lessee requires additional utility, electrical or mechanical facilities, the Lessor may in its sole discretion if they are available elect to install them at the Lessee’s expense and in accordance with plans and specifications to be approved in advance in writing by the Lessor;
- m) not bring upon the Leased Premises any machinery, equipment, article or thing that by reason of its weight, size or use, might in the opinion of the Lessor, acting reasonably, damage the Leased Premises or overload the floors of the Leased Premises. Any such machinery, equipment, article or thing shall be subject to removal by the Lessor without notice at any time and such removal shall be done and all damages as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand; and
- n) observe and comply with all federal, provincial or municipal laws pertaining to or affecting the Leased Premises, the Lessee’s use of the Leased Premises or the conduct of any business in the Leased Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Leased Premises, and the regulations of



any insurance underwriters in respect of the insurance maintained by the Lessor in respect of the City Market, and carry out all modifications to the Leased Premises and the Lessee's conduct of business or in use of the Leased Premises which may be required by any such authorities.

### **7.03 Prohibited Activities**

- a) The Lessee acknowledges that it is only one of many tenants in the City Market and that therefore the Lessee shall conduct its business in the Leased Premises in a manner consistent with the best interests of the City Market as a whole; and
- b) The Lessor shall have the right to cause the Lessee to discontinue and the Lessee shall thereupon forthwith discontinue the sale of any item, merchandise, commodity or the supply of any service or the carrying on of any business, any of which is either prohibited by this Section 7.03 or which the Lessor, acting reasonably, determines is not directly related to the business set out in Section 7.01. The Lessee will not allow or cause the use of any part of the Leased Premises for any of the following businesses or activities:
  - i. the sale of secondhand goods or surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock;
  - ii. the sale of goods, except as may be specifically permitted by the provisions of Section 7.01;
  - iii. an auction, bulk sale (other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting hereunder), liquidation sale, “going out of business” or bankruptcy sale, or warehouse sale;
  - iv. any advertising or selling procedures which would, or any sale or business conduct or practice which would, because of the merchandising methods or quality of operation likely to be used, in either case in the Lessor's opinion, tend to lower the character of the City Market or harm or tend to harm the business or reputation of the Lessor or reflect unfavourably on the City Market, the Lessor or other tenants in the City Market or tend to confuse, deceive, mislead or be fraudulent to the public; or
  - v. a mail order business save and except for dulce and maple products or a department store, junior department store or variety store.

### **7.04 Hazardous Substances**

The Tenant covenants and agrees to utilize the Leased Premises and operate its business in a manner so that no part of the Leased Premises or surrounding lands are used to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except in strict compliance with all applicable federal, provincial and municipal statutes, by-laws and regulations, including, without limitation, environmental, land use and occupational and health and safety laws, regulations, requirements, permits, statutes, by-laws and regulations. Further the Lessee hereby covenants and agrees to indemnify and save harmless the Lessor and those for whom the Lessor is in law responsible from any and all losses, costs, claims, damages, liabilities, expenses or injuries caused or contributed to by any Hazardous Substances which are at any time located, stored or incorporated in any part of the Leased Premises. The Lessee hereby agrees that the Lessor or its authorized representatives shall have the right at the Lessee's expense, payable as Additional Rent within fifteen (15) days of receipt of an invoice therefor, to conduct such environmental site reviews and investigations as it may deem necessary for the purpose of ensuring compliance with this Section 7.04. The Lessee's obligations pursuant to this Section 7.04 shall survive the expiration or earlier termination of the Term.

## **ARTICLE VIII**

### **FIXTURES, ALTERATIONS AND REPAIRS AND**

#### **LESSOR'S CONTROL OF CITY MARKET**

### **8.01 Installations by the Lessee**

All equipment, fixtures and improvements installed by the Lessee in the Leased Premises shall be new or completely reconditioned. The Lessee shall not make any alterations, additions or improvements or install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings or make any changes to the store front without first obtaining the Lessor's written approval and consent. The Lessee shall present to the Lessor plans and specifications in form, content and such detail as the Lessor may reasonably require for such work at the time approval is sought. The Lessee covenants that any work that may be done in respect of the Leased Premises by or on

behalf of the Lessee shall be done in such a manner as not to conflict or interfere with any work being done or about to be done by the Lessor in or about the City Market, whether such conflict or interference shall arise in relation to labour unions or otherwise and the Lessee shall obtain all requisite permits, licenses and inspections in respect of any such work done by or on the Lessee’s behalf. Notwithstanding anything herein contained, the Lessee shall make no alterations, additions or improvements that are of a structural nature or that would lessen the value or Rentable Area of the Leased Premises or the City Market, or would interfere with the usage of the Common Areas.

All alterations, decorations, additions and improvements made by the Lessee or made by the Lessor on the Lessee’s behalf by agreement under this Lease shall immediately upon installation or affixation become the property of the Lessor without compensation therefor to the Lessee, but the Lessor shall be under no obligation to repair, maintain or insure the alterations, decorations, additions or improvements. Such alterations, decorations, additions and improvements shall not be removed from the Leased Premises without prior consent in writing from the Lessor. Upon expiration of this Lease, the Lessee shall, at the option of the Lessor, remove all trade fixtures and personal property and shall remove all such alterations, decorations, additions and improvements and restore the Leased Premises as required by the Lessor.

#### **8.02 Maintenance and Repair by the Lessee**

The Lessee will at all times keep the Leased Premises (including exterior entrances and all glass and show windows) and all partitions, doors, fixtures, equipment and appurtenances thereof (including lighting, heating and plumbing fixtures, and the electrical and mechanical systems) in good order, condition and repair (including periodic painting or redecorating and preventative maintenance as determined by the Lessor and including such repairs or replacements as are required to keep the Leased Premises in good repair and condition). All aforesaid maintenance, repairs, restorations and replacements shall be in quality and class equal to the original work or installations.

#### **8.03 Signs, Awnings, Canopies**

The Lessee will not place or suffer to be placed or maintained on any exterior door, wall or window of the Leased Premises any sign, awning or canopy or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Leased Premises without first obtaining the Lessor’s written approval and consent. The Lessee further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times, and in addition to the foregoing, the Lessee shall maintain any signs or displays of its goods or wares which may be seen from the exterior of the Leased Premises in a manner which is in keeping with the character of the City Market of which the Leased Premises form a part and which is designed to enhance the business of the Lessee.

#### **8.04 Surrender of Leased Premises**

Subject to Article 10.01, the Lessee will leave the Leased Premises in good repair, reasonable wear and tear only excepted. Without limiting the generality of the foregoing, at the expiration or earlier termination of the Term the Lessee shall surrender the Leased Premises in the same condition as the Leased Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear only excepted, and shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for the payment of Rent and shall inform the Lessor of all combinations on locks, safes and vaults, if any, in the Leased Premises. Should the Lessee fail to remove its fixtures and personal property, such fixtures and personal property shall be deemed to be abandoned by the Lessee and may be appropriated, sold or otherwise disposed of by the Lessor without notice or obligation to compensate the Lessee or to account therefor. The Lessee’s obligations to observe or perform this covenant shall survive the expiration or earlier termination of the Term of this Lease.

#### **8.05 Lessee to Discharge all Liens**

The Lessee will ensure that no construction or other lien or charge, or notice thereof, is registered or filed against:

- a) the City Market or any part of it; or
- b) the Lessee’s interest in the Leased Premises or any of the leasehold improvements in the Leased Premises.

by any person claiming by, through, under or against the Lessee or its contractors or subcontractors. If such a lien or charge or notice thereof is registered or filed and the Lessee fails to discharge it within five (5) days after written notice from the Lessor, the Lessor may discharge it by paying the amount claimed to be due into court or directly to the claimant and the Lessee will pay to the Lessor as Additional Rent on demand all costs (including legal fees) incurred by the Lessor in connection therewith, together with an administrative overhead charge of fifteen percent (15%) thereon.

#### **8.06 Rules and Regulations**

The Lessee will comply with the Rules and Regulations. The Lessor reserves the right from time to time to amend or supplement the Rules and Regulations. Notice of such amendments and supplements, if any, shall be given to the Lessee, and the Lessee agrees thereupon to comply with and observe all such amendments and supplements, provided that no Rule or Regulation shall contradict any provision of this Lease. The Lessor shall not be responsible to the Lessee for non-observance or violation of any of the provisions of such Rules and Regulations by any other tenant of the City Market or of the terms of any other lease of premises in the City Market and the Lessor shall be under no obligation to enforce any such provisions. All Rules and Regulations shall be enforced against the Lessee in a non-discriminatory manner.

#### **8.07 Maintenance and Repair by the Lessor**

The Lessor shall, subject to the other provisions of this Lease, maintain and repair or cause to be maintained and repaired, the structure of the City Market, including without limitation, the foundations, exterior weather walls, subfloor, roof, bearing walls and structural columns and beams of the City Market. If, however, the Lessor is required to maintain or repair any structural portions or any other portion of the Leased Premises or the City Market by reason of the negligent acts or omissions of the Lessee, its employees, agents, invitees, suppliers, agents and servants of suppliers, licensees, concessionaires or subtenants, the Lessee shall pay on demand as Additional Rent, the Lessor's costs for making such maintenance or repairs, together with an administrative fee of fifteen percent (15%) of such costs.

#### **8.08 Control of City Market by Lessor**

The City Market and the Common Areas are at all times subject to the exclusive control and management of the Lessor. Without limiting the generality of the foregoing, the Lessor has the right in its control, management and operation of the City Market and by the establishment of rules and regulations and general policies with respect to the operation of the City Market or any part thereof at all times throughout the Term to construct, maintain and operate lighting facilities and heating, ventilating and air conditioning systems; provide supervision and policing services for the City Market; close all or any portion of the City Market to such extent as may in the opinion of the Lessor's counsel be legally sufficient to prevent a dedication thereof or the accrual of any rights to any third party or the public; grant, modify and terminate easements or other agreements pertaining to the use and maintenance of all or any part of the City Market; obstruct or close off all or any part of the City Market for the purpose of maintenance, repair or construction, employ all personnel, including supervisory personnel and managers necessary for the operation, maintenance and control of the City Market; use any part of the Common Areas from time to time for merchandising, display, decorations, entertainment and structures designed for retail selling or special features or promotional activities; designate the areas and entrances and the times in, through and at which loading and unloading of goods shall be carried out; control, supervise and generally regulate the delivery or shipping of merchandise, supplies and fixtures to and from the Leased Premises, and other portions of the City Market; designate and specify the kind of container to be used for garbage and refuse in the manner and the times and places at which same is to be placed for collection (if the Lessor for the more efficient and proper operation of the City Market provides or designates a commercial service for the pickup and disposal of refuse and garbage instead of or in addition to the service provided by the municipality, the Lessee shall use same at the Lessee's cost); from time to time change the area, level, location, arrangement or use of the City Market or any part thereof; construct other buildings or improvements in the City Market and make changes to any part thereof; construct other buildings or improvements in the City Market and make changes to any part of the City Market; and do and perform such other acts in and to the City Market as in the use of good business judgment the Lessor determines to be advisable for the more efficient and proper operation of the City Market.

Notwithstanding anything to the contrary, if as a result of the exercise by the Lessor of any of its rights as set out in this Section 8.08, the Common Areas are diminished or altered in any manner whatsoever, the Lessor is not subject to any liability nor is the Lessee entitled to any compensation or diminution or abatement of Rent nor is any alteration or diminution of the Common Areas deemed constructive or actual eviction, or a breach of any covenant for quiet enjoyment contained in this Lease.

#### **8.09 Lessor's Right to Enter Leased Premises**

- a) It is not a re-entry or a breach of quiet enjoyment if the Lessor or its authorized representatives enter the Leased Premises at reasonable times to:
  - i. examine them;
  - ii. make permitted or required repairs, alterations, improvements or additions to the Leased Premises (including the pipes, conduits, wiring, ducts, columns and other installations in the Leased Premises) or the City Market or adjacent property; or
  - iii. excavate land adjacent or subjacent to the Leased Premises; in each case (to the extent reasonably possible in the circumstances) without unreasonably interfering with the Lessee's business operations in the Leased Premises, and the Lessor may take material

into and on the Leased Premises for those purposes. Rent will not abate or be reduced while the repairs, alterations, improvements or additions are being made. The Lessor will take reasonable steps to minimize any interruption of business resulting from any entry.

- b) At any time during the Term, the Lessor may exhibit the Leased Premises to prospective purchasers and during the six (6) months prior to the expiration of the term of this Lease, the Lessor may exhibit the Leased Premises to prospective tenants and place upon the Leased Premises the usual notice “To Let” which notice the Lessee shall permit to remain where placed without molestation;
- c) If the Lessee shall not be personally present to open and permit an entry into the Leased Premises, at any time, when for any reason an entry therein shall be necessary or permissible, the Lessor or the Lessor’s agents may enter the same by a master key, or may forcibly enter the same, without rendering the Lessor or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Lease;
- d) Nothing in this Section contained, however, shall be deemed or construed to impose upon the Lessor any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the City Market or any part thereof, except as otherwise in this Lease specifically provided.

## ARTICLE IX

### INSURANCE AND INDEMNITY

#### 9.01 Lessee’s Insurance

- a) The Lessee shall throughout the Term, at its own cost and expense, take out and keep in full force and effect the following insurance:
  - i. All-risk insurance upon property owned by the Lessee or for which the Lessee is legally liable (including, signs and plate glass) and which is located within the City Market in an amount of not less than the full replacement cost thereof;
  - ii. Comprehensive General Liability with minimum limits of at least Five Million Dollars (\$5,000,000.00) or such higher limits as the Lessor may reasonably require from time to time. This policy shall include:
    - a) The City added as an Additional Insured;
    - b) Inclusive limits for bodily injury and property damage;
    - c) Personal injury liability;
    - d) Tenant’s Legal Liability;
    - e) Contractual Liability with respect to this Lease;
    - f) Premises, Property and Operations;
    - g) Completed Operations;
    - h) A Cross Liability Clause;
    - i) A Thirty (30) days written notice of Cancellation shall be given to the City of Saint John.
  - iii. The Lessee shall also provide any other form of insurance as the Lessee or the Lessor may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would insure.
- b) All policies shall be taken out with reputable and recognized insurers acceptable to the Lessor and shall be in a form satisfactory from time to time to the Lessor. The Lessee agrees that certificates of insurance of each such insurance policy will be delivered to the Lessor as soon as practicable after the placing of the required insurance. All policies shall contain an undertaking by the insurers to notify the Lessor in writing not less than thirty (30) days prior to any material change, cancellation or termination thereof;

- c) The Lessee agrees that if the Lessee fails to take out or keep in force any such insurance referred to in this Section 9.01, or should any such insurance not be approved by the Lessor and should the Lessee not rectify the situation immediately after written notice by the Lessor to the Lessee, the Lessor has the right without assuming any obligation in connection therewith to effect such insurance at the sole cost of the Lessee and all outlays by the Lessor shall be immediately paid by the Lessee to the Lessor as Additional Rent without prejudice to any other rights and remedies of the Lessor under this Lease.

### **9.02 Increase in Insurance Premium**

The Lessee will not allow or cause anything to occur in the Leased Premises which shall cause any increase of premium for any insurance on the Leased Premises or the City Market or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Leased Premises. If the Lessee is in default under this Section 9.02 the Lessee shall pay any resulting additional premium on any insurance policies taken out or maintained by the Lessor, or if any insurance policy upon the Leased Premises or the City Market or any part thereof shall be cancelled or refused to be renewed by an insurer by reason of the use or occupation of the Leased Premises or any part thereof or the acts or omissions of the Lessee, the Lessee shall forthwith remedy or rectify such use or occupation upon request to do so in writing by the Lessor, and if the Lessee shall fail to do so within twenty-four (24) hours of such written request, the Lessor shall have the right to enter the Leased Premises and rectify the situation, without liability to the Lessee for any loss or damage occasioned by such entry and rectification, or shall be entitled to hold the Lessee liable for any damage or loss resulting from such cancellation or refusal, or the Lessor may at its option determine this Lease forthwith by leaving upon the Leased Premises notice in writing of its intention to do so, and thereupon Rent and any other payments for which the Lessee is liable under this Lease shall be apportioned and paid in full to the date of such determination of the Lease, and together with an amount equal to the Gross Rent payable for a period of one (1) year as liquidated damages, and the Lessee shall immediately deliver up possession of the Leased Premises, a schedule issued by the organization making the insurance rate on the Leased Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make the fire insurance rate of the Leased Premises. Bills for such additional premiums shall be rendered by the Lessor to the Lessee at such times as the Lessor may elect and shall be due from and payable by the Lessee when rendered, and the amount thereof shall be deemed to be and be paid as Additional Rent.

### **9.03 Loss or Damage**

The Lessor shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the City Market, or damage to property of the Lessee or of others located on the Leased Premises, nor shall it be responsible for any loss of or damage to any property of the Lessee or others from any cause whatsoever, except any such death, injury, loss or damage results from the negligence of the Lessor, its agents, servants or employees or other persons for whom the Lessor is in law responsible. Without limiting the generality of the foregoing, the Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof or subsurface of any floor or ceiling or from the street or any other place or other tenants or persons in the City Market or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Lessee kept or stored on the Leased Premises shall be so kept or stored at the risk of the Lessee only and the Lessee shall indemnify the Lessor and save it harmless from any claims arising out of any damages to the same, including, without limitation, any subrogation claims by the Lessor's insurers. In no event shall the Lessor be liable for any injury to the Lessee, its servants, agents, employees, customers and invitees or for any injury or damage to the Leased Premises or to any property of the Lessee, or to any property of any other person, firm or corporation on or about the Leased Premises caused by an interruption, suspension or failure in the supply of any utilities to the Leased Premises.

### **9.04 Indemnification of the Lessor**

The Lessee will indemnify the Lessor, and save harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased premises, the occupancy or use by the Lessee of the Leased premises or any part thereof, or occasioned wholly or in part by any act or omission of the Lessee, its agents, contractors, employees, servants, licensees, or concessionaires or invitees. In case the Lessor shall, without fault on its part, be made a party to any litigation commenced by or against the Lessee, then the Lessee shall protect and hold it harmless and shall pay all costs, expenses and solicitors' and counsel fees on a solicitor and client basis incurred or paid by them in connection with such litigation.

## **ARTICLE X**

### **DAMAGE, DESTRUCTION AND EXPROPRIATION**

#### **10.01 Total or Partial Destruction of Leased Premises**

If, during the Term, the Leased Premises are expropriated or totally or partially destroyed or damaged by any cause in respect of which the Lessor is insured, the following provisions shall have effect:

- a) If the Leased Premises are rendered partially unfit for occupancy by the Lessee, Gross Rent only shall abate in part only, in the proportion that the part of the Leased Premises rendered unfit for occupancy by the Lessee bears to the whole of the Leased Premises or if the Leased Premises are rendered wholly unfit for occupancy by the Lessee the Rent hereby reserved shall be suspended in either event until the day following a reasonable period (taking into account the extent of the Lessee’s restoration) following completion of the Lessor’s restoration;
- b) Notwithstanding the provisions of subparagraph (a), if the Leased Premises in the opinion of the Architect shall be incapable of being rebuilt and/or repaired or restored with reasonable diligence within 180 days of the happening of such destruction or damage, then the Lessor may at its option terminate this Lease by notice in writing to the Lessee given within thirty (30) days of the date of such destruction or damage and in the event of such notice being so given this Lease shall cease and become null and void from the date of such destruction or damage and the Lessee shall immediately surrender the Leased Premises and all interest therein to the Lessor and the Rent shall be apportioned and shall be payable by the Lessee only to the date of such destruction or damage and the Lessor may re-enter and repossess the Leased Premises discharged of this Lease;

If the Leased Premises are capable of being rebuilt and/or repaired or restored within 180 days of the happening of such damage or destruction or if within the period of thirty (30) days referred to in Section 10.01(b) the Lessor shall not give notice terminating this Lease, the Lessor shall with reasonable promptitude proceed to rebuild and/or repair or restore the Leased Premises to the extent of the Lessor’s repair obligations under the Lease and the Lessee shall immediately upon substantial completion of the Lessor’s work and, within a reasonable period determined by the Lessor (given the extent of the Lessee’s restoration) complete the restoration of the Leased Premises.

The certificate of the Architect shall bind the parties as to the (i) extent to which the Leased Premises are unfit for occupancy; (ii) time required to rebuild and/or repair or restore the Leased Premises; and (iii) due completion of repairs.

#### **10.02 Total or Partial Destruction of City Market**

In the event that a substantial portion of the City Market shall be expropriated or damaged or destroyed by fire or other cause, or in the event the costs as estimated by the Lessor of repairing, restoring or rebuilding will exceed by \$250,000 or more the proceeds of insurance available to the Lessor, notwithstanding that the Leased Premises may be unaffected, or in the event the Lessor shall have the right, to be exercised by notice in writing delivered to the Lessee within sixty (60) days from and after said occurrence, to elect to cancel and terminate this Lease. Upon the giving of such notice to the Lessee, the Term of this Lease shall expire upon the third (3<sup>rd</sup>) day after such notice is given, and the Lessee shall vacate the Leased Premises and surrender the same to the Lessor.

#### **10.03 Abatement of Rent**

Notwithstanding anything herein before contained, all abatements of Rent set out in this Article X shall be limited to an amount equal to the amount which the Lessor collects under any rental income insurance.

#### **10.04 Expropriation Awards**

The Lessor and the Lessee will co-operate with each other if there is an expropriation of all or part of the Leased Premises or the City Market, so that each may receive the maximum award that it is entitled to at law. To the extent, however, that a part of the City Market, other than the Leased Premises, is expropriated, the full proceeds that are paid or awarded as a result, will belong solely to the Lessor, and the Lessee will assign to the Lessor any rights that it may have or acquire in respect of the proceedings or awards and will execute the documents that the Lessor reasonably requires in order to give effect to this intention.

### **ARTICLE XI**

#### **STATUS STATEMENT, SUBORDINATION AND ATTORNMENT**

##### **11.01 Status Statement**

Within fifteen (15) days after request, the Lessee will sign and deliver to the Lessor a status statement or certificate, stating that this Lease is in full force and effect, any modifications to this Lease, the commencement and expiry dates of this Lease, the date to which Rent has been paid, the amount of any prepaid Rent or deposits held by the Lessor, whether there is any existing default and the particulars, and any other information required by the party requesting it.

#### **11.02 Power of Attorney**

The Lessee hereby irrevocably appoints the Lessor as the attorney for the Lessee with full power and authority to execute and deliver in the name of the Lessee any instruments or certificates required to carry out the intent of Section 11.01 which the Lessee shall have failed to sign and deliver within fifteen (15) days after the date of a written request by the Lessor to execute such instruments.

### **ARTICLE XII**

#### **TRANSFERS BY LESSEE**

##### **12.01 Transfer Defined**

“Transfer” means, (i) an assignment, sale, conveyance, sublease, or other disposition of this Lease or the Leased Premises, or any part of them or any interest in this Lease (whether by operation of law or otherwise), or in a partnership that is a Lessee under this Lease, (ii) a mortgage, charge or debenture (floating or otherwise) or other encumbrance of this Lease or the Leased Premises or any part of them, or of any interest in this Lease or of a partnership, or partnership interest, where the partnership is a Lessee under this Lease, (iii) a parting with or sharing of possession of all or part of the Leased Premises, and (iv) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the corporate shares of the Lessee or an “affiliate” (as that term is defined on the date of this Lease under the *Canada Business Corporations Act*) of the Lessee which results in a change in the effective voting control of the Lessee. “Transferor” and “Transferee” have meanings corresponding to the definition of “Transfer” set out above, (it being understood that for a Transfer described in clause (iv) the Transferor is the person that has effective voting control before the Transfer and the Transferee is the person that has effective voting control after the Transfer).

##### **12.02 Consent Required**

The Lessee will not allow or cause a Transfer, without the prior written consent of the Lessor in each instance which consent may not be unreasonably withheld. Notwithstanding any statutory provisions to the contrary, Lessor’s consent shall not be deemed to have been unreasonably withheld where Lessor refuses consent to a Transfer within twenty-four (24) months of either the Commencement Date or a previous Transfer. Without limiting the generality of the foregoing, no Transfer shall be effective, and no consent shall be given unless the following provisions have been complied with:

- a) There is no default of the obligations of the Lessee under this Lease;
- b) The Lessee shall have given at least thirty (30) days’ prior written notice of the proposed Transfer and the effective date thereof to the Lessor;
- c) A duplicate original of the documents affecting the Transfer shall be given to the Lessor within thirty (30) days after the execution and delivery thereof;
- d) The Transferee, except in the case of a Transfer described in Section 12.01(iv), shall have assumed in writing with the Lessor the due and punctual performance and observance of all the agreements, provisions, covenants and conditions hereof on the Lessee’s part to be performed or observed from and after the effective date of the Transfer.

The Lessee acknowledges that the factors governing the granting of the Lessor’s consent to any Transfer may include, without limitation, the restrictive clauses entered into with other tenants by the Lessor, the financial background, business history and the capability of the proposed Transferee in the Lessee’s line of business, and the nature of the business practices of the proposed Transferee. The consent by the Lessor to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. If a Transfer takes place, the Lessor may collect rent from the Transferee, and apply the net amount collected to the Rent herein reserved, but no such action shall be deemed a waiver of the requirement to obtain consent or the acceptance of the Transferee as lessee, or a release of the Lessee or any Indemnifier from the further performance by the Lessee of covenants on the part of the Lessee herein contained. Notwithstanding any Transfer, the Lessee shall remain fully liable under this Lease and shall not be released from performing any of the obligations of the Lessee under this Lease.

Any Transfer, if consented to by the Lessor, may at the Lessor’s option be documented by the Lessor or its solicitors, and any and all legal costs and the Lessor’s then-standard fee with respect thereto or

to any documents reflecting the Lessor’s consent to the Transfer shall be payable by the Lessee on demand as Additional Rent.

### **12.03 No Advertising of Leased Premises**

The Lessee shall not print, publish, post, display or broadcast any notice or advertisement to the effect that the Leased Premises are for lease or for sale or otherwise advertise the proposed sale or lease of the whole or any part of the Leased Premises and shall not permit any broker or other party to do any of the foregoing, unless the complete text and format of any such notice, advertisement or offer is first approved in writing by the Lessor. Without in any way restricting or limiting the Lessor’s right to refuse any text or format on other grounds, any text or format proposed by the Lessee shall not contain any reference to the rental rate of the Leased Premises.

## **ARTICLE XIII**

### **DEFAULT OF LESSEE**

#### **13.01 Right to Re-Enter**

When

- a) the Lessee shall be in default in the payment of any Rent whether lawfully demanded or not and such default shall continue for a period of five (5) consecutive days; or
- b) the Lessee shall be in default of any of its covenants, obligations or agreements under this Lease or of any term or condition of this Lease (other than its covenant to pay Rent) and such default shall continue for a period of fifteen (15) consecutive days or such longer or shorter period as the Lessor, acting reasonably, determines after five (5) days written notice by the Lessor to the Lessee specifying with reasonable particularity the nature of such default and requiring the same to be remedied;

then and in any of such cases the then current month’s Rent, together with the Rent for the three (3) months next ensuing shall immediately become due and payable, and at the option of the Lessor, the Terms shall become forfeited and void, and the Lessor may without notice or any form of legal process whatsoever forthwith re-enter upon the Leased Premises or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding, provided however, that such forfeiture shall be wholly without prejudice to the right of the Lessor to recover arrears of rent or damages for any antecedent default by the Lessee of its covenants, obligations or agreements under this Lease or any term or condition of this Lease and provided further that notwithstanding any such forfeiture the Lessor may subsequently recover from the Lessee damages for loss of Rent suffered by reason of this Lease having been prematurely determined. In addition, the Lessor shall have the right to remove and sell the Lessee’s goods and chattels and trade fixtures and apply the proceeds thereof to Rent due under the Lease.

#### **13.02 Right to Re-let**

Should the Lessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Leased Premises, and re-let the Leased Premises or any part thereof as agent for the Lessee for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Lessor in its sole discretion may deem advisable; upon each re-letting all rentals received by the Lessor from such re-letting shall be applied; first, to the payment of any indebtedness other than rent due hereunder from the Lessee to the Lessor; second, to the repayment of any reasonable costs and expenses of such re-letting, including brokerage fees and solicitors’ fees and of costs of such alterations and repairs; third, to the payment of Rent due as the same may become due and payable hereunder. If such Rent received from such re-letting during any month be less than that to be paid during that month by the Lessee hereunder, the Lessee shall pay any such deficiency to the Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Leased Premises by the Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to the lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should the Lessor at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from the Lessee all damages it may incur by reason of such breach, including the cost of recovering the Leased Premises, and including the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent reserved in this Lease for the remainder of the Term hereof over the then reasonable rental value of the Leased Premises for the remainder of the Term hereof, all of which amounts shall be immediately due and payable from the Lessee to the Lessor. In determining the Rent which would be payable by the Lessee hereunder, subsequent to default, the annual



Rent for each year of the unexpired Term shall be equal to the greater of: (a) the average annual Gross Rent and Percentage Rent payable by the Lessee from the Commencement Date to the time of default or during the preceding three (3) full calendar years, whichever period is shorter; and (b) Gross Rent payable hereunder, together with all Additional Rent which would have been payable during the calendar year in which this Lease was terminated, prorated over a full calendar year, if required.

### **13.03 Legal Expenses**

In case suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of the Lessee to be kept or performed and a breach shall be established, the Lessee shall pay to the Lessor all expenses incurred therefor, including reasonable solicitors' and counsel fees on a solicitor and his client basis.

### **13.04 Bankruptcy**

The Lessee covenants and agrees that if the Term or any of the goods and chattels of the Lessee on the Leased Premises shall be at any time during the Term seized or taken in execution or attachment by any creditor of the Lessee or if a receiver, interim receiver or receiver and manager is appointed for the assets or business of the Lessee or if the Lessee shall make any assignment for the benefit of creditors or any bulk sale or, becoming bankrupt or insolvent, shall take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors or if any order shall be made for the winding up of the Lessee, or if the Leased Premises shall without the written consent of the Lessor become and remain vacant for a period of fifteen (15) days, or be used by any other persons than such as are entitled to use them under the terms of this Lease, or if the Lessee shall without the written consent of the Lessor abandon or attempt to abandon the Leased Premises or to sell or dispose of goods or chattels of the Lessee or to remove them or any of them from the Leased Premises so that there would not in the event of such abandonment, sale or disposal be sufficient goods on the Leased Premises subject to distress to satisfy the Rent above due or accruing due, then and in every such case the then current month's Rent and the next ensuing three (3) months' Rent shall immediately become due and be paid and the Lessor may re-enter and take possession of the Leased premises as though the Lessee or the servants of the Lessee or any other occupant of the Leased Premises were holding over after the expiration of the Term and the Term shall, at the option of the Lessor, immediately without any notice or opportunity for cure provided to the Lessee, become forfeited and determined, and in every one of the cases above such accelerated Rent shall be recoverable by the Lessor in the same manner as the Rent hereby reserved and if Rent were in arrears and the said option shall be deemed to have been exercised if the Lessor or its agents given notice to the Lessee as provided for herein.

### **13.05 Lessor May Perform Lessee's Covenants**

If the Lessee shall fail to perform any of its covenants or obligations under or in respect of this Lease, the Lessor may from time to time at its discretion, perform or cause to be performed any such covenants or obligations, or any part thereof, and for such purpose may do such things upon or in respect of the Leased Premises or any part thereof as the Lessor may consider requisite or necessary.

All expenses incurred and expenditures made by or on behalf of the Lessor under this Section, together with an administrative fee equal to fifteen (15%) percent thereon, shall be forthwith paid by the Lessee to the Lessor on demand as Additional Rent.

### **13.06 Waiver of Exemptions from Distress**

Despite any applicable Act, legislation or any legal or equitable rule of law: (a) none of the inventory, furniture, equipment or other property at any time owned by the Lessee is exempt from distress; and (b) no lack of compliance with any requirement concerning the day of the week, time of day or night, method of entry, giving of notice, appraising of goods, or anything else, will render any distress unlawful where the Lessee owes arrears of Rent at the time of the distress.

### **13.07 Remedies Cumulative**

No reference to nor exercise of any specific right or remedy by the Lessor will prejudice or preclude the Lessor from exercising or invoking any other remedy in respect thereof, whether allowed at law or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Lessor may from time to time exercise any one or more of such remedies independently or in combination.

## **ARTICLE XIV**

### **MISCELLANEOUS**

#### **14.01 Overholding**

If the Lessee remains in possession of the Leased Premises after the end of the Term and without the execution and delivery of a new lease, there shall be no tacit renewal of this Lease and the Term hereby granted, and the Lessee shall be deemed to be occupying the Leased Premises as a Lessee from month to month at monthly rent payable in advance on the first day of each month equal to the sum of:

- a) one and one half (1 ½) times the Gross Rent payable during the last month of the Term; and
- b) one-twelfth of the Additional Rent payable by the Lessee for the Lease Year immediately preceding the last Lease Year of the Term;

and otherwise upon the same terms and conditions as are set forth in this Lease, except as to duration of Term, and any right of renewal mutatis mutandis.

#### **14.02 Successors**

This Lease applies to the successors and assigns of the Lessor and, if Article XII is complied with, the heirs, executors, administrators and permitted successors and permitted assigns of the Lessee. If there is more than one party named as Lessee, they are jointly and severally liable under this Lease.

#### **14.03 Waiver**

Failure by the Lessor to require performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Lessor shall not be deemed to be a waiver of any preceding breach of the Lessee of any term, covenant or condition of this Lease, other than the failure of the Lessee to pay the particular rent so accepted, regardless of the Lessor's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or condition of this Lease shall be deemed to have been waived by the Lessor, unless such waiver be in writing by the Lessor.

#### **14.04 Accord and Satisfaction**

No payment by the Lessee or receipt by the Lessor of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement or any cheque or any letter accompanying any cheque or payment as Rent be deemed an accord and satisfaction, and the Lessor may accept such cheque or payment without prejudice to the Lessor's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

#### **14.05 Entire Agreement**

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between the Lessor and the Lessee concerning the Leased Premises and there are no covenants, promises, agreements, conditions or representations, either oral or written, between them other than are herein and in the said schedules and rider, if any, set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Lessor or the Lessee unless reduced to writing and signed by them.

#### **14.06 No Partnership**

The Lessor does not, in any way or for any purpose, become a partner of the Lessee in the conduct of its business, or otherwise or joint venture or a member of a joint enterprise with the Lessee.

#### **14.07 Force Majeure**

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labour troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding anything herein contained, the provisions of this Section 14.07 shall not operate to excuse the Lessee from the prompt payment of Gross Rent, Additional Rent or any other payments required by the terms of this Lease, nor entitle the Lessee to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

#### **14.08 Notices**

Any notice herein provided or permitted to be given by the Lessee to the Lessor shall be sufficiently given if delivered personally to the City Clerk, or if transmitted by telecopier or if mailed in Canada, registered and postage prepaid, addressed to the Lessor at: C/O The City Clerk, The City of Saint John, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1, with a copy to Facility

Management Division, The City of Saint John, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1, and any notice herein provided or permitted to be given by the Lessor to the Lessee shall be sufficiently given if delivered personally to the party being given such notice or to a responsible employee of the party being given such notice, or if transmitted by telecopier or if mailed in Canada, registered and postage prepaid, addressed to the Lessee at **24 School Avenue, Rothesay, NB, E2E 1Z6**. Any such notice given as aforesaid shall be conclusively deemed to have been given on the day on which such notice is delivered or transmitted or on the third day that there is postal delivery following the day on which such notice is mailed, as the case may be. Either party may at any time give notice in writing to the other of any change of address of the party given such notice and from and after the giving of such notice the address therein specified shall be deemed to include any request, statement or other writing in this Lease provided or permitted to be given by the Lessor to the Lessee or by the Lessee to the Lessor. If there is more than one party named as Lessee, notice to one shall be deemed sufficient as notice to all.

#### **14.09 Place for Payment of Rent**

The Lessee shall pay the Rent. Including all Additional Rent, at the office of the Lessor specified in Section 14.08 or as such place or places as the Lessor may designate from time to time by notice in writing: currently to the Cashier's Office, City Hall, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1.

#### **14.10 Approval in Writing**

Wherever the Lessor's consent is required to be given hereunder or wherever the Lessor must approve any act or performance by the Lessee, such consent or approval, as the case may be, shall be given in writing by the Lessor before same and shall be deemed to be effective.

#### **14.11 Governing Law**

The Lease is to be governed by and construed according to the laws of the Province of New Brunswick.

#### **14.12 Captions and Section Numbers**

The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles or of this Lease, nor in any way affect this Lease.

#### **14.13 Partial Invalidity**

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and/or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be separately valid and enforceable to the fullest extent permitted by law.

#### **14.14 No Option**

The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises and this Lease becomes effective as a Lease only upon execution and delivery thereof by the Lessor and the Lessee.

#### **14.15 Time To Be of the Essence**

Time shall be of the essence of this Lease.

#### **14.16 Quiet Enjoyment**

The Lessor covenants with the Lessee for quiet enjoyment.

#### **14.17 Riders and Schedules**

Schedules attached hereto form part of this Lease.

#### **14.18 Basement Storage Space**

Where the Leased Premises includes any area of basement storage space, notwithstanding any provision herein contained, the Lessee acknowledges and agrees that water and sewer lines are located within the basement area of the Leased Premises and that there is a possibility that water and/or sewage may escape from the lines as a result of breakage, blockage, overflow or other cause, and may cause damage to anything stored in the basement area of the Leased Premises. The Lessee acknowledges and agrees that if it chooses to store anything, whether belonging to it or to others, in the basement area of the

Lease for Stall Space – City Market  
**721360 N.B. Ltd.**  
**dba Slocum & Ferris**  
Schedule “C”

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Leased Premises, it does so at its own risk and the Lessee hereby releases and indemnifies and saves harmless the Lessor from and against any and all manner of actions, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to or arising out of breakage, blockage, overflow or other problem of the water or sewage lines.