

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 03-051

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND BH PARKWAY PLACE LTD. FOR 1135 LANSDOWNE STREET WEST

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute a lease agreement between the Corporation of the City of Peterborough and BH Parkway Place Ltd. in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second time 31st day of March, 2003

By-law read a third time and finally passed this 31st day of March, 2003

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS INDENTURE made the 4th day of February, 2003 is made in pursuance of the SHORT FORMS OF LEASES ACT (ONTARIO)

B E T W E E N:

BH PARKWAY PLACE LTD., a corporation
incorporated under the laws of the Province of Ontario,

hereinafter called the "Landlord"

OF THE FIRST PART

and

**THE CORPORATION OF THE CITY
OF PETERBOROUGH**

hereinafter called the "Tenant"

OF THE SECOND PART

Premises

WITNESSETH that in consideration of the rents, covenants, undertakings and agreements hereinafter reserved and contained on the part of the said Tenant, to be paid, observed, and performed, the said Landlord has demised and leased and by these presents doth demise and lease unto the said Tenant,

ALL THOSE CERTAIN PREMISES forming part of the Landlord's premises municipally known as 1135 Lansdowne Street West, Peterborough, Ontario as shown on Schedule A attached hereto and forming part hereof, the said demised premises shall be deemed to be comprised of Thirteen Thousand Nine Hundred, Forty-Six (13,946) square feet more or less of rentable area on the Lower Level of the said building which approximate area location is outlined in red on attached Schedule A and hereinafter referred to as the "demised premises" in this Indenture and known as Unit 201.

Notwithstanding that the demised premises are deemed to consist of 13,946 square feet more or less of rentable area, it is understood and agreed that the Landlord shall have the right, during the term of this Lease, to lease the northerly portion, up to approximately 7,500 square feet, to another tenant. The Landlord shall have the right, during the Tenant's regular business hours, and upon not less than four (4) hours notice to the Tenant, to show the northerly part of the demised premises to a prospective tenant.

Should the Landlord receive a bona fide offer to lease the northerly part of the demised premises, the Landlord shall notify the Tenant, in writing, including a copy of the offer to lease. The Tenant shall thereafter have thirty (30) days to exercise an option to terminate the Landlord's right to lease the space. In the event that the Tenant exercises this option, the Tenant shall immediately begin to pay to the Landlord basic rent at the rate of Five Dollars (\$5.00) per square foot for the balance of the term of this Lease, being Sixty-Nine Thousand, Seven Hundred and Thirty Dollars (\$69,730.00) per annum, in advance, in monthly payments of Five Thousand, Eight Hundred and Ten and 83/100 Dollars (\$5,810.83).

In the event that the Tenant does not exercise its option as aforesaid, the Landlord may proceed to lease the approximately 7,500 square feet of the northerly portion of the demised premises to another tenant. The Landlord shall pay all costs incurred to divide the demised premises, with all such work conforming to the standards as set out by the authorities having jurisdiction. When the demised premises have been divided in this manner, the Tenant shall thereafter pay basic rent to the Landlord in the amount of Five Dollars (\$5.00) per square foot for the remaining rentable area occupied by the Tenant, and shall continue to pay its proportionate share of operating costs and realty taxes, provided, that, under no circumstances, shall the combination of basic rent, operating costs and realty taxes exceed the total amount of Fifty-Four Thousand, Two Hundred and

Forty Dollars (\$54,240.00) per year, payable in monthly installments of Four Thousand, Five Hundred and Twenty Dollars (\$4,520.00), inclusive of GST. For clarification purposes, see Schedule B hereto attached.

Lease Value

It is understood and agreed the aggregate amount payable by the Tenant during the term of this Lease is not less than One Hundred Forty Thousand, One Hundred and Twenty Dollars (\$140,120.00) and declining by the amount of each monthly payment made to the Landlord as herein provided.

WHEREAS the Landlord has agreed to lease the demised premises as shown on Schedule A, hereto attached, to the Tenant.

WHEREAS the Tenant has agreed to lease the demised premises as shown on Schedule A, hereto attached, from the Landlord.

WHEREAS the Tenant covenants, undertakes and agrees with the Landlord to pay to the Landlord rent all in accordance with this Indenture and subject to section 3.10 comply with all existing and or future municipal or governmental laws, bylaws, rules and regulations which now have or may have in the future due jurisdiction over the premises.

WHEREAS the Landlord covenants, undertakes and agrees with the Tenant to provide quiet enjoyment of the demised premises and comply with the covenants, undertakings and agreements that are or will become applicable during the Term(s), all as further provided herein.

NOW THEREFORE THIS LEASE WITNESSES that in consideration of the covenants, undertakings and agreements contained in this Lease, the Landlord and Tenant agree to as follows:

1. INTERPRETATION AND DEFINITION

The Parties hereto agree that when used in this Indenture or in any Schedules and Appendixes attached to this Indenture, the following words or expressions shall have the meaning hereinafter set forth:

1.1 **"Rent"** means all basic rent, additional rent, realty taxes and any other payment due or to become due and payable by the Tenant pursuant to this Indenture.

1.2 **"Common Areas"**: The expression "common areas" as used in this Indenture shall mean the lanes, accommodation areas including but not limited to pedestrian sidewalks and ways, landscaping areas, exterior ramps and stairways, interior stairways and hallways, washrooms, parking lot and any other facilities of the building on the said premises, which are from time to time provided or available for general use and enjoyment including areas reserved for the maintenance and upkeep and vital services areas.

1.3 **"Operating Costs"** means the total amount paid or payable whether by the Landlord or others on behalf of the Landlord for management, administration, maintenance, maintenance supplies and janitorial services for the building and land appurtenant thereto and common areas and all repairs required for such maintenance and without limiting the generality of the foregoing, the cost of snow and garbage removal, parking lot maintenance, sweeping, resurfacing and cleaning, hydro meter charges, lighting fixtures of common areas and parking lot, the cost of all electrical current supplied, gas, gas meter charges, maintenance of lawns and shrubs, cleaning and washing common areas, the cost of providing water for the premises, the cost of window cleaning and insurance costs for the premises, service contracts with independent contractors, and all other wages, salaries and costs and expenses paid or payable by the Landlord in connection with the care, management, administration, cleaning, operating, maintaining, insuring and advertising the premises and all services including GST and any other taxes imposed by authorities having jurisdiction, excluding, however, Landlord's capital costs.

1.4 **"Proportionate Share"**: Proportionate share when used in this Indenture shall mean that 60% of the Operating Costs shall be borne by the main level tenants and 40% of the Operating Costs shall be borne by the lower level tenants. Proportionate share when applicable to Operating costs, shall be determined by the following ratio: The ratio shall have as its numerator the area of the Tenant's demised premises and shall have as its denominator: (a) for a main level tenant, the total area of the main level of the main mall building or (b) for a lower level tenant, the total area of the lower level of the main mall building. The Tenant's proportionate share for Unit 201 is 38.64% for the lease commencement year.

1.5 **"Premises"** The expression when used in this Indenture shall mean, the building, including common areas, demised premises, parking lot, patios, landscaped areas, walkways, and all other areas within the property municipally known as 1135 Lansdowne Street West, Peterborough, Ontario.

2. **GRANT, TERM AND RENT**

2.1 **Grant and Term**

In consideration of the Tenant's covenants, undertakings and agreements contained in this Indenture, the Landlord leases to the Tenant the demised premises for the Term commencing at 9:00 a.m. on the 1st day of April, 2003 (the "commencement date") and ending on the 31st day of October, 2005 subject to the Tenant giving to the Landlord not less than One Hundred Eighty (180) days written notice to terminate prior to the end of the Term provided that the tenancy shall not end earlier than the date of the expiry of the Term, as set out herein, October 31st, 2005.

2.2. **Basic Rent**

Yielding and paying therefore unto the Landlord, its successors and assigns, yearly and every year during the said Term, without any deduction, defalcation or abatement whatsoever, basic rent in the amount NIL Dollars (\$0.00), in monthly installments of NIL Dollars (\$0.00), inclusive of GST. The said monthly installment shall be payable on the last day of each month, in advance.

2.3 **Option to Renew**

The Tenant, when not in default hereunder, shall have the right to renew this Lease for two (2) additional terms of five (5) years each, upon the same terms and conditions as are contained in this Lease, save and except the basic rent and save and except this right of renewal. The basic rent for each of the two (2) renewal terms shall be as follows:

- (a) for the first renewal term, \$5.40 per square foot per annum, and
- (b) for the second renewal term, \$5.83 per square foot per annum.

2.4 **Overholding**

If the Tenant remains in possession of the demised premises after the expiration of the Fixed Term(s) with the consent of the Landlord but without other special agreement, the Tenant shall be a monthly tenant only at a monthly rental equal to the basic monthly rental previously paid by the Tenant in accordance with this Lease during the month immediately preceding the expiration of the Fixed Term(s) plus an increase of 20%. Such monthly tenancy shall, in all other respects, be subject to the terms of this Lease. The Tenant or the Landlord, as the case may be, may terminate such overholding monthly tenancy by not less than 180 day written notice.

2.5 **Additional Rent**

In addition to the minimum basic rent, the Tenant shall pay its proportionate share

of the Landlord's operating costs including a 15% service charge fee.

The Landlord may in each year compute a bona fide estimate of the operating costs payable by the Tenant and operating costs during the forthcoming year or portion thereof. From and after the date upon which notice of such estimate is given by the Landlord to the Tenant, the Tenant shall pay the amount of such estimated costs by equal monthly installments payable in advance on the last day of each and every month during the year or portion thereof for which estimate was computed. All payments shall be made as set out in section 2.6 herein. Adjustments between Landlord and Tenant shall be made within ninety (90) days after the end of each calendar year period or any portion thereof for which estimate of operating costs have been made by the Landlord, the Landlord shall furnish the Tenant with a statement, setting forth the total of the operating costs, during the immediately preceding calendar year or portion thereof during which operating costs are payable by the Tenant for such period. Within ten (10) days after delivery of such statement, the Landlord or the Tenant (as the case may be) shall make an adjusting payment in the amount of the difference between the total of actual operating costs paid by the Tenant, during such period and of the actual operating costs that should have been paid by the Tenant on the basis as set out in such statement.

Notwithstanding anything else contained in this paragraph, during the term of this Lease to and including the 31st day of October, 2005, the Proportionate Share shall be deemed to be Thirty-Four Thousand, Three Hundred and Twenty Dollars (\$34,320.00) per year, payable in monthly installments of Two Thousand, Eight Hundred and Sixty Dollars (\$2,860.00), inclusive of GST, excepting that, should the Landlord's insurance and waste disposal costs increase over the amount paid in the year 2002, the Tenant shall pay to the Landlord its Proportionate Share of such increase. If, as a result of such increase the Proportionate Share of Operating Costs in any year exceeds an increase of five per cent (5%) over the previous year, the Tenant may, at its sole option, demand that the Landlord's records pertaining to the Operating Costs be audited for that year, so long as the Tenant requests such audit not later than thirty (30) days after the end of such year. Should the audit confirm the Landlord's costs, the Tenant shall pay to the Landlord, as rent, the Landlord's costs of auditing its records.

During any renewal term of this Lease, the Proportionate Share of Operating Costs for the first year of either renewal term shall not exceed an increase of five per cent (5%) over the actual amount of Operating Costs paid by the Landlord for the last year of the previous term.

2.6 Postdated Cheques

The Tenant hereby agrees to pay to the Landlord as rent any and all charges due and payable in this Lease Agreement. If the Tenant's required payments are made by a cheque, bank draft or electronic transfer of funds, and the funds fail to be credited to the Landlord for any reason whatsoever, a service charge of Fifty Dollars (\$50.00) shall be payable by the Tenant to the Landlord for each such failure.

2.7 Interest and Collection Charge

The Tenant shall pay interest to the Landlord at the rate of 2.00% per month (26.8242% per annum) on any rent payment or other charges for which the Tenant is responsible for and has not paid by the due date. In addition to the foregoing, the Tenant hereby agrees to pay to the Landlord a minimum collection charge of Fifty Dollars (\$50.00) for each occurrence. Should it be necessary, in the opinion of the Landlord, to incur legal expenses in this matter, the Tenant agrees to pay to the Landlord as additional rent, Landlord's costs on a solicitor and client basis.

3. TENANT'S COVENANTS, UNDERTAKINGS AND AGREEMENTS

The Tenant covenants, undertakes and agrees with the Landlord as follows:

3.1 Rent

Tenant shall pay minimum basic rent, additional rent and other charges as provided for in this Lease.

3.2 **Realty Taxes**

In every year of the Term(s), the Tenant shall pay to the Landlord all real estate taxes, school taxes, local improvement rates, and all other rates, charges, excises or levies assessed against the demised premises which hereinafter may be referred to as "Taxes".

Main and Lower Level Taxes shall be based upon current year occupied tax rate. Main Level Taxes are deemed to be 74% of the Total Main and Lower Level Taxes. Lower Level Taxes are deemed to be 26% of the Total Main and Lower Level Taxes. The Tenant's proportionate share, payable by the Tenant to the Landlord, is deemed to be 35.50% of Lower Level Taxes as calculated above.

The Landlord may in each year compute a bona fide estimate of the additional taxes payable by the Tenant and taxes during the forthcoming year or portion thereof. From and after the date upon which notice of such estimate is given by the Landlord to the Tenant the Tenant shall pay the amount of such estimated costs by equal monthly installments payable in advance on the last day of each and every month during the year or portion thereof for which estimate was computed. All payments shall be made as set out in section 2.6 herein. Adjustments between Landlord and Tenant shall be made within ninety (90) days after the end of each calendar year period or any portion thereof for which estimate of taxes have been made by the Landlord, the Landlord shall furnish the Tenant with a statement, setting forth the total of the taxes, during the immediately preceding calendar year or portion thereof during which taxes are payable by the Tenant for such period. Within ten (10) days after delivery of such statement, the Landlord or the Tenant (as the case may be) shall make an adjusting payment in the amount of the difference between the total of actual taxes paid by the Tenant, during such period and of the actual taxes that should have been paid by the Tenant on the basis as set out in such statement.

Notwithstanding anything contained in this paragraph, during the term of this Lease, property taxes shall be deemed to be Nineteen Thousand, Nine Hundred and Twenty Dollars (\$19,920.00) per year, payable in monthly installments of One Thousand, Six Hundred and Sixty Dollars (\$1,660.00). During any renewal terms, the Tenant shall pay its proportionate share of the property taxes.

3.3 **Separate Schools**

If the Tenant or any other person occupying the demised premises shall elect to have them assessed for taxes in support of separate schools the Tenant shall pay the amount by which the separate school taxes exceed the amount of taxes which would have been payable by the Landlord had such election not been made. Should the Tenant fail to pay such taxes, the Landlord may pay same and collect the monies so paid and Landlord's reasonable costs as accrued rent.

3.4 **Tenant's Insurance**

(a) The Tenant shall place and maintain at its expense all risk liability, property damage including insurance for all glass and plate glass and rental loss insurance covering the demised premises and the Tenant's business operations in such amounts as are maintained from time to time in Tenant's business operations, provided that the minimum amount of liability insurance shall be \$2,000,000.00. The Tenant shall provide the Landlord with a certified copy of such insurance policy and satisfactory evidence of its renewal or replacement upon the request of the Landlord.

(b) The Tenant shall not do or permit to be done, or omit to do, anything which shall cause the rate of insurance upon the Landlord's premises, as aforesaid, or any part thereof, to be increased.

(c) Should the Landlord's insurance premium for the premises be increased as

a result of the Tenant's action(s), the Tenant shall pay to the Landlord as additional rent an amount equal to the amount by which the insurance premium(s) payable by the Landlord or any other occupant may be so increased.

3.5 Demised Premises Direct Utilities Costs

The Tenant shall pay all charges for public utilities used in respect of the demised premises, including but not limited to, water, electricity, telephone and gas, and for any apparatus, meters or things leased in connection with such public utility services.

3.6 Tenant's Repair and Maintenance

(a) The Tenant shall, at its expense, at least annually, perform routine maintenance service on the heating and air conditioning equipment which serves the demised premises, and shall provide proof to the Landlord of completion of such annual service.

(b) The Tenant shall, at its expense, repair any damage to the demised premises, including the heating and air conditioning equipment, plumbing, and/or fire safety equipment, which is caused by the Tenant's negligence, except for reasonable wear and tear, or damage caused by lightning, tempest, impact of aircraft, acts of God or the Queen's enemies. The Tenant shall also pay the cost of all electric light bulbs, tubes, starters, and ballasts within the demised premises. Notwithstanding anything hereinbefore contained, the Landlord will, at the Landlord's cost, repair and maintain the HVAC and plumbing in the demised premises for the first ninety (90) days of the term. For clarification, it is understood and agreed that the Tenant shall not be responsible for normal wear and tear, but shall be responsible for filters, breakers, fuses, belts, etcetera for HVAC units, changing of valves, taps, etcetera for plumbing fixtures and hot water supply including replacement of hot water tank, if necessary. The Tenant shall also be responsible for any and all fire safety maintenance and inspections required under the Fire and Safety Regulations for the demised premises. A copy of the Fire Safety Plan Inspection Requirements is attached hereto as Schedule "C".

3.7 Keep Clean, Waste Disposal and Recycling

(a) The Tenant's disposal of waste, and recycling, shall at all times be in accordance with the rules and regulations and in accordance with municipal, provincial and federal requirements.

(b) The Tenant shall keep the demised premises clean and free of refuse and other obstructions and shall comply with any laws, rules and regulations governing the cleanliness of the demised premises.

(c) The Tenant shall, at its own expense, be responsible for the removal of its own garbage and debris from the demised premises and dispose of it as directed from time to time by the Landlord.

3.8 Condition of Demised Premises

The Tenant has inspected the demised premises and agrees to lease the demised premises in an 'as is' condition except that the Tenant shall, at the Tenant's own cost and expense, paint the demised premises and carry out any necessary preoccupancy cleaning.

3.9 Comply With Laws

Subject to the exceptions set out in this paragraph, the Tenant shall promptly comply with the requirements of all laws at any time in force during the Term(s) which affect the condition of or use of the demised premises. The Tenant shall be required to comply with such requirements only insofar as non-compliance may arise out of the specific use being made of the demised premises by the Tenant and not if the demised premises fail to comply with such requirements at the commencement of the Term(s) of this Lease.

3.10 **Landlord May Make Repairs**

If the Tenant is in default of the provisions of sections 3.7, 3.9, 3.11, 3.12, 3.17, 3.18, 3.20 or 3.21 the Landlord may proceed, after 5 days written notice to the Tenant, to make the needed repairs and may then charge its costs for doing so to the Tenant for immediate payment on demand as accrued rent except that no notice is required in the case of a fire safety matter or an emergency.

3.11 **Entry By Landlord**

The Landlord may enter the demised premises at reasonable times during normal business hours and after notice to the Tenant to view the state of repairs. If the Landlord notifies the Tenant of the need for repairs, the Tenant shall repair in accordance with such notice subject to the exceptions set out in section 3.6 (b) herein. On the expiration or date of early termination of this Indenture, the Tenant shall surrender the demised premises to the Landlord in a good state of repair subject to the exceptions set out in section 3.6 (b) herein. Provided that if the Tenant is in default of any rent or other payments for which the Tenant is responsible, the Landlord may enter the demised premises without notice at any time.

3.12 **Notice To Landlord Of Damage and Structural Changes**

(a) The Tenant shall advise the Landlord of any substantial damage occurring to the demised premises forthwith.

(b) The Tenant shall not make any structural changes without the prior written consent of the Landlord.

3.13 **Nuisance**

The Tenant shall not by its act or omissions permit anything to occur in or on the demised premises which shall be or shall result in a nuisance. The use of the demised premises by the Tenant for the purposes permitted under this Indenture shall not be considered a nuisance, provided, however, the Landlord's decisions as to what constitutes a nuisance shall be final.

3.14 **Use**

The demised premises may be used by the Tenant only as a Call Center as provided for under the applicable municipal bylaws, provincial and federal legislation. The Tenant shall be entitled to operate the demised premises at the Tenant's regular business hours, subject to compliance with applicable legislation, provided, however, the Landlord shall not be required to provide management and/or maintenance personnel and/or services outside of the Landlord's normal business hours as may be determined from time to time by the Landlord.

3.15 **Assignment And Subletting**

The Tenant shall have the right to assign or sublet all or any part of its interest in the demised premises and the Lease, subject to having obtained the prior written consent of the Landlord, which consent shall not be unreasonably withheld and if given, shall not relieve the Tenant or the Guarantors from payment of the rent hereunder. Provided that the minimum consent fee shall be not less than \$250.00 payable by the Tenant to the Landlord.

3.16 **Signs, Awnings And Canopies**

(a) The Tenant shall be permitted to display its business name and unit number in Landlord's standard form of signage on the front entrance door in a place so designated by the Landlord at no cost to the Tenant except the Landlord's actual costs incurred in installing and maintaining such signage. The Tenant shall pay the Landlord

monthly and during each and every month of the tenancy the sum of --N/A-- Dollars (\$N/A) as rent for --N/A-- sign space only for the first year and thereafter the rental shall increase at the rate of 5% for each ensuing year. All payments shall be made in accordance with section 2.6 herein.

(b) The Tenant shall not place, or permit to be placed, on any exterior door, wall or window of the demised premises, any sign, awning, canopy, decoration, advertising matter, notice, illumination, or other thing of any kind, nor place or permit to be placed any decoration, lettering, sign or advertising matter on the glass of any door or window of the demised premises without first obtaining the written consent of the Landlord, which consent shall not be unreasonably withheld and the Tenant shall comply with all municipal or other requirements with respect to same.

(c) The Tenant shall maintain all signs, awnings, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times and the Tenant, on ceasing to be a Tenant of the demised premises shall forthwith cause same to be removed or obliterated at his own expense and in a workmanlike manner to the satisfaction of the Landlord. In the event that same is not removed within fourteen (14) days, the Landlord may at the expense of the Tenant remove or dispose of it and all such apparatus shall become the property of the Landlord absolutely.

3.17 **Alterations**

The Tenant shall have the right to make such alterations, subject to Landlord's prior written approval and consent, additions or changes in or to the demised premises as it may consider necessary for its business purposes including, without limitation, the laying of carpeting, installing of light fixtures, removing or replacing of interior nonbearing walls, etcetera. If the Tenant makes any alterations, additions or changes, the Tenant shall comply with all applicable zoning and building bylaws, codes and regulations. All work shall be done in a good and workmanlike manner. Upon termination of this Lease, the Tenant shall not be required to remove the alterations, additions or changes made by it before or during the Term(s). Provided, however, that should such alterations, additions or changes in or to the demised premises be deemed to be unsightly, a nuisance, in need of substantial repair, or hinders to potential re-renting, then such alterations, additions or changes shall, at the sole option of the Landlord, be removed by the Tenant at the Tenant's costs or removed and/or replaced to its original state by the Tenant at the Tenant's costs collectable as rent by the Landlord.

3.18 **Indemnity**

The Tenant shall indemnify the Landlord from any loss, cost, damage or expense for which the Landlord may become liable as a result of any breach by the Tenant of a covenant of this Lease or as a result of any personal injury, property damage or death occurring because of the willful act or negligence of the Tenant or those for whom it is in law responsible. This indemnification shall survive the termination of this Lease insofar as any breach, personal injury, property damage or death occurs during the Term(s).

3.19 **Liability**

Unless such personal injury, death or property damage occurs as a result of the willful act or negligence of the Landlord or those for whom it is in law responsible, the Landlord shall not be liable for any personal injury, death or property damage sustained by the Tenant or its employees, agents, sublessees, licensees or those doing business with it upon the demised premises. Should the Landlord, in law be found responsible by a competent court of jurisdiction, for a willful act or negligence of the Tenant or its employees, agents, sublessees, licensees or those doing business with it upon the demised premises, then the Tenant shall indemnify the Landlord for any and all of its costs including but not limited to Landlord's legal costs on a client to solicitor basis.

3.20 **Locks**

The Tenant shall not change locks or install additional locks, bolts, or bars on the demised premises without the prior written consent of the Landlord. The Tenant shall provide to the Landlord all keys, electronic or otherwise, in its possession, to the Demised Premises or the Premises, as the case may be, upon vacating the Demised Premises.

3.21 **Heavy Equipment**

The Tenant shall not bring upon the demised premises or any part thereof any machinery, equipment, or article that by reason of its weight or size may damage the demised premises. The Tenant further covenants that if any damage is caused to the demised premises by any machinery, equipment or article by overloading, misuse or otherwise, the Tenant shall be responsible to repair the same or pay to the Landlord its costs of such repair, as additional rent.

3.22 **Loading And Unloading**

The Tenant agrees that all loading and unloading of merchandise, supplies, materials, garbage, refuse and other chattels shall be made only at such times and through and by means of such doorways, corridors and elevators as the Landlord shall designate from time to time.

3.23 **Use Of Common Areas**

The Tenant may, subject to the rules and regulations incorporated herein and to such other and further rules and regulations as the Landlord may make pertaining to the use of the common areas, the Tenant may have for itself and its officers, agents and employees, and for the use of its customers the non-exclusive right to use the common areas in common with all others entitled thereto for their proper and intended purposes during normal business hours and the Tenant acknowledges that the common areas are subject to the exclusive control and management of the Landlord.

3.24 **Parking**

(a) The Landlord shall not be liable to the Tenant or its visitor(s) for loss or damage to any vehicle(s), or the contents therein, parked on the premises. The Tenant shall be entitled to N/A parking space(s) on the premises. The Tenant shall pay to the Landlord the sum of N/A Dollars (\$N/A) per month for each additional parking space on the premises, subject to availability.

(b) Where the Tenant has been assigned a specific parking space, the Tenant shall park its vehicle, which vehicle shall be roadworthy and have a valid Ontario license plate, only in that space specifically assigned to that license plate number. The Landlord shall not be liable to the Tenant for loss or damage to any vehicles or the contents therein or for the unauthorized use by other Tenants or strangers of the parking space allotted to the Tenant, and the Tenant's rights shall be against the person or persons causing such damage and the responsibility of enforcing unauthorized occupation of such allocated parking spaces shall be the sole responsibility of the Tenant. Provided further that the Tenant shall comply with such parking regulations as shall from time to time be set out by the Landlord or authorities having jurisdiction.

(c) The Tenant shall advise its employees to park at the rear parking lot of the premises at all times.

3.25 **Assignment to Mortgage**

The Tenant acknowledges that the Landlord may be obliged to assign this Lease or the rentals payable hereunder to a mortgagee as part of the security for the mortgage loan on the said property described in Schedule A and further that the Landlord may be obliged to assign its interest in this Lease or to assign the rentals payable hereunder as part of the security for further mortgages on the said property. The Tenant agrees that it will be bound by any such assignment of the Landlord's interest in this Lease or the rentals payable thereunder and further agrees that it will execute promptly upon request by the Landlord any instruments, certificates or acknowledgements which may be required by any mortgagee or proposed mortgagee thereof at no cost to the Landlord.

3.26 **Liens**

The Tenant shall promptly pay all charges incurred by it for any work, materials, or services that may be done, supplied or performed in respect of the demised premises and shall forthwith discharge any liens at any time filed against and keep the lands and premises of which the demised premises form a part, free from liens and in the event that the Tenant fails to do so, the Landlord may, but shall be under no obligation to, pay into Court the amount required to obtain a discharge of any such lien in the name of the Tenant and any amount so paid together with all disbursements and costs in respect of such proceedings on a solicitor and client basis shall be forthwith due and payable by the Tenant to the Landlord as additional rent.

4. **LANDLORD'S COVENANTS, UNDERTAKINGS AND AGREEMENTS**

The Landlord covenants, undertakes and agrees with the Tenant as follows:

4.1 **Quiet Enjoyment**

For quiet enjoyment during the Term(s).

4.2 **Landlord's Repairs**

The Landlord shall not be required to make any improvements to the Demised Premises during the term(s) of this Lease, except repairs of a structural or capital nature which are required within the walls or roof of the building or any of the mechanical systems, unless such repairs are necessitated as a result of any negligence by the Tenant, its servants, employees, agents or anyone permitted by the Tenant to be on the premises.

4.3 **Landlord's Management and Maintenance**

(a) The Landlord shall manage and administer the property in a professional manner so as to give the appearance of good curb appeal and general cleanliness, all in accordance with applicable municipal bylaws and other applicable rules and regulations, provided however, that if there is a dispute between Tenants and or Tenant and Landlord as to the management, administration and maintenance and upkeep the Landlord's

decision in any such matter shall be final and binding upon the Tenant.

(b) To clean, maintain and repair common areas provided that the Landlord shall not be liable for any loss or damage caused by or resulting from rain, snow, water, steam or gas leading into or escaping from any part of the building or any fixtures, appliances or equipment installed therein, nor for any damage caused by or attributable to the condition or arrangement of any wiring within or outside of the building, nor for any condition of non-repair through the negligence, carelessness or misuse by the Tenant, his servants, employees, agents, or anyone permitted by him to be on the premises, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant who shall pay the same to the Landlord forthwith on demand, as additional rent.

4.4 **Consent**

The Landlord agrees that whenever in this Lease, its consent, approval, authorization or opinion is referred to, such consent, approval or authorization shall not be unreasonably withheld and such opinion shall be given on a reasonable basis. The Landlord may charge its reasonable costs incurred for giving such consent as contemplated herein.

4.5 **Taxes**

The Landlord agrees to pay taxes, save and except any business taxes and taxes on personal property or income. The Landlord shall not be required to pay any real property, school or local improvement taxes, assessments, rates and levies, any sewer or municipal service rates and levies, including levies for the installation of services levied against the Landlord or the Landlord in respect of its ownership thereof, all of which are payable by the Tenant as specifically provided for in sections 3.2 and 3.3 herein.

4.6 **Tenant May Perform Landlord's Covenants**

The Landlord agrees that if, at any time or times, it has failed to observe any of its covenants contained in this Lease, then the Tenant, after 30 days written notice to the Landlord or such longer period as may reasonably be necessary considering the nature of the default, should the Landlord fail to rectify the default if it is capable of rectification, the Tenant may perform such covenant(s) and shall charge the Landlord the cost of performing such covenant(s). The Tenant shall have the right of deducting such cost of performing such covenant(s) from any rent or other amount owing to the Landlord by the Tenant.

5. **MUTUAL COVENANTS, UNDERTAKINGS AND AGREEMENTS**

The Landlord and Tenant mutually covenant, undertake and agree to as follows:

5.1 **Subordination**

Nothing herein contained shall prevent or limit the right of the Landlord to place mortgage(s) on the lands and buildings of which the demised premises form a part of, nor to receive advances under any mortgage(s) hereinbefore or hereinafter arranged by the Landlord; upon the request of the Landlord, the Tenant will subordinate or postpone its rights hereunder to protect or preserve the priority of a mortgagee under any mortgage and all advances made or thereafter to be made upon the security thereof; and the Tenant covenants and agrees that it shall, at the request of the Landlord and at no cost or charge to the Landlord, acknowledge in writing to the mortgagee the subordination or postponement of the Tenants rights hereunder. Provided, however, that such subordination shall not affect the Tenant's quiet enjoyment, term(s) of lease, and amount of rent payable hereunder.

5.2 **Removal of Fixtures**

Tenant shall not remove any fixtures, goods, chattels and equipment out of the Demised Premises (other than in the routine course of its business), whether owned by

the Landlord, Tenant or others, prior to obtaining written consent from the Landlord, which consent shall not be unreasonably withheld. Provided however, that any removal of fixtures, in any event, shall be in accordance with section 3.17 herein.

5.3 **Distress**

None of the goods, furniture or equipment on the demised premises, whether owned by the Tenant or others, shall be exempt from levy by distress for rent or additional rent in arrears, notwithstanding the provisions of any statute taking away or limiting the Landlord's right of distress.

5.4 **Re-Entry on Default**

The Landlord shall have the right to re-enter the demised premises in the event of default by the Tenant of any obligations set out in this Lease, including but not limited to, default by the Tenant in payment of rent or additional rent. This right of re-entry may be exercised by the Landlord only after the Landlord has given the Tenant 5 days written notice specifying the nature of the default complained of, provided however, in the event of non-payment of rent or additional rent, the Landlord in addition to all other rights shall have the right to re-enter and take possession of the demised premises or any part or parts thereof either by force or otherwise, without being liable for any prosecution therefore and as agent for the Tenant, let and manage the demised premises and grant any lease or leases thereof upon such terms as the Landlord or its assigns may appear to be reasonable, and demand, collect, receive and distain for all rental which shall become payable thereof, and as agent of the Tenant, to take possession of any furniture, chattels

or other property on the demised premises and to sell the same privately or by public sale without notice to the Tenant and to apply the proceeds of such sale and any rentals derived from this lease, (after deducting all expenses incurred in connection with the demised premises and in the collection of the said rent including reasonable commission for the collection thereof and management of the demised premises and legal fees and disbursements incurred on a solicitor and client basis) upon the rent hereby reserved, and the Tenant shall be liable to the Landlord for the deficiency, if any.

5.5 **Non-Waiver**

If the Landlord or Tenant excuses or overlooks any default by the other under this Lease, such excusing or overlooking shall not be a waiver of the Landlord's or Tenant's rights under this Lease in respect of any later default by the other, nor in any way defeat the rights of the Landlord or Tenant, as the case may be, under this Lease or any later default.

5.6 **Landlord May Pay Tenant's Charges**

If the Tenant fails to pay, when due, any charges which it has agreed to pay in this Lease, or if by reason of any default by the Tenant in the performance or observance of any of the covenants herein provided, it shall become necessary for the Landlord at its option and discretion, from time to time to make any payment or incur any expense for the purpose of protecting its premises or carrying out necessary repairs, maintenance or redecoration which should have been carried out by the Tenant, or for any other purposes, and for such purposes aforesaid, the Landlord shall be entitled to enter upon the demised premises. All costs and expenses (including legal fees on a client and solicitor basis) and disbursements reasonably necessary incurred by the Landlord in so doing shall forthwith upon demand become due and payable by the Tenant to the Landlord and shall be recoverable by the Landlord as additional rent and the Landlord shall not be liable for any loss or damage to the Tenant's property or business caused by reasonable and responsible acts of the Landlord in performing any of the covenants and obligations of the Tenant.

5.7 **Notice To Lease**

The Landlord may within three months before the expiration of the Term(s), if not renewed, or three months before the expiration of any renewal term, place on the demised

premises a sign of reasonable dimensions stating that the demised premises are for rent.

5.8 **Entry to Inspect**

The Landlord and its representatives shall be permitted to enter the demised premises to inspect their condition and for the purpose of doing any work which the Landlord may require or be obligated to perform, by this Lease. The Tenant shall permit the Landlord to exhibit the demised premises at all reasonable times during the term(s) of this Lease or any renewal or extension thereof, to any prospective purchaser or mortgagee of the Landlord's property and further, the Tenant shall permit the Landlord to exhibit the demised premises at all reasonable times during the last three months of such term(s) to any prospective tenant and shall permit such prospective purchasers, mortgagees or tenants or their respective representatives to enter upon and view the demised premises at all reasonable hours. Entry by the Landlord shall be restricted to normal business hours of the Tenant and after notice is given to the Tenant of such proposed entry, except that no notice is required in case of emergency.

5.9 **Registration**

The parties hereto covenant and agree that this Lease shall not be registered against the title to the property hereinbefore referred to, but that either party shall be at liberty to register, at its own expense, Notice of the Lease in the prescribed statutory form and that either party hereto will, at the request of the other, forthwith execute such Notice of Lease for registration purposes. The Tenant undertakes and agrees that if the Tenant has registered or caused to register a Notice of Lease, to discharge same, at the Tenant's own expense, not less than 60 days prior to the termination of the tenancy.

5.10 **Demolition**

(a) It is understood that in the event the Landlord desires to demolish the building during the term or any renewal thereof or in the event the premises are expropriated by appropriate authority, then the Landlord shall have the right, notwithstanding anything herein contained, to terminate this Indenture upon giving not less than six (6) months notice to the Tenant and the Tenant undertakes to vacate the demised premises on or before the date specified in the Landlord's notice.

(b) It is understood that the said six (6) month's notice need not expire at the end of any year or at the end of any month, and in the event of the day fixed for termination of the lease expiring on some other day than the last day of a month, the rent for such month shall be apportioned for the broken period.

5.11 **Notice**

Notices or demands required or permitted to be given by this Lease shall be in writing and shall be given by prepaid registered mail or delivery to the parties at the following addresses, or to such other addresses as may from time to time be designated by the parties in writing. Any notice so given by registered mail shall be considered to have been given and received on the third day (excluding Saturdays, Sundays and statutory holidays) following the date of such mailing of the notice, or on the date of such delivery).

(a) Landlord's Address: BH Parkway Place Ltd.
Unit 500
601 Dundas Street East
Whitby, Ontario L1N 7B8

(b) Tenant's Address: Parkway Place
Unit 201
1135 Lansdowne Street West
Peterborough, Ontario K9J 7M2

6. **COVENANTS, BENEFIT AND BIND**

This Lease, also referred to as Indenture, and all covenants, undertakings and obligations as herein provided, shall extend to and bind and enure to the benefit of the respective heirs, executors, administrators, successors and assigns (as the case may be) of the parties hereto, be subject to the consent of the Landlord having been obtained as hereinbefore provided to any assignment or sublease by the Tenant; this Lease is to be interpreted in accordance with the laws of the Province of Ontario; words importing the singular shall include the plural and vice versa, words importing the masculine shall include the feminine and vice versa and words importing persons shall include firms and corporations and vice versa. If during the Term(s), there is more than one tenant of the demised premises all Tenant's covenants in this Lease shall be considered to be joint and several covenants. Each obligation of the Landlord or the Tenant in this Lease shall be deemed to be a covenant, even though not expressed to be one.

7. **BANKRUPTCY OR INSOLVENCY OF TENANT**

The applicable legislation shall apply.

8. **DAMAGE OR DESTRUCTION OF PREMISES**

In the event that the demised premises shall be damaged or destroyed by fire or otherwise, the Frustrated Contracts Act and the following provisions shall apply:

(a) **Damage Requiring More Than 180 Days To Be Repaired:**

If, in the opinion of the Landlord, the demised premises shall be so badly damaged as to be unfit for occupancy and incapable of being repaired with reasonable

diligence within One Hundred and Eighty (180) days of the happening of such damage, then the term hereby granted shall cease and be at an end with effect from the date of such damage or destruction and the Tenant shall immediately surrender and deliver up possession of the demised premises to the Landlord; no further rent shall be payable from and after the date of such surrender and delivery of possession, but without prejudice to the right of the Landlord to recover any arrears of rent accruing up to the date of such surrender and delivery of possession.

(b) **Repair Within 180 Days, Premises Unusable:**

If, in the opinion of the Landlord, the demised premises shall be capable, with reasonable diligence, of being repaired and rendered fit for occupancy within One Hundred and Eighty (180) days from the happening of such damage as aforesaid but if the damage is such as to render the demised premises in the meantime wholly unfit for occupancy, then the rent hereby reserved shall not run or accrue after such damage until the demised premises have been repaired and rendered fit for occupancy and the Landlord shall repair the same with all reasonable speed and rent shall again commence to accrue and be payable on and after the date upon which such repairs have been completed to the point where the demised premises have again been rendered fit for occupancy.

(c) **Repair Within 180 Days, Premises Partially Useable:**

In the event that the damage is such that the demised premises are capable of being partially used or have been repaired to a condition which they are capable of being partially used, then until the remainder of the demised premises shall have been repaired to the point where they are reasonably fit for occupancy, rent shall abate in the proportion that the part of the demised premises rendered or continuing for the time being to be unfit for occupancy bears to the whole of the demised premises.

(d) **Certificate of Architect:**

The certificate of the Landlord's architect duly qualified to practice as such in the

Province of Ontario shall bind the parties as to the due completion of repairs.

9. **RIGHT TO TERMINATE**

(a) The Tenant may terminate this Indenture, at the expiration of the First Term, at the expiration of the First Renewal Term and at the expiration of the Second Renewal Term, by giving the Landlord not less than 180 days written notice to terminate.

(b) The Tenant or the Landlord may terminate this Indenture, if the Tenant remains as an overholding tenant, by giving the other not less than 180 days written notice to terminate.

(c) This Indenture may be terminated upon written mutual consent at any time during the term(s).

(d) The Landlord may, upon default by the Tenant, terminate this Indenture provided and it is hereby expressly agreed that:

(i) **Non-Payment Of Rent Or Additional Charges:** If and whenever the rent hereby reserved or any additional charges payable hereunder, or any part thereof shall not be paid when due and such default by the Tenant shall continue after five (5) days written notice by the Landlord requiring the Tenant to rectify same; or

(ii) **Non-Observance Or Non-Performance Of Covenants, Etcetera:** If and whenever the Tenant shall not observe, perform and keep each and every of the covenants, agreements, provisos, conditions, or rules and regulations herein contained to be observed, performed and kept by the Tenant and shall persist in such failure after thirty (30) days written notice by the Landlord requiring that the Tenant cure such default; or

(iii) **Vacant Or Improper Use Of Demised Premises:** If and whenever the said demised premises or part thereof, become and remain vacant and unoccupied for a period of fifteen (15) days, or be used by any other person or persons, or for any other purpose than as hereinbefore provided, without the written consent of the Landlord; or

(iv) **Demised Premises Taken In Execution Of Attachment:** If and whenever the said demised premises shall be taken in execution or attachment for any cause whatsoever; or

(v) **Bulk Sale, Removal of Goods, Chattels, Etcetera:** If and when the Tenant shall make the bulk sale of its goods or move or commence, attempt or threaten to move its goods, chattels and equipment out of the demised premises (other than in the routine course of its business) or shall cease to conduct business from the demised premises, then and in every such case, at the option of the Landlord, the full amount of basic rent, the estimated additional rent, realty taxes and utilities shall immediately become due and payable for the balance of the Tenant's unexpired term and the Landlord may immediately distain for the same and any arrears of rental, operating costs and taxes, or additional charges then unpaid, and the Landlord may without notice or any form of legal process forthwith re-enter upon and take possession of the demised premises or any part thereof and remove and sell the Tenant's goods, chattels and equipment there from, any rule of law or equity to the contrary notwithstanding; and the Landlord may seize and sell such goods, chattels and equipment of the Tenant as are in the demised premises or at any place to which the Tenant or any other person may have removed them in the same manner as if they had remained and been distained upon the demised premises; and such sale may be effected in the discretion of the Landlord either by public auction or by private agreement and either in bulk or by individual items, or partly by one means and partly by another, all as the Landlord in its entire discretion may decide.

(e) The Tenant covenants and agrees that upon the Landlord's becoming entitled to re-enter upon the demised premises under any of the provisions of this Lease, the Landlord, in addition to all other rights, shall have the right to determine forthwith this Lease and the term by leaving upon the demised premises notice in writing of such

termination and thereupon rent and additional rent plus accelerated rate as provided in this Indenture shall be computed, apportioned and paid in full to the date of such termination of this Lease and any other payments for which the Tenant is liable under this Lease shall be paid and the Tenant shall immediately deliver up possession of the demised premises to the Landlord, and the Landlord may re-enter and take possession of the same.

10. **LANDLORD'S AND TENANT'S AGENTS**

All rights and powers reserved to the Landlord and to the Tenant by this Lease may be exercised by the Landlord and the Tenant or their agents or other representatives. The Landlord and Tenant shall each appoint a person or persons as their agent and shall notify each other in writing of such appointment. Either party, may at will, by notice as set out in 5.11 herein, change the name or names of such agent.

11. **ENTIRE AGREEMENT**

This Indenture, the rules and regulations and the Schedules and Appendixes annexed hereto and forming part hereof set forth all of the covenants, promises, agreements, conditions, warranties and understandings between the Landlord and the Tenant concerning the demised premises and there are no covenants, promises, agreements, conditions, warranties or understandings either oral or written, between them other than as herein set forth and no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or the Tenant unless reduced to writing and signed by the Tenant and the Landlord.

12. **NO REPRESENTATION**

The Tenant acknowledges that he has satisfied himself that the demised premises are suitable and may be lawfully used for the purpose for which they are leased as hereinbefore provided and it is hereby further acknowledged and agreed that there is no representation or warranty by the Landlord (and the execution and delivery of this Lease shall not be deemed to constitute any such representation or warranty) that the use of the demised premises as aforesaid is in compliance with applicable zoning bylaws or other bylaws, ordinances or restrictions respecting the occupation or use of the property as may be from time to time imposed by any competent authority.

13. **RIGHTS UNDER STATUTE RESERVED**

Nothing in this Lease shall limit or restrict the right of the Landlord (which is hereby expressly reserved) to prove for and retain as liquidated damages or accelerated rent in bankruptcy, insolvency, receivership, reorganization or arrangement proceedings an amount equal to the maximum by statute or rule of law governing such proceedings.

14. **RULES AND REGULATIONS**

The rules and regulations hereto attached form part hereof and shall in all respects be observed and performed by the Tenant and the employees, servants, agents and licensees of the Tenant. All such rules and regulations now or hereafter in force shall be read as forming part of the terms and conditions of this Lease as if the same were embodied here and the Landlord shall be entitled to amend the rules and regulations from time to time.

15. **GUARANTOR**

Should there be a guarantor to this Lease, this section 15. shall be initialed specifically and an Appendix 2 shall be attached hereto and form part of this Lease.

IN WITNESS WHEREOF, the parties have hereunto executed this Lease and set their hands and seals.

SIGNED, SEALED AND DELIVERED

