

**TRIPARTITE AGREEMENT (REFINANCING)**

**SERENITY**

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BETWEEN:

(the “Lessee”)

AND:

(the “Mortgagee”)

AND: SIMON FRASER UNIVERSITY, a British Columbia University created pursuant to the *University Act*, and having an office at 8888 University Drive, Burnaby, British Columbia, V5A 1S6

(the “University”)

WHEREAS:

- A. By a ground lease (the “Ground Lease”) registered in the Lower Mainland Land Title Office on July 28, 2004 under registration number BW348116, on the terms and conditions therein contained, the University, as lessor, did demise and lease to Polygon Development 170 Ltd. (the “Developer”), as lessee, those lands in the Province of British Columbia, more particularly known and described as:

Lot 10  
District Lots 102 and 211  
Group 1  
New Westminster District  
Plan BCP3161

(the “Lands”);

- B. The Lands have been subdivided into strata lots by the deposit of a leasehold strata plan in the Lower Mainland Land Title Office in accordance with the provisions of the *Strata Property Act*, S.B.C. 1998, chapter 43, as amended, and the *Land Title Act*, S.B.C. 1996, chapter 250 and the Registrar of the Lower Mainland Land Title Office has issued in the name of the University, as registered owner in fee simple, new certificates of title to each of the strata lots shown upon the leasehold strata plan;
- C. The deposit of the leasehold strata plan converted the Ground Lease into individual leases in the name of the Developer, in respect of the interest of the Developer in each strata lot including its share in the common property, at a rent, premium or other consideration, and subject to the applicable terms and conditions contained in the Ground Lease and in the model strata lot lease attached thereto and to the provisions of the said *Strata Property Act* and the regulations thereto (the model strata lot lease being hereinafter referred to as the "Lease");
- D. The Lessee is the registered holder of the leasehold interest in Strata Lot \_\_\_\_\_, Leasehold Strata Plan BCS1737 (the "Leased Premises");
- E. The Lessee as mortgagor has demised and assigned or will demise or assign by way of mortgage (the "Mortgage") unto the Mortgagee all the Lessee's right, title and interest in the Leased Premises under the Lease to secure a loan in the principal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_); and
- F. The Mortgagee is a "Mortgagee", as defined under section 1.01 of the Lease and desires to have every opportunity to protect its interest and security.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of One Dollar (\$1.00) now paid by each of the Mortgagee, the University and the Lessee to the others (the receipt and sufficiency of which is hereby acknowledged by each of the parties):

- 1. The University covenants and agrees with the Mortgagee that the University:
  - (a) will not accept a surrender of the Lease, in whole or in part, without the prior written consent of the Mortgagee, not to be unreasonably withheld; and
  - (b) will not agree to any modification or amendment to the Lease:
    - (i) which may adversely affect the Mortgagee's security without the prior written consent of the Mortgagee, such consent not to be unreasonably withheld (provided that if the Mortgagee has neither provided its consent nor advised the University in writing, within forty-five (45) days of receipt of a request from the University for its consent, that it will not provide its consent, the Mortgagee will be deemed to have consented to the modification or amendment); or
    - (ii) which does not materially adversely affect the Mortgagee's security without giving the Mortgagee seven (7) days prior written notice.

2. The Lessee acknowledges and represents to the Mortgagee that it has entered into possession of the Leased Premises pursuant to the terms of the Lease.
3. The University covenants and agrees to grant and provide to the Mortgagee all rights, assurance and notice afforded under the terms of the Lease to a "Mortgagee", as defined in the Lease, and, without limiting the generality of the foregoing, all remedies afforded a "Mortgagee" under the Lease.
4. The University and the Lessee mutually covenant and agree, at any time and from time to time, upon not less than thirty (30) days prior request by the Mortgagee, to execute, acknowledge and deliver to the Mortgagee a statement in writing certifying that:
  - (a) the Lease is unmodified and in full force and effect or if there have been modifications that same is in full force and effect as modified and identifying the modifications;
  - (b) the dates to which the rent and other charges payable under the Lease have been paid, provided that the request specifies with particulars the charges in respect of which such information is required; and
  - (c) to the best of the knowledge of the maker of the statement, without having conducted any searches or made any particular enquiries, the other party to the Lease is not in default under the provisions of the Lease, or, if in default, the particulars thereof.
5. If the Mortgagee acquires title to the Lessee's interest in the Leased Premises, the Mortgagee covenants and agrees to attorn as tenant under the Lease pursuant to the terms thereof for so long as it remains tenant and has not assigned the balance of the Term and hereby acknowledges that it has had the opportunity to read the Lease and upon attorning as tenant under the Lease shall adopt the covenants and agreements of the Lease on the part of the Lessee to be performed and observed as though such provisions were incorporated in and formed a part of this agreement provided that the provisions of this section 5 shall not limit or affect the University's rights to re-enter, seek an order for sale, terminate or forfeit the Lease if the Mortgagee fails to comply with the requirements of section 17.02 of the Lease. If the Mortgagee complies with the requirements of this section 5 and section 17.02 of the Lease, the Mortgagee shall be given and afforded the right, privileges and benefits of the Lessee under the Lease.
6. If the Lessee and the University cannot agree as to any matters regarding the Lease and they decide that the resolution of that matter is to be determined by arbitration pursuant to the arbitration provisions of the Lease, the Mortgagee shall be given adequate notice of such arbitration proceedings and if in the reasonable opinion of the Mortgagee, such proceedings affect its mortgage security, the Mortgagee shall be given a reasonable opportunity by the Lessee and the University to participate in the arbitration proceedings if the Mortgagee considers such proceedings may affect its mortgage security.
7. If the Mortgagee shall have fully cured any default in the payment of any Rent (as defined in the Lease) or any other amount required to be paid by the Lessee under the

Lease and shall continue to pay currently such monetary obligations as and when the same fall due then if the Mortgagee is prohibited, by any process or injunction issued by any court by reason of any action by any court having jurisdiction over any proceeding involving the Lessee, from commencing or prosecuting foreclosure or other appropriate proceedings of the nature thereof or from obtaining possession of the Leased Premises, then the time specified in section 17.02 of the Lease for commencing or prosecuting such foreclosure or other proceedings or for curing defaults other than payment of Rent (as defined in the Lease) or any other amount required to be paid by the Lessee under the Lease shall be extended for the period of such prohibition or injunction.

8. If the Mortgagee has cured all defaults and contingencies of which the Mortgagee has received notice from the University under section 17.02 of the Lease, then it shall be entitled to permit the Lessee to continue as tenant of the Leased Premises unless the Mortgagee has acquired the right, title and interest of the Lessee in the Leased Premises under the Lease, in which case the provisions of section 5 hereof shall apply. For the purposes of this clause the events contemplated by Article 18 of the Ground Lease shall not constitute a default or contingency.
9. This Agreement shall be deemed to terminate and be of no further force and effect at such time as the Mortgage has been paid in full, has been terminated or released in accordance with the terms and conditions therein contained, or has been released or discharged from the Leased Premises.
10. The Mortgagee covenants and agrees that subject to the provisions of section 17.03 of the Lease, all of the rights of the Mortgagee, whether statutory or at common law, shall be subject to the rights of the University under the Ground Lease.

11. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF this Agreement has been executed on the day, month and year first above written.

SIGNED, SEALED AND DELIVERED by )

\_\_\_\_\_ and \_\_\_\_\_ )

in the presence of: )

\_\_\_\_\_ )

Signature )

\_\_\_\_\_ )

Print Name )

\_\_\_\_\_ )

Address )

\_\_\_\_\_ )

Occupation )

(witness as to all signatures) )

\_\_\_\_\_ )  
Print Name

\_\_\_\_\_ )  
Print Name

\_\_\_\_\_ )

\_\_\_\_\_ )

By: Name: \_\_\_\_\_ )

Title: \_\_\_\_\_ )

\_\_\_\_\_ )

\_\_\_\_\_ )

By: Name: \_\_\_\_\_ )

Title: \_\_\_\_\_ )

\_\_\_\_\_ )

**SIMON FRASER UNIVERSITY** )

\_\_\_\_\_ )

By: \_\_\_\_\_ )

Authorized Signatory )