

ENCUMBRANCE
WEST CAMPUS UNIVERSITY DISTRICT LANDS
(NEIGHBORHOOD ASSOCIATION)

DATED: ●

To secure an annual rent charge of ● (\$●) based on a buildable square foot area of ● square feet at a rate of \$● per buildable square foot plus the Adjustment Amount (as hereinafter defined) (such annual rent charge and Adjustment Amount shall collectively be referred to herein as the "**Rent Charge**") pursuant to the *Land Titles Act* (Alberta), ●, as encumbrancer, with offices located at ● (the "**Owner**") being registered as owner of a subleasehold estate, subject to such encumbrances, liens and interests as are notified by memorandum endorsed thereon, of those lands located in the Province of Alberta legally described in Schedule "A" attached hereto (the "**Lands**", which Lands may be hereafter be subdivided therefrom by registration of a subdivision plan or condominium plan, and any subdivided parcel of land or condominium unit described in a title created upon the registration of such plan in respect of the Lands shall be subject to this encumbrance), desires to render its interest in the Lands available for the purpose of securing the rent charge hereinafter mentioned to and for the benefit of West Campus Development Corporation, as trustee for West Campus Development Trust with offices located at Alastair Ross Technology Centre, Suite 110A, 3553 – 31st Street NW, Calgary, Alberta, T2L 2K7, as encumbrancee (the "**Encumbrancee**") and its successors and assigns, and does hereby encumber the Owner's subleasehold interest in the Lands for the benefit of the Encumbrancee with the Rent Charge, for each twelve (12) consecutive months commencing on the date first written above to be paid by the Owner to the Encumbrancee in lawful money of Canada, at the Encumbrancee's office located at Alastair Ross Technology Centre, Suite 110A, 3553 – 31st Street NW, Calgary, Alberta, T2L 2K7, (or such other place in Calgary, Alberta as the Encumbrancee may from time to time or at any time designate in writing) as further set out herein. Furthermore, and to the extent the buildable square foot area of the final building or Improvement (as defined in the Residential Lease) to which this encumbrance applies to varies to the buildable square foot area stated herein, such Rent Charge will be readjusted by multiplying the buildable square foot area of the final building or Improvement by a rate of \$● per buildable square foot.

The "**Adjustment Amount**" as used herein shall mean, in respect of each calendar year after the date hereof, that sum of money equal to the product obtained by multiplying the sum of the Rent Charge plus the cumulative total of all prior years' Adjustment Amounts (if any) by the percentage increase, if any, in the "all items" consumer price index (or its equivalent from time to time) for the City of Calgary as issued by Statistics Canada for that year over the previous year; and further on the basis that there shall be no adjustment for any decrease from time to time in such index. For greater certainty, the intent of the Adjustment Amount is to reflect the cumulative and compounded increase in the consumer price index as aforesaid, year by year, commencing on the date first written above.

In the event a condominium plan is registered against the title to the Lands (the "**Condominium Plan**"), each and every condominium unit created upon the registration of

such plan in respect of the Lands shall be subject to this encumbrance; however, the annual rent charge and Adjustment Amount applicable to each condominium unit shall be the share of the Rent Charge which is proportional to the unit factor for each condominium unit (as determined under the *Condominium Property Act* (Alberta)) or such future rent charge as may be determined by the Association (as defined herein) for each calendar year in accordance with Section ● of the Residential Lease Agreement (Project Site Block ●, Lot ●) dated ● made by West Campus Development Trust, by its trustee West Campus Development Corporation, ●, in its capacity as lessee and ●, in its capacity as condo corp lessee) (the "Residential Lease") and the bylaws of the Association.

AND THE OWNER DOES HEREBY COVENANT, ACKNOWLEDGE AND AGREE THAT:

1. The true consideration for the granting of this encumbrance and for the covenant to pay the Rent Charge hereby secured is the payment by the Encumbrancee to the Owner of One Dollar (\$1.00) and other good and valuable consideration (the receipt or sufficiency of which by the Owner being hereby acknowledged).
2. The Rent Charge is payable in advance to the Encumbrancee at the address for the Encumbrancee (or to another address the Encumbrancee designates in writing) on or before the 1st day of January of each calendar year. In the event that the Rent Charge is payable in respect of a period of less than 365 days, a pro rata calculation of the amount payable shall be made on a per diem basis based upon a calendar year of 365 days and shall be payable within thirty (30) days following such determination.
3. The Owner shall pay the Rent Charge at the time, place and manner as set forth herein without deduction or defalcation; and, any amount in default shall bear interest at the rate of five (5%) percent per annum in excess of the reference rate of interest referred to as the "prime business (prime rate)" as announced and adjusted by The Bank of Canada from time to time, calculated yearly not in advance and payment of such rent charge and such interest is secured by these presents; furthermore, the Owner shall also pay any and all fines imposed against the Owner by the Encumbrancee in respect of any default in the payment of such amounts when due.
4. Each Owner shall pay to the Encumbrancee concurrently with the Rent Charge all taxes, whether federal, provincial or municipal, that may be levied on or in respect of the payments required hereunder and the amount of all such taxes shall form part of the Rent Charge secured hereby.
5. The Encumbrancee shall be entitled to and is hereby granted the right of distress together with all powers and remedies of an encumbrancee under the *Land Titles Act* (Alberta) and the *Law of Property Act* (Alberta).
6. Any discretion, option, decision or opinion hereunder on the part of the Encumbrancee shall be sufficiently exercised or formed if exercised or formed by or subsequently ratified by an officer or director of the Encumbrancee or any agent, delegate or other person appointed by the Encumbrancee for such purpose in accordance with the Encumbrancee's bylaws.

7. This encumbrance may be freely transferred by the Encumbrancee to a society, company, corporation, association or other entity (an "Association") formed in accordance with Section ● of the Residential Lease; and upon the transfer of this encumbrance to an Association, (i) the Association, as the transferee of this encumbrance, may, increase or decrease the Rent Charge from time to time, in accordance with its bylaws, and (ii) the Owner shall, at the request of the Association, as the transferee of this encumbrance, grant an encumbrance to be registered in replacement of this encumbrance, which encumbrance shall be in a form approved by such Encumbrancee in accordance with its bylaws.
8. Notwithstanding anything stated to the contrary herein, the obligation to pay the Rent Charge is hereby suspended and the amount thereof shall abate until such time as this encumbrance has been transferred to an Association.
9. Any notice to be given by the Encumbrancee to the Owner in respect of this encumbrance may be delivered to the Owner's address or be forwarded by ordinary mail addressed to the Owner at the municipal address of said Lands or to the last post office address of the Owner known to the Encumbrancee, and shall be deemed to have been received by the Owner when delivered or three (3) business days following the letter being deposited, postage prepaid, in a post office.
10. If any provision of this encumbrance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this encumbrance shall not be affected thereby and each provision hereof shall be enforced to the fullest extent permitted by law.
11. All legal costs, as between a solicitor and his own client, and taxable court costs, incurred in respect to the enforcement of this encumbrance together with any interest accrued thereon, are secured hereby, and shall constitute a charge on the Lands.
12. The words in the hereinbefore contained covenants, provisos, conditions and agreements which import the singular number shall be read and construed as applied to each and every Owner male or female and to his or her executors, administrators and assigns, and in the case of a corporation, to such corporation and its successors and assigns, and that in case of more than one Owner, the said covenants, provisos, conditions and agreements shall be construed and held to be several as well as joint.
13. Subject to paragraph 14 hereof, this encumbrance shall enure to the benefit of the holder hereof and its successors and assigns and shall be binding upon each Owner and such Owner's executors, administrators, successors, assigns and successors in title.
14. The covenants and obligations on the part of an Owner set forth in this encumbrance in respect of the Lands shall only bind such Owner while such Owner is the registered owner of the Lands, and no action for damages for any default or breach of any of such covenants and obligations shall lie against such Owner in respect of any default or breach occurring or which occurred at any other time. This paragraph 14 shall constitute an absolute defence to any action brought in contravention of this paragraph 14 and may be pleaded as such.

15. The Owner shall require any purchaser or transferee of the Lands to execute in favour of the Encumbrancee an encumbrance in the form of this encumbrance, as a condition to any such purchase or transfer.
16. The Owner shall not negative the implied covenants and conditions contained in section 58(1) of the *Land Titles Act* (Alberta), it being agreed that this provision shall run with the Lands, binding the Lands and each and every part thereof, and each successor in title to the Lands from time to time.
17. This encumbrance may be discharged by the Encumbrancee without the consent of the Owners.

(Signature page follows)

IN WITNESS WHEREOF this Encumbrance is dated as of date first written above.

●

Witness: _____ Per: _____
Name (c/s)
Title

Execution Page of Encumbrance (Block ●, Lot●)

SCHEDULE "A"
LEGAL DESCRIPTION OF LANDS

PLAN ●
BLOCK ●
LOT ●
EXCEPTING THEREOUT ALL MINES AND MINERALS

AFFIDAVIT OF EXECUTION (FORM 31)
LAND TITLES ACT (SECTIONS 155 AND 156)

I, _____, of _____, in the Province of _____,
(print full name of witness) *(print name of city/town)* *(print name of province)*

MAKE OATH AND SAY:

1. I was personally present and did see _____ who is known to me to be the person named in the within instrument, duly sign the instrument.
2. The instrument was signed at the City of _____, in the Province of _____ and that I am the subscribing witness thereto.
3. I believe the person whose signature I witnessed is at least eighteen (18) years of age.

SWORN BEFORE ME at the City/Town of)
_____, in the Province of _____)
this _____ day of _____, 20●.)
_____)

Commission for Oaths Signature

Witness Signature

A Commissioner for Oaths in and for _____
Province

(Affix Commissioner of Oaths Stamp with expiry date.)

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY (FORM 31.1)
LAND TITLES ACT (SECTION 161)

I, _____, of _____, in the Province of _____,
(print full name of signing authority) *(print name of city/town)* *(print name of province)*

MAKE OATH AND SAY:

1. I am an officer or director of ● named in the within instrument.
2. I am authorized by the corporation to execute the instrument without affixing a corporate seal.

SWORN BEFORE ME at the City/Town of)
_____, in the Province of _____)
this _____ day of _____, 20●.)
_____)

Commission for Oaths Signature

Signing Authority Signature

A Commissioner for Oaths in and for _____
Province

(Affix Commissioner of Oaths Stamp with expiry date.)