

limitation any government authority) except as required by law, or to the Tenant's professional advisers and lenders on a need-to-know basis on the condition they maintain such information in strict confidence, or with the prior written consent of the Landlord, which consent may be unreasonably withheld;

- (e) promptly notify the Landlord in writing of any release of a Contaminant or any other occurrence or condition at the Premises or any adjacent property that could contaminate the Premises or subject the Landlord or the Tenant to any liability under Environmental Laws;
- (f) on the expiry or earlier termination of this Lease, or at any time if requested by the Landlord or required by any government authority under Environmental Laws, remediate by removal any Contaminants and contamination in, on, at, or under the Premises or any adjacent property (to the extent permitted by the adjacent property owner or the requirements of the government authority), in either case brought onto, used at, or released at or from the Premises by the Tenant or any person for whom it is in law responsible. The Tenant will perform these obligations promptly at its own cost and in accordance with Environmental Laws. The Tenant will provide to the Landlord full information with respect to any remedial work performed under this Section and will comply with the Landlord's requirements with respect to such work. The Tenant will use a qualified environmental consultant approved by the Landlord to perform the remediation and will obtain the written agreement of the consultant to the Landlord relying on its report. The Tenant will, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment and Climate Change Strategy and other applicable government authorities in respect of the remediation as are required under Environmental Laws or by the Landlord, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry and the Landlord. All such Contaminants will remain the property of the Tenant, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding the degree of their affixation to the Premises; and
- (g) indemnify the Landlord and its shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses (including, without limitation, diminution in value), costs, orders, fines, penalties, and expenses whatsoever (including any and all environmental or statutory liability for remediation, all legal and consultants' fees and expenses and the cost of remediation of the Premises and any adjacent property) arising from or in connection with:
  - (i) any breach of or non-compliance with the provisions of this Article *[number]* by the Tenant; or
  - (ii) any release or alleged release of any Contaminants at or from the Premises related to or as a result of the use and occupation of the Premises or any act or omission of the Tenant or any person for whom it is in law responsible.

The obligations of the Tenant under this Article *[number]* will survive the expiry or earlier termination of this Lease.

## **V. SHORT FORM ENVIRONMENTAL PROVISIONS IN A COMMERCIAL LEASE—TENANT'S PERSPECTIVE [§ 12.5]**

### **SHORT FORM—TENANT'S PERSPECTIVE**

#### **1. ENVIRONMENTAL MATTERS**

## 1.1 Definitions

For the purposes of this Article *[number]*:

- (a) **“Contaminants”** means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, lead, asbestos, asbestos-containing materials, hazardous, corrosive or toxic substances, hazardous waste, waste, polychlorinated biphenyls (“PCBs”), PCB-containing equipment or materials, per- and polyfluoroalkyl substances, radon, vermiculite, pesticides, defoliants, fungi, including mould and spores arising from fungi, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, and a combination of any of them, which is now or hereafter prohibited, controlled, or regulated under Environmental Laws.
- (b) **“Environmental Laws”** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, codes of practice, and other lawful requirements of any government authority having jurisdiction over the Premises now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life or transportation of dangerous goods, including the principles of common law and equity.

## 1.2 Landlord’s Representations and Warranties

The Landlord represents and warrants to the Tenant that as of the date of this Lease:

- (a) the Premises are free of Contaminants, except in amounts that are permissible under Environmental Laws for use of the Premises for *[commercial/ industrial]* purposes; and
- (b) *[the certificate of compliance dated [month, day, year] for the Premises is valid and subsisting, the terms and conditions of the certificate are in good standing and have been complied with, and all fees payable under Part 4 of the Environmental Management Act and the applicable regulations have been paid in full.]*

Section 1.2(b) is optional because it applies only where the premises were part of a contaminated site that had been the subject of a certificate of compliance.

## 1.3 Landlord’s Covenants and Indemnity

The Landlord covenants and agrees as follows:

- [(a) not to use the Project or permit the Project to be used for the sale, storage, manufacture, handling, disposal, use, or any other dealing with any Contaminants, except in compliance with Environmental Laws;]*
- [(b) at its own cost, to cause the Project to comply with Environmental Laws and to use its best efforts to cause any tenants or other occupants of premises at the Project to comply with Environmental Laws in the use and occupancy of their premises at the Project; and]*

Sections 1.3(a) and (b) are shown as optional because they apply only to circumstances in which the premises form part of a project, a portion of which is used or controlled by the landlord. If the premises are stand-alone these provisions may not be relevant.

- (c) to indemnify the Tenant and its shareholders, directors, officers, employees, agents, subtenants, successors, and permitted assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses (including, without limitation, lost profits and any other losses arising directly or indirectly from any

interruption to or disruption of the Tenant's use and occupation of the Premises or the Tenant's business conducted on the Premises), costs, orders, fines, penalties, and expenses whatsoever (including any and all environmental or statutory liability for remediation, all legal and consultants' fees and expenses, and the cost of remediation of the Premises and any adjacent property) arising from or in connection with:

- (i) any breach of or non-compliance with the provisions of this Article [number] by the Landlord; or
- (ii) the presence of any Contaminants in, on, at, or under the Premises or any Release or alleged Release of any Contaminants at or from the Premises prior to or after the commencement of the Term, but excluding any Contaminants brought onto or Released at or from the Premises by the Tenant or any person for whom the Tenant is at law responsible.

The obligations of the Landlord under this Article [number] will survive the expiry or earlier termination of this Lease.

## VI. GREEN LEASING PROVISIONS [§12.6]

According to the World Green Building Council, buildings and construction accounted for 39% of global carbon emissions in 2019 (*Bringing embodied carbon upfront* (World Green Building Council, 2019)). As a result, green leasing provisions are becoming more common as landlords and tenants work together to reduce greenhouse gases from building operations, decrease waste and water use, increase the use of renewable energy in buildings, and meet the requirements of building certifications such as LEED (Leadership in Energy and Environmental Design). The growth of ESG (environmental, social, and governance) policies at the corporate level is also driving the inclusion of green provisions in leases.

A green lease, which is also known as an aligned lease, high-performance lease, or energy-efficient lease, is a lease that incorporates clauses in which the landlord and the tenant undertake specific responsibilities with respect to the sustainable operation or occupation of a building. Such responsibilities typically cover areas such as energy efficiency measures, water conservation, and waste management policies to increase the rate of recycling or composting. Other issues that may be addressed by green leasing provisions include indoor air quality, management of asbestos and other identified hazardous substances, potential climate change-related hazards, and infrastructure to encourage the use of public transportation, cycling, and electric vehicles. The allocation of costs between landlords and tenants for compliance with green lease provisions will typically be negotiated by the parties. Organizations such as the Real Property Association of Canada and the Building Owners and Managers Association have released standard-form green leases, which incorporate measures aligned with ESG reporting and performance standards in commercial real estate (see <https://realpac.ca/product/realpac-office-green-lease-national-standard-lease-for-single-building-projects/> and [www.boma.org/GreenLeaseGuide](http://www.boma.org/GreenLeaseGuide)).

As illustrated above, the environmental aspect of ESG is the one most commonly addressed in leases. To date, the social and governance aspects of ESG have been less commonly incorporated into leases. This is because social and governance factors are generally subjective in nature, and it may be difficult to obtain data in connection with social and governance targets from tenants. Social factors may include human rights, employee health and safety, diversity and inclusion, and employee compensation. Governance factors may include organizational policies and codes of ethics. Where parties look to incorporate social and governance commitments into their leases, they may find it practical to incorporate a standard of reasonable efforts rather than fixed targets.