

SCHEDULE 11

LENDERS' REMEDIES AGREEMENT

for the Academic Ambulatory Care Centre
at Vancouver General Hospital

**VANCOUVER COASTAL HEALTH AUTHORITY
BNY TRUST COMPANY OF CANADA
ABN AMRO BANK N.V., CANADA BRANCH
AHV ACCESS HEALTH VANCOUVER LTD.**

Dated September 2, 2004

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LENDERS' REMEDIES AGREEMENT

THIS AGREEMENT is dated as of September 2, 2004.

AMONG:

VANCOUVER COASTAL HEALTH AUTHORITY

("VCHA")

AND:

BNY TRUST COMPANY OF CANADA

(the "**Agent**") as indenture trustee

AND:

ABN AMRO BANK N.V., CANADA BRANCH

("ABN AMRO") as **DELETED**

AND:

AHV ACCESS HEALTH VANCOUVER LTD.

("Project Co")

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 Definition

In this Agreement, capitalized but otherwise undefined terms will have the meaning given in the Project Agreement and:

"**Agreement**" means this agreement, as amended or supplemented from time to time;

"**Appointed Representative**" means the Representative identified in a Step-In Notice;

"**Default Notice**" means a notice given by VCHA to the Agent and ABN AMRO under Section 3.2;

"**Discharged Obligations**" has the meaning given in Section 7.3(a);

"**Discharged Rights**" has the meaning given in Section 7.3(c);

"**Event of Default**" means an event of default under the Lending Agreements;

"**Event of Insolvency**" means an event described in Section 15.1(f) of the Project Agreement;

"Modification" means any amendment, supplement, modification, replacement or surrender to be made to or in respect of the Project Agreement or the Leases by VCHA and Project Co;

"Notice Period" means the period starting on the date of a Default Notice and ending 60 days later;

"Project Agreement" means the agreement dated September 2, 2004 between Project Co and VCHA relating to the design, construction, financing, operation and maintenance of a new academic ambulatory care centre near Vancouver General Hospital, as amended, supplemented or replaced from time to time in accordance with the terms thereof;

"Representative" means:

- (a) the Agent, any Lender or any of their Affiliates;
- (b) a receiver or receiver and manager of Project Co appointed under the Security Documents;
- (c) a person directly or indirectly owned or controlled by the Agent or any of the Lenders; or
- (d) any other person approved by VCHA (such approval not to be unreasonably withheld or delayed);

"Security Documents" means all security granted by Project Co to the Lenders (or any trustee or agent thereof) pursuant to or in connection with the Lending Agreements, including:

- (a) trust indenture made between the Agent, Project Co and ABN AMRO, as bond manager;
- (b) mortgage granted by Project Co to and in favour of the Agent with respect to Project Co's estate, right, title and interest in and to the Site, including Project Co's estate, right, title and interest in and to the Building Lease and the VCHA Sublease;
- (c) general security agreement made between Project Co and ABN AMRO;
- (d) assignment of material agreements made between Project Co and ABN AMRO; and
- (e) mortgage granted by Project Co to and in favour of ABN AMRO with respect to Project Co's estate, right, title and interest in and to the Site, including Project Co's estate, right, title and interest in and to the Building Lease and the VCHA Sublease;

"Secured Parties" means ABN AMRO and the Agent;

"Step-In Date" means the date on which the Agent or ABN AMRO gives VCHA a Step-In Notice;

"Step-In Notice" means the notice given by the Agent or ABN AMRO to VCHA pursuant to Section 4 stating that the Agent or ABN AMRO, as the case may be, is exercising the step-in rights under this Agreement and identifying the Appointed Representative;

"Step-In Period" means the period from the Step-In Date up to and including the earlier of:

- (a) the Step-Out Date;

- (b) the date that a transfer to a Suitable Substitute Contractor becomes effective pursuant to Section 7;
- (c) the date of any notice from VCHA to the Agent, ABN AMRO and Project Co following the failure of the Appointed Representative or Project Co, as the case may be, to fulfill its obligations under Section 5.2;
- (d) if the Step-In Date occurs prior to Substantial Completion, the later of (i) the last day of the second year after the Target Substantial Completion Date, or (ii) the second anniversary of the Step-In Date; and
- (e) the Expiry Date;

"Step-Out Date" means the date that is 20 Business Days after the date of a Step-Out Notice;

"Step-Out Notice" means a notice from the Agent, ABN AMRO or Appointed Representative to VCHA pursuant to Section 6.1; and

"Suitable Substitute Contractor" means a person approved by VCHA (such approval not to be unreasonably withheld or delayed) to replace Project Co under the Project Agreement and the Leases. In exercising its discretion in respect of a Suitable Substitute Contractor, VCHA will not unreasonably withhold its consent if VCHA is satisfied that the proposed Suitable Substitute Contractor:

- (a) is a Fit and Proper Person;
- (b) has the technical expertise, resources and abilities which are necessary for it to perform effectively the obligations of Project Co under the Project Agreement and the Leases; and
- (c) is not involved in a business or activity which is incompatible or inappropriate in relation to the operation of a public hospital.

1.2 Construction and Interpretation

The division of this Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the construction or interpretation of this Agreement. The word "including" will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Agreement to "**Section**" and "**Schedule**" is to a Section of, and a Schedule to, this Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia,
- (e) all references to amounts of money mean lawful currency of Canada, and

- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied.

1.3 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia.

1.4 Severability

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement, or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction,

except that if:

- (c) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable, and
- (d) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of this Section 1.4, the basic intentions of the parties in this Agreement are materially affected, the parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

2. CONSENT TO SECURITY

2.1 Consent

VCHA acknowledges notice of, and consents to, the Lending Agreements and the security interest granted over Project Co's rights under, and interest in, the Project Agreement, the Leases and any other Project Documents effected by Project Co in favour of the Lenders (or any trustee or agent thereof) under the Security Documents.

2.2 No Notice of Other Security

VCHA confirms that it has not received notice of any other security interest granted over Project Co's rights under, or interest in, the Project Agreement, the Leases or any other Project Documents.

2.3 VCHA Obligations

Except as specifically provided for in this Agreement, VCHA has no obligations (whether express, implied, collateral or otherwise) to the Agent, ABN AMRO or any other Lenders in connection with this Agreement, the Project Agreement, the Leases or the Project.

3. NO TERMINATION WITHOUT NOTICE

3.1 Termination Rights

Subject only to Section 3.2, VCHA may serve notice terminating the Project Agreement or either of the Leases at any time if it is entitled to do so under the terms of the Project Agreement or the Leases, as the case may be.

3.2 Default Notice

VCHA agrees with the Agent and ABN AMRO (without prejudice to VCHA's rights against Project Co) that it will not terminate or serve notice terminating the Project Agreement in respect of a Project Co Event of Default without giving to the Agent and ABN AMRO:

- (a) prior written notice (a "**Default Notice**") on the occurrence of a Project Co Event of Default concurrently with giving the Default Notice to Project Co pursuant to Section 15 of the Project Agreement, stating:
 - (1) that a Project Co Event of Default has occurred; and
 - (2) the circumstances and any information relating to the Project Co Event of Default, in reasonable detail; and
- (b) not later than 10 Business Days after the date of a Default Notice, a notice containing details of any amount owed by Project Co to VCHA, and any other liabilities or obligations of Project Co of which VCHA is aware (having made proper enquiry):
 - (1) which are accrued and outstanding at the time of the Default Notice; or
 - (2) which will fall due under the Project Agreement or the Leases on or prior to the end of the Notice Period.

4. REPRESENTATIVE

4.1 Step-In Notice

Subject to Section 4.2 and without prejudice to the Agent's or ABN AMRO's rights under the Security Documents, the Agent or ABN AMRO may give VCHA a Step-In Notice at any time:

- (a) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served); or
- (b) during the Notice Period.

4.2 Notice Prior to Step-In Notice

The Agent or ABN AMRO will give VCHA and the other Secured Party not less than 2 Business Days prior notice of:

- (a) its intention to issue a Step-In Notice; and

- (b) the identity of the proposed Appointed Representative,

and the Agent or ABN AMRO, as the case may be, may request copies of all notices of default given by VCHA to Project Co under the Project Agreement relating to the Project Co Event of Default giving rise to the Default Notice, and VCHA will provide copies of such notices promptly thereafter.

4.3 Appointed Representative

Upon the issuance of the Step-In Notice, the Appointed Representative will assume jointly with Project Co, the rights and obligations of Project Co under the Project Agreement and the Leases, which rights and obligations arise from and after the Step-In Date and thereafter, until the end of the Step-In Period, VCHA will deal with the Appointed Representative and not Project Co.

4.4 One Step-In Notice

VCHA will deal only with the Appointed Representative named in the Step-In Notice first delivered to VCHA after the issuance of a Default Notice, to the exclusion of any rights of the other Secured Party (except for any rights the other Secured Party may have under Section 5.2(b)) for the duration of the resulting Step-In Period.

5. STEP-IN PERIOD

5.1 VCHA Right to Terminate

Notwithstanding Sections 3 and 5.2, VCHA may terminate the Project Agreement and the Leases if:

- (a) any amount referred to in the notice provided pursuant to Section 3.2(b)(1) has not been paid to VCHA on or before the Step-In Date; or
- (b) any amount referred to in the notice provided pursuant to Section 3.2(b)(2) has not been paid on or before the last day of the Notice Period; or
- (c) amounts of which VCHA was not aware (having made proper enquiry) at the time of the Default Notice, continue to remain payable to VCHA and are not discharged by the later of the Step-In Date and 30 days after the date on which the liability for these amounts is notified to the Agent and ABN AMRO.

5.2 Limits on Termination During Step-In Period

VCHA will not terminate the Project Agreement or the Leases during the Step-In Period if:

- (a) in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has been cured by or on behalf of the Appointed Representative or Project Co, as the case may be, or the Appointed Representative or Project Co, as the case may be, is diligently continuing to cure the breach until so cured; or
- (b) in the case of a Project Co Event of Default which is not capable of being cured, the Agent (on behalf of certain of the Lenders under the applicable Lending Agreements) or ABN AMRO, as the case may be, agrees to enter into a new Project Agreement and/or

new Leases on the same terms as the Project Agreement and the Leases for the remainder of the Term of each of the Project Agreement and the Leases.

6. STEP-OUT

6.1 Step-Out Notice

The Appointed Representative may at any time during the Step-In Period deliver to VCHA and to the other Secured Party a Step-Out Notice which specifies the Step-Out Date.

6.2 Expiry of Step-In Period

On expiry of the Step-In Period:

- (a) the rights and obligations of the Appointed Representative in relation to VCHA under the Project Agreement and the Leases arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
- (b) VCHA will no longer deal with the Appointed Representative and will deal with Project Co; and
- (c) the Appointed Representative is released from all obligations and liabilities under the Project Agreement and the Leases.

6.3 One Step-In Period

There will be no more than one Step-In Period following the issuance by VCHA of any one Default Notice. If the Appointed Representative named in the first Step-In Notice delivers a Step-Out Notice before the expiry of the period described in subsection (d) of the definition of "**Step-In Period**", the other Secured Party may deliver a Step-In Notice but the step-in period for such Secured Party will be limited to the period remaining in the Step-In Period of the Secured Party which first stepped-in had such Secured Party not delivered a Step-Out Notice.

6.4 Project Co Remain Bound

Project Co will continue to be bound by the terms of the Project Agreement and the Leases, notwithstanding the occurrence of a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Agent, ABN AMRO or Appointed Representative or the other Lenders or any provision of this Agreement.

7. NOVATION

7.1 Project Co Transfer Notice

Subject to Section 7.2, at any time:

- (a) after an Event of Default has occurred; or
- (b) during the Step-In Period,

the Agent or ABN AMRO may, by notice to VCHA and any Appointed Representative, cause the transfer of Project Co's rights and obligations under the Project Agreement and the Leases to a person that is a Suitable Substitute Contractor in accordance with the provisions of Section 7.3. The notice delivered will include all information reasonably required by VCHA to decide whether the proposed transferee is a Suitable Substitute Contractor.

7.2 Confirmation of Suitable Substitute Contractor

VCHA will advise the Agent and ABN AMRO within 10 Business Days from its receipt of the notice from the Agent or ABN AMRO, as the case may be, (and all the information referred to above) whether it accepts a proposed transferee pursuant to Section 7.1 as a Suitable Substitute Contractor. If VCHA fails to respond within such 10 Business Day period, VCHA will be deemed to have accepted the Suitable Substitute Contractor. It will, without limitation, be reasonable for VCHA to withhold its acceptance if there are unremedied Events of Default under the Project Agreement and the proposed transferee has not confirmed with VCHA to VCHA's satisfaction, acting reasonably, that promptly following such transfer it will take or continue with the steps contemplated in Section 5.2.

7.3 Terms of Transfer

Upon the transfer referred to in Section 7.1 becoming effective:

- (a) Project Co and VCHA will be released from their obligations under the Project Agreement and the Leases to each other (collectively, the "**Discharged Obligations**");
- (b) the Suitable Substitute Contractor and VCHA will assume obligations under the Project Agreement and the Leases towards each other which differ from the Discharged Obligations only insofar as they are owed to or assumed by the Suitable Substitute Contractor instead of Project Co;
- (c) each of the rights of Project Co against VCHA under the Project Agreement and the Leases and the rights of VCHA against Project Co under the Project Agreement and the Leases (collectively, the "**Discharged Rights**") will be cancelled;
- (d) the Suitable Substitute Contractor and VCHA will acquire rights under the Project Agreement and the Leases against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Contractor instead of Project Co;
- (e) any subsisting ground for termination by VCHA of the Project Agreement or the Leases will be deemed to have no effect and any subsisting Default Notice will be automatically revoked;
- (f) VCHA will enter into a direct agreement with the Suitable Substitute Contractor and a representative of the Lenders lending to the Suitable Substitute Contractor on the same terms as this Agreement; and
- (g) any Deficiency Notices or Warning Notices that arose prior to that time will not be taken into account after that time.

8. MISCELLANEOUS

8.1 VCHA's Further Assurances

VCHA will, at Project Co's expense, take whatever action the Agent, ABN AMRO, an Appointed Representative or a Suitable Substitute Contractor taking a transfer in accordance with Section 7 may require for perfecting any assumption, transfer or release under Sections 4, 6 and 7 including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Agent, ABN AMRO, Appointed Representative or Suitable Substitute Contractor reasonably requires.

8.2 Term

This Agreement will remain in effect until the earlier of:

- (a) the date on which all obligations which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably satisfied in full; provided that on the date on which all obligations which may be or become owing by Project Co to ABN AMRO under the l/c agreement made on or about the date hereof between ABN AMRO and Project Co have been irrevocably satisfied in full and the l/c agreement has been terminated, ABN AMRO, in its capacity as Lender under such l/c agreement, shall have no further rights or obligations hereunder;
- (b) the date of termination, in compliance with this Agreement, of the Project Agreement other than in the circumstances contemplated in Section 5.2(b) of this Agreement; or
- (c) the date that a transfer referred to in Section 7.1 becomes effective and the agreement contemplated in Section 7.3(f) is executed and delivered by the parties thereto.

8.3 Agent to Notify VCHA

The Agent and ABN AMRO will promptly notify VCHA of:

- (a) any Event of Default, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment; and
- (b) the date referred to in Section 8.2(a) above,

no later than 20 Business Days after the Agent or ABN AMRO, as the case may be, receives notice of its occurrence.

8.4 Additional Notification Requirements

Any Modification and any proposed acceptance by VCHA of any partial or total surrender or release by Project Co of its rights or obligations under the Project Agreement or the Leases will be subject to the approval of the Agent and ABN AMRO, each acting reasonably. The Agent and ABN AMRO may withhold their consent if the proposed Modification, surrender or release:

- (a) will materially or adversely affect Project Co's or the Lenders' rights, or Project Co's or the Lenders' ability to exercise their respective rights, under the Project Agreement, the Leases, the Lending Agreements or the Security Documents, or
- (b) will have the effect of increasing any liability of Project Co or the Lenders, whether actual or contingent, present or future, known or unknown, under the Project Agreement, the Leases, the Lending Agreements or the Security Documents.

8.5 Project Co Covenant

Project Co joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

8.6 Conflict or Inconsistency

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of this Agreement will prevail.

9. ASSIGNMENT

9.1 Restriction on Assignment

No party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement except as provided in this Section 9.

9.2 Assignment by Agent and ABN AMRO

Each of the Agent and ABN AMRO may assign or transfer its rights and obligations under this Agreement to a successor in accordance with the Lending Agreements without the consent of VCHA.

9.3 Assignment by Lender

Any Lender may assign or transfer its rights and obligations under the Lending Agreements in accordance with the terms of the Lending Agreements without the consent of VCHA.

9.4 Assignment by VCHA

VCHA may assign or transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Project Agreement and the Leases. The Agent and the Lenders will co-operate with VCHA in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by VCHA.

9.5 New Agreement

If Section 9.2 is applicable, VCHA and Project Co will, upon request by the new Agent or successor to ABN AMRO, as the case may be, enter into a new direct agreement with the successor of the Agent or ABN AMRO, as the case may be, on substantially the same terms as this Agreement.

10. GENERAL

10.1 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

10.2 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

10.3 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

10.4 Confidentiality

The Agent and ABN AMRO will be bound to comply with the confidentiality obligations on the part of Project Co contained in Section 19 of the Project Agreement in relation to all information, documentation and records obtained from any other party in connection with the Project.

10.5 Notices

Each notice to a party must be given in writing. A notice may be given by delivery to an individual or by fax, and will be validly given if delivered on a Business Day at the following address, or, if transmitted on a Business Day by fax addressed to the following party:

if to VCHA:

Vancouver Coastal Health Authority – Corporate Office
601 West Broadway, 11th floor
Vancouver, British Columbia, V5T 1X7

Attention: Executive Director, Facilities and Projects Manager
Facsimile: 604.875.5673

if to ABN AMRO:

ABN AMRO Bank N.V., Canada Branch
79 Wellington Street West
Suite 1500
TD Centre, P.O. Box 114
Toronto, Ontario M5K 1G8

Attention: Chief Credit Officer
Facsimile: 416.367.7937

If to the Agent:

BNY Trust Company of Canada
(A Bank of New York Company)
4 King Street West, Suite 1101
Toronto, Ontario M5H 1B6

Attention: Senior Trust Officer
Facsimile: 416.360.1711

if to Project Co:

AHV Access Health Vancouver Ltd.
Three Bentall Centre
595 Burrard Street, Suite 2373
Vancouver, British Columbia, V7X 1J1

Attention: President
Facsimile: 604.484.7165

or to any other address, fax number or individual that the party designates. Any notice:

- (a) if validly delivered, will be deemed to have been given when delivered (provided that such notice is received by the contact person noted above or a person authorized on their behalf);
- (b) if validly transmitted by fax before 5:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day; and
- (c) if validly transmitted by fax after 5:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.

10.6 Dispute Resolution Procedure

The parties agree that the Dispute Resolution Procedure (as such term is defined in the Project Agreement) provided for in the Project Agreement shall apply to any dispute under this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

VANCOUVER COASTAL HEALTH AUTHORITY

Per: _____

Per: _____

AHV ACCESS HEALTH VANCOUVER LTD.

Per: _____

Per: _____

BNY TRUST COMPANY OF CANADA

Per: _____

ABN AMRO BANK N.V., CANADA BRANCH

Per: _____

Per: _____