

## LEASE AND LICENCE OF OCCUPATION AGREEMENT

THIS AGREEMENT dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 2023 is

### BETWEEN

**REGIONAL DISTRICT OF NANAIMO**, a regional district incorporated under the *Local Government Act* (British Columbia) and having offices at 6300 Hammond Bay Road, Nanaimo, BC, V9T 6N2

(the “**Regional District**”)

### AND

**CEDAR SCHOOL AND COMMUNITY ENHANCEMENT SOCIETY**, a society incorporated under the *Societies Act* (British Columbia) and having offices at 1644 MacMillan Rd, Nanaimo, BC, V9X 1L9

(the “**Tenant**”)

### WHEREAS:

- A. By an agreement dated DATE made between the Board of School Trustees of School District 68 (Nanaimo-Ladysmith)(the “**Board**”) and the Regional District, the Regional District leases land located at 1644 MacMillan Road, Nanaimo, BC, V9X 1L9 and legally described as:

That part of Lot A, Section 16, Range 8, Cranberry District and of Section 16, Range 1, Cedar District, Plan 48768, shown as "Agreement Area" on Plan VIP 71705

(the “**Land**”);

- B. The Regional District owns the building and improvements located on the Land, formerly known as the North Cedar Elementary School (the “**Building**”);
- C. The Tenant wishes to lease the Building and to obtain a licence to occupy the Land, including the parking spaces and playground on the Land;
- D. The Regional District agrees to lease the Building and to provide a licence to occupy the Land to the Tenant on the terms and subject to the conditions set out herein; and
- E. The Board has consented in writing to the grant of the licence to occupy the Land.

**NOW THEREFORE THIS AGREEMENT** is evidence that in consideration of the mutual promises contained in this Agreement and other good and valuable consideration paid by each of the parties to the other (the receipt and sufficiency of which each party acknowledges), the parties covenant and agree as follows:

### **1.0 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, words and phrases shall be defined as follows:

- (a) “**Commencement Date**” has the meaning provided in section 2.1 of this Agreement;
- (b) “**Board**” means the Board of School Trustees of School District 68 (Nanaimo-Ladysmith);
- (c) “**Building**” means the building formerly known as the North Cedar Elementary School, located at 1644 MacMillan Road, Nanaimo, BC, V9X 1L9, and referred to in recital B;
- (d) “**Land**” means the land referred to in recital A;
- (e) “**Local Government Act**” means the *Local Government Act*, RSBC 2015, c 1, as amended or replaced from time to time;
- (f) “**Premises**” means the Land and Building together;
- (g) “**Regional District**” means the Regional District, and where the applicable to the context, includes its elected officials, officers, employees, agents, and contractors;
- (h) “**Rent**” has the meaning provided in section 3.1 of this Agreement;
- (i) “**Societies Act**” means the *Societies Act*, RSBC 2015, c 18, as amended or replaced from time to time;
- (j) “**Tenant**” means the Cedar School and Community Enhancement Society;
- (k) “**Term**” means the period from the Commencement Date until the Termination Date as defined in section 2.1 of this Agreement; and
- (l) “**Termination Date**” has the meaning provided in section 2.1 of this Agreement.

1.2 **Interpretation** – Wherever the singular, masculine, or neuter is used in this Agreement, the same shall be construed as meaning the plural, the feminine, or body corporate where the context so requires.

1.3 **References to Tenant** – Any reference to the “Tenant” includes, where the context allows, subtenants, occupants, employees, agents, licensees, and invitees of the Tenant and all others over whom the Tenant may reasonably be expected to exercise control, and any default in observing or performing the Tenant’s obligation by such person will be deemed to be defaults of the Tenant.

1.4 **Headings** – The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and do not define, limit, or enlarge the scope or meaning of this Agreement.

## **2.0 DEMISE AND TERM**

2.1 **Demise and Term** – The Regional District hereby demises and leases to the Tenant the Building for a term of one (1) year, from August 1<sup>st</sup>, 2023 (the “**Commencement Date**”) to and including June 30<sup>th</sup>, 2024 or such earlier or later date as may be determined in accordance with this Agreement (the “**Termination Date**”), to have and to hold for the Term

as the tenant, and the Tenant does hereby accept the demise and lease of the Building, all subject to the covenants, conditions and agreements herein contained and subject to the following:

- (a) Subject to section 9.4, the parties acknowledge and agree that this Agreement may be terminated prior to the end of the Term by:
  - (i) the Regional District at any time by giving to the Tenant ninety (90) days' notice in writing; and
  - (ii) the Tenant at any time by giving to the Regional District ninety (90) days' notice in writing; and
  - (iii) mutual written agreement of the parties.

**2.2 Removal Upon Termination** – In the event of termination of this Agreement, if required by the Regional District, the Tenant shall forthwith remove from the Premises all structures, machinery, supplies, articles, materials, effects, and things at any time brought or placed thereon or therein by the Tenant and shall also, to the satisfaction of the Regional District, repair any damage and injury occasioned to the Premises by reason of such removal and the Tenant shall not be entitled to any compensation for such removal. It is further agreed that unless required by the Regional District, the Tenant shall not remove any goods, chattels, materials, effects, or things from the Premises until all Rent or additional rent due or to become due under the Agreement is fully paid.

**2.3 Quiet Enjoyment** – Subject to this Agreement, the Tenant will and may peaceably hold and enjoy the Building during the Term without interruption or disturbance by the Regional District or any person lawfully claiming under the Regional District.

### **3.0 LICENCE TO OCCUPY**

**3.1 Licence to Occupy** – The Regional District grants to the Tenant the non-exclusive right and licence to occupy the Land, including the parking spaces and playground on the Land, throughout the Term.

**3.2 Condition Precedent** – It is a condition precedent of the right and licence to occupy the Land provided for under section 3.1 of this Agreement that the Board provide consent in writing. Upon such consent, the Tenant covenants and agrees with the Regional District to perform all covenants, conditions, and provisos to be performed by the Regional District under the agreement between the Regional District and the Board, as amended, to the intent and for the purpose that no default shall arise from the lease and licence to occupancy provided for by this Agreement.

**3.3 Waiver of Condition Precedent** – The condition precedent found in section 3.2 is solely for the benefit of the Regional District and may be waived in whole or in part by notice in writing to the Tenant.

### **4.0 RENT**

**4.1 Rent** – The Tenant shall pay to the Regional District rent in the amount of \$12.50 for the entire Term (the “**Rent**”), to be paid in advance on the date of execution of this Agreement.

- 4.2 **Rent Does Not Constitute Fair Market Rent** – The parties acknowledge and agree that the Rent payable under this Agreement does not constitute fair market rent for the Premises, and the Building is leased to the Tenant and the Tenant is provided with the Licence on the terms and conditions of this Agreement and subject to the Tenant carrying out its activities and programs under its constitution and bylaws.
- 4.3 **Interest on Amounts in Arrears** – The Tenant will pay to the Regional District interest at a rate equal to three (3) percent per year above the prime commercial lending rate per year charged by the Royal Bank of Canada at its main branch in Vancouver, at the start of each month, calculated and compounded monthly, upon all Rent or other expenses required to be paid under this Agreement, from the due date for payment until paid. This stipulation for interest will not prejudice any other right or remedy of the Regional District under this Agreement or at law or at equity.
- 4.4 **Premises Accepted “As Is”** – The Tenant accepts the Premises “as is” and acknowledges that the Regional District has made no representations or warranties respecting the Premises.
- 4.5 **Net Agreement** – It is the intention of both parties that this is a “net agreement” and that all expenses, costs, and payments incurred in respect of the Premises and any other improvement to the Premises, or anything affecting the Premises shall be borne by the Tenant unless previous consideration to share said expenses has been determined. In addition to the Tenant’s obligation to pay Rent and otherwise abide by the terms of this Agreement.
- 4.6 **Taxes and Fees** – The Tenant shall pay to the Regional District all taxes, charges, levies, and other fees, including Goods and Services Tax, or any replacement tax, which may be payable in respect of this Agreement and the Premises.
- 4.7 **Utilities** – The Tenant shall pay all charges for water supply, sewage disposal, garbage removal, gas, heating fuel, telephone service, cablevision, electricity, power, or other utility or communication service rendered in respect of the Premises.

## **5.0 USE OF PREMISES**

- 5.1 **Assigning and Subletting** – Except as expressly permitted in this Agreement, the Tenant shall not assign this Agreement in whole or in part and shall not sublet all or any part of the Building, without the Tenant obtaining the prior written consent of the Regional District, in each instance with such consent not to be unreasonably withheld, and of the Board, where applicable. In requesting the Regional District’s consent to an assignment, sub-lease, or license of the Building, the Tenant must provide the Regional District with all information requested by the Regional District. The Tenant must, if required by the Regional District, enter into sub-leases, assignment agreements, or licenses of the Building on terms the required by the Regional District, including requirements for insurance and indemnities. No assignment by the Tenant will release the Tenant from its obligation to observe or perform the Tenant’s obligations under this Agreement.

### **5.2 Use of Premises**

- (a) The Tenant shall use the Premises solely for a community centre, which for the purpose of this Agreement includes community uses such as special events,

programs/activities, meetings, rentals, community gatherings for all ages, community internet, and preschool/daycare uses.

- (b) For greater certainty, the Tenant agrees that the Premises must not be used for any other purpose unless the Tenant obtains the prior written approval of the Regional District.

## **6.0 TENANT'S REPRESENTATIONS AND UNDERTAKINGS**

**6.1 Legal Status** – The Tenant warrants, represents, and agrees that:

- (a) It is and shall remain throughout the Term a non-profit society in good standing under the *Societies Act* and all other applicable laws of the Province of British Columbia and will, upon reasonable request, furnish to the Regional District, proof that it is a non-profit organization in good standing with the Registrar of Societies in British Columbia;
- (b) It has taken all necessary or desirable actions, steps, and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement; and
- (c) It has the power and capacity to enter into and carry out the transaction provided for in this Agreement.

**6.2 Construction** – The Tenant may, if the Tenant is not then in default under this Agreement and with the prior written consent of the Regional District, undertake improvements, construction, or renovations of the Building. In giving its consent, the Regional District may impose any conditions, including, without limitation, location requirements, use restrictions, financial restrictions, insurance requirements, and security obligations. The Tenant acknowledges that all leasehold improvements become the property of the Regional District upon affixation to the Building, without any obligation by the Regional District to pay for the leasehold improvements.

**6.3 Reverter** – The Tenant acknowledges that in the event the Agreement is terminated subject to sections 2.1 (a) and 7.4, all improvements on the Building, past and present, shall become the property of the Regional District.

**6.4 Permits Required** – The Tenant acknowledges that prior to undertaking any improvements, construction, or renovations of the Building, the Tenant must obtain a building permit and comply with all other bylaw requirements imposed by the Regional District on construction and development within its boundaries.

**6.5 Compliance with Laws** – The Tenant will at all times during the Term use and occupy the Building in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws relating to environmental matters, including all the rules, regulations, policies, guidelines, criteria, or the like made under or pursuant to any such laws.

**6.6 Zoning** – Without limiting section 6.5, the Tenant acknowledges that the Tenant must not use the Premises or permit a use in breach of the zoning bylaws applicable to the Land.

- 6.7 **No Nuisance** – The Tenant will not, at any time during the Term, use, exercise, or carry on or permit or suffer to be used, exercised or carried on, in or upon the Premises or any part thereof any noisy, noxious, or offensive art, trade, business, occupation, or event and, the Tenant will not carry on, or suffer or permit to be carried on, any act, matter or thing which will or may constitute a nuisance or an unreasonable annoyance to the Regional District, to any property owner or occupier in the vicinity of the Premises, or to the public generally.
- 6.8 **Liens and Judgments** – The Tenant will not permit any liens, judgments, or other charges to be registered against the Land except those charges permitted in writing by the Regional District. Unless otherwise agreed in writing, if any lien, judgment, or other charge is registered, the Tenant will obtain its discharge within 30 days of the said registration.
- 6.9 **Repairs and Maintenance** – Throughout the Term at its own expense, the Tenant shall repair and maintain and keep the Premises in a state of good repair as a prudent owner would do. The Regional District will not be obliged to repair, maintain, replace, or alter the Premises during the Term or to supply any services or utilities thereto save and except for such services and utilities as the Regional District may be required to provide strictly in its capacity as a regional district and not in its capacity as a landlord. Subject to section 6.10, the Tenant hereby assumes the full and sole responsibility of the condition, operation, maintenance, repair, replacement, and management of the Premises during the Term. All repairs will be in all respects to a standard equal to or greater than the original work and material in the improvements and will meet the lawful requirement of all statutory authorities.
- 6.10 **Repair According to Notice** – Without restricting the generality of section 6.9, the Tenant will do all repairs and maintenance that it is obliged to do pursuant to section 6.9 promptly upon notice from the Regional District. If the Tenant does not perform all repairs and maintenance promptly upon notice from the Regional District, the Regional District reserves the right to enter the Premises to restore the Premises back to the state of good repair. The Tenant will pay to the Regional District, on demand, the Regional District's costs and expenses of repair, as well as an additional amount for administration and overhead.
- 6.11 **Public Safety** – The Tenant shall take all reasonable precautions to ensure that safety of persons using the Premises.
- 6.12 **Waste** – The Tenant will not commit, suffer, or permit any wilful or voluntary waste, spoil or destruction of the Premises.
- 6.13 **Right to Inspect** – The Tenant shall permit the Regional District to enter the Premises at all reasonable times to determine if the Tenant is complying with all its promises under this Agreement.
- 6.14 **Regional District Meetings** – Without limiting section 6.13, the Tenant agrees that the Regional District shall have access to the Premises in accordance with the following:
- (a) Electoral Area 'A' Parks, Recreation and Culture Commission (Area A PRC) regular or special meetings, and Area A PRC community meetings or workshops for the purposes of carrying out the work of the Commission, at no charge;
  - (b) Electoral Area 'A' meetings or workshops for Regional District purposes of three per year at no charge. Any additional Electoral Area 'A' meetings for the Regional District will be charged a rental rate of \$10 per hour up to \$50 per day;

- (c) The Regional District shall pay the Tenant regular rental charges for any meeting or workshop not contemplated in section 6.14(a) or (b); and
- (d) All Regional District and Commission bookings will be booked according to CHC procedures and based on availability.

6.15 **Annual Meeting** – The parties agree that either the Regional District or the Tenant may request a meeting, once each year of the Term of the Agreement, to be attended by the Manager of Recreation Services of the Regional District and the Tenant's Chairperson for the purpose of discussing any matter or issues relating to the Building or Land;

6.16 **Workers' Compensation** – If required by law, the Tenant will, at its cost, carry and pay for full workers' compensation coverage in respect of all workers, employees, and other persons engaged in any work or service, non-payment of which would create a lien claim on the Premises.

6.17 **Tree Cuttings, Excavations, and Hazardous Substances**

- (a) The Tenant must not carry on or do or allow to be carried on or done on the Land any cutting, clearing, or removal of trees, bushes, or other vegetation or growth or any excavation or disturbance of the surface of the Land and must not bring on or deposit any soil or fill on the Land except with the written consent of the Regional District;
- (b) The Tenant must not bring on, deposit, store, spray, or apply nor cause or permit to be brought on, deposited, stored, sprayed, or applied on or to the Land or any trees, bush or vegetation on the Land any chemical fertilizer, herbicide, pesticide, chemical product, petroleum product, or any other substance which is capable of contaminating the Land or any water on the Land.

6.18 **Environmental Matters**

- (a) For the purposes of section 6.18:
  - (i) **"Contaminants"** means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, asbestos materials, hazardous, corrosive, or toxic substances, special waste or waste of any kind, or any other substance which is now or hereafter prohibited, controlled, or regulated under Environmental Laws; and
  - (ii) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits, and other lawful requirements of any governmental 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, or transportation of dangerous goods, including the principles of common law and equity.
- (b) The Tenant covenants and agrees as follows:
  - (i) not to use or permit to be used all or any part of the Premises for the sale, storage, manufacture, handling, disposal, use, or any other dealing with any

Contaminants, without the prior written consent of the Regional District, which consent may be unreasonably withheld;

- (ii) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises;
- (iii) to promptly provide to the Regional District a copy of any environmental site assessment, audit, report, or test results relating to the Premises conducted by or for the Tenant at any time;
- (iv) to maintain all environmental site assessments, audits, reports, and test results relating to the Premises in strict confidence and not to disclose their terms or existence to any third party (including without limitation any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need-to-know basis, or with the prior written consent of the Regional District, which consent may be unreasonably withheld;
- (v) to promptly notify the Regional District in writing of any release of a Contaminant or any other occurrence or condition at the Premises or any adjacent property which could contaminate the Premises or subject the Regional District or the Tenant to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
- (vi) on the expiry or earlier termination of this Agreement, or at any time if requested by the Regional District or required by any governmental authority under Environmental Laws, to remove from the Premises all Contaminants, and to remediate by removal any contamination of the Premises or any adjacent property resulting from Contaminants, in either case brought onto, used at, or released from the Premises by the Tenant or any person for whom it is in law responsible. The Tenant shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants shall remain the property of the Tenant, notwithstanding any rule of law or other provision of this Agreement to the contrary and notwithstanding the degree of their affixation to the Premises; and
- (vii) to indemnify the Regional District and its directors, appointed officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including 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:
  - (A) any breach of or non-compliance with the provisions of this section 6.18 by the Tenant; or
  - (B) 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 Licensee or any person for whom it is in law responsible.



- (viii) The obligations of the Tenant under section 6.18 shall survive the expiry or earlier termination of this Agreement

6.19 **Amendment to Constitution** – The Tenant will provide the Regional District with not less than 30 days written notice of any planned amendment to the Tenant’s constitution or bylaws and its status as a society under the *Societies Act*.

## **7.0 REGIONAL DISTRICT'S COVENANTS**

7.1 The Regional District will take out and maintain during the Term a policy of insurance insuring the Building against the risk of loss or damage caused by or resulting from fire or any additional peril against which the Regional District normally insures regional property;

7.2 If the Building is destroyed by fire or any other means, the Regional District has the sole discretion to decide whether to rebuild it, and before making that decision, will consult with the Tenant, and will take into consideration whether:

- (a) the Board, as owner of the Land and the Regional District's landlord under the agreement referred to in recital A of this Agreement, will permit the Building to be rebuilt of the Land;
- (b) there are sufficient proceeds from the insurance policy referred to in section 7.1, together with any funds held or raised by the Tenant, to pay all costs of rebuilding;
- (c) there is sufficient time remaining in the Term of the Agreement and the term of the agreement referred to in recital A to justify rebuilding on the Land; and
- (d) there is another site available where a replacement for the Building may be constructed; and
- (e) if the considerations in section 7.2(a), (c), or (d) are not favourable or if they are favourable but there are insufficient funds acquired or raised under section 7.2(b) within 180 days of the destruction of the Building, then the Regional District may elect not to rebuild and in that case, this Agreement will terminate.

7.3 **Management Fee** – The Regional District shall pay a management fee to the Tenant to assist the Tenant with maintaining and repairing the premises, and therefore to assist the Tenant in providing community centre services to members of the public. A management fee of \$7,333.33 will be paid in two installments of \$3,666.67 on or before September 1<sup>st</sup>, 2023 and January 31<sup>st</sup> 2024.

## **7.4 Improvements and Capital Projects**

- (a) Notwithstanding the Tenant’s covenants to repair the Premises found elsewhere in this Agreement, the Regional District agrees to provide capital facility improvements associated with the Premises when the cost is above \$2,000 per capital project. When possible, the Regional District will schedule capital work to minimize its effect on scheduled facility use.
- (b) Decisions regarding whether an improvement is a capital facility improvement shall be made by the Regional District in its sole discretion and will be made in

accordance with the Regional District Policy A2.5 *Capital/Operating Expenditures Policy*.

- (c) The Regional District agrees to work with the Tenant and meet annually prior to the annual budget preparation to consider discuss capital improvements requested.
- (d) The Tenant will not make any alterations or improvements, nor construct any structures on the Premises, unless it has obtained Regional District approval in writing to make such alterations, improvements or construction. The Tenant acknowledges such approval may also be subject to the written consent of the Board.

**7.5 Management Covenants** - The Tenant covenants and agrees with the Regional District:

- (a) That the Tenant will not carry on or do or allow to be carried on or done on the Premises anything that:
  - (i) Increases the hazard of fire or liability of any kind,
  - (ii) Increases the premium rate of insurance against loss by fire or liability upon the Premises;
  - (iii) Invalidates any policy of insurance for the Premises; or
  - (iv) Directly or indirectly causes damage to the Premises.
- (b) To spend any grant money that may be received from the Regional District on the Building and Land only and not on other Tenant's projects or purposes;
- (c) To use revenue from the Tenant's rental of all or part of the Building to pay for the maintenance and operation of the Building;
- (d) To provide an annual report to the Regional District of the Tenant's fundraising activities for the Building and the operation by the Tenant of the Premises;

**8.0 INSURANCE AND INDEMNITY**

**8.1 Insurance**

- (a) The Tenant is responsible for insuring the Premises and the contents of them and all other improvements, including fixtures, appurtenances, contents, equipment, installations and electrical distribution system, based upon at least ninety (90) percent of the full replacement value, with "all risks" coverage on the replacement cost basis, flood and earthquake endorsements, and a maximum deductible of \$5,000 for any one loss.
- (b) Without limiting the Tenant's obligations and liabilities under this Agreement, the Tenant shall obtain, at its own expense, and keep in force a policy of general public liability insurance providing coverage against claims for personal injury, death, or property damage or loss upon, in, or about the Premises, and arising out of or connected with the activities of the Tenant and of subtenants carried on within the Premises, or the use and occupancy of the Building or any part thereof by the

Tenant or by any subtenants, in an amount of not less than \$5,000,000 per occurrence for bodily injury (including death), and property damage subject to a maximum deductible of \$5,000 for any one loss, and with endorsements for personal injury, voluntary medical payment to a limit of \$1,000 for each person, and \$10,000 for each accident for any one occurrence with no deductible, blanket contractual, products and completed operations and cross liability with limits not less than \$3,000,000 for any one loss or damage, subject to maximum deductible of \$5,000.

- (c) On or before the Commencement Date and at other times upon demand by the Regional District, the Tenant shall deliver to the Regional District certified copies of the policies of insurance required to be maintained by the Tenant under this Agreement.
- (d) The Regional District may, from time to time, notify the Tenant of the Regional District's desire to change the amount of insurance required by this Agreement and upon receiving such notification from the Regional District, the Tenant will:
  - (i) within 30 days of receiving such a notice, cause the amounts to be changed and deliver to the Regional District a letter from its insurer certifying the change in the amount of insurance; or
  - (ii) alternatively, within 30 days of receiving such notice, advise the Regional District in writing that it objects to a change in the insurance required and the reasons for its objection and upon such objection, the parties shall use their best efforts to resolve the issue(s) underlying the objection.
- (e) The Tenant shall ensure that all policies of insurance pursuant to this Agreement are:
  - (i) placed with insurers licensed in British Columbia;
  - (ii) include the Regional District as an additional insured;
  - (iii) contain a cross-liability clause and a waiver of subrogation clause in favour of the Regional District;
  - (iv) are primary and do not require the sharing of any loss by any insurer that insures the Regional District;
  - (v) contain a clause to the effect that any release from liability entered into by the Regional District prior to any loss shall not affect the right of Tenant or the Regional District to recover; and
  - (vi) are endorsed to provide the Regional District with 30 days advance notice in writing of cancellation or material change.
- (f) The Tenant shall ensure that if both the Regional District and the Tenant have claims to be indemnified under any insurance required by this Agreement, the indemnity must be applied first to the settlement of the claim of the Regional District and the balance, if any, to the settlement of the claim of the Tenant.

- (g) The Tenant agrees that if alcohol is to be consumed at the Building, the Tenant is responsible to ensure the appropriate licences and insurance are acquired, and that the Regional District is named as an additional insured.
- (h) All policies may provide that the amount payable in the event of any loss will be reduced by a deductible, in an amount to which the Regional District consents. Consent, non-consent, and/or authorized consent of the Regional District will not constitute an agreement by the Regional District to participate in the financial undertaking of the Tenant to satisfy any deductible payable. The Tenant will be solely responsible for any and all insurance deductible.
- (i) If the Tenant at any time fails to maintain any insurance it is required to maintain, then the Regional District may obtain and maintain such insurance in such amounts and with such deductible amounts and for such periods of time as the Regional District reasonably deems advisable. The Tenant will pay to the Regional District, on demand, the Regional District's cost of so doing.
- (j) Any disputes between the parties with respect to insurance under this section 8.1 shall be resolved by application of the dispute resolution provisions under section 9.9.

**8.2 Release** – The Tenant hereby releases the Regional District and its elected officials, officers, employees, agents and others of the Regional District, from and against all demands and claims which the Tenant may have, now or in the future, in relation to this Agreement, the Premises, or the Tenant's use or occupancy of the Premises, or any of the perils against which the Tenant shall have insured or pursuant to the terms of this Agreement is obligated to insure.

**8.3 Indemnity** – Save and except for the negligence of the Regional District, its employees and contractors, the Tenant will and hereby does indemnify and save harmless the Regional District and its elected officials, officers, employees, agents and others of the Regional District from any and all liabilities, damages, costs, claims, suits or actions whatsoever in connection with or arising from:

- (a) Any breach of any obligation set forth in this Agreement to be observed or performed by the Tenant;
- (b) Any of the perils against which the Tenant shall have insured or pursuant to the terms of this Agreement is obligated to insure;
- (c) Any act, omission, or negligence of the Tenant, its members, officers, directors, employees, agents, contractors, subtenants, licensees, invitees or others for whom it is responsible;
- (d) Any damage to property occasioned by the Tenant's use and occupation of the Premises or any injury to person or persons, including death, resulting at any time from the Tenant's use and occupation of the Premises; or
- (e) The granting of the Agreement herein.

**8.4 Survival of Indemnity and Release** – The indemnities and release contained in this Agreement will survive the expiration or earlier termination of the Term.

## **9.0 DEFAULT AND DISPUTE RESOLUTION**

**9.1 Notice of Default** – If the Tenant defaults in the payment of any money payable under this Agreement or fails to observe, comply with, or perform any of its covenants, conditions, agreements, or obligation under this Agreement, the Regional District may deliver to the Tenant a notice of default (in the manner required herein for giving notices) stipulating that the default must be rectified or cured within 30 days of the notice if the default is non-payment of Rent and within 60 days of the notice for other defaults, but less or no notice is required to be given by the Regional District in emergency or urgent circumstances, as determined by the Regional District in its sole discretion, acting reasonably, or where the Tenant has failed to keep the Premises insured or where the Premises remains vacant or unoccupied or not used for the purposes herein permitted for 30 consecutive days or more.

**9.2 Regional District's Right to Perform** – If the Tenant fails to rectify or cure a default within the time and in the manner specified in section 9.1 and if the default is one that can be rectified or cured by the Regional District, the Regional District may, without further notice to the Tenant, take all steps considered in its sole discretion necessary to rectify or cure the default and all costs of doing so, including the cost of retaining professional advisors, shall be payable immediately by the Tenant as additional rent. Nothing in this Agreement obligates the Regional District to rectify or cure any default of the Tenant but should the Regional District choose to do so, the Regional District shall not be liable to the Tenant for any act or omission in the course of rectifying or curing or attempting to rectify or cure any default.

**9.3 Distress** – If the Rent payable by the Tenant is in arrears, the Regional District or a person authorized in writing by the Regional District may enter upon the Premises and seize and goods or chattels and may sell the same.

**9.4 Provisos** – Provided always and it is hereby agreed that the Regional District may, without further notice to the Tenant, terminate this Agreement and re-enter and take possession of the Building:

- (a) Upon forty-five (45) days' notice in writing to the Tenant;
- (b) If the Rent or any other amount due to the Regional District hereunder is unpaid for 30 days after notice pursuant to section 9.1;
- (c) If the Tenant fails to observe, comply with, or perform any of its covenants, agreements, or obligations herein and the failure is not rectified or cured by the Tenant within the time specified in section 9.1.

The Tenant will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under this section. If the Regional District terminates this Agreement, the Regional District retains the right to proceed at law against the Tenant for all of the Rent and other loss or damage and costs.

- 9.5 **Costs** – If the Tenant defaults on this Agreement, the Tenant will pay to the Regional District the Regional District’s full costs including legal costs arising from the default, whether before action or otherwise and, at the option of the Regional District, upon a solicitor and client basis.
- 9.6 **Remedies Cumulative** – The Regional District’s remedies in this Agreement are cumulative and are in addition to any remedies of the Regional District at law or in equity.
- 9.7 **Dissolution** – If an order is made, a resolution passed or a petition filed for the liquidation or winding up of the Tenant or of a receiver or receiver-manager is appointed to administer or carry on the Tenant’s business or if the Tenant fails to maintain itself in good standing as a society under the *Societies Act*, then at the option of the Regional District, the Rent and all outstanding levies and charges shall become immediately due and payable and this Agreement shall immediately become forfeited and void and the Regional District may re-enter and take possession of the Building.
- 9.8 **Bankruptcy** – If this Agreement is at any time seized or taken in execution or in attachment by any creditor of the Tenant, or if the Tenant should become insolvent or make any assignment for the benefit of creditors, or commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankrupt petition is filed or presented against the Tenant or the Tenant consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging the Tenant to be bankrupt under any law relating to bankruptcy and insolvency, then at the option of the Regional District, the Rent and all outstanding levies and charges shall become immediately due and payable and this Agreement shall immediately become forfeited and void and the Regional District may re-enter and take possession of the Building.
- 9.9 **Dispute Resolution** – If the parties to this Agreement are unable to agree on the interpretation or application of any provision in the Agreement, or are unable to resolve any other issue relating to this Agreement, the parties agree to the following process in the order it is set out:
- (a) The party initiating the process will send written notice to the other party;
  - (b) The parties will promptly, diligently and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement or dispute;
  - (c) If the parties are unable to negotiate a resolution within 30 days of the date the written notice was sent advising of the dispute, the parties may request the assistance of a skilled mediator agreed to by the parties within 30 days written notice of a request to appoint a mediator by any party, failing which the mediator will be appointed by the B.C. International Commercial Arbitration Centre (“BCICAC”), and unless the parties agree otherwise, this mediation will follow BCICAC rules and will terminate 30 days after the appointment of the mediator.
- 9.10 **Cost Sharing for Mediator Process** – Unless otherwise agreed by the parties or ordered by an arbitrator, each party will pay an equal share of the costs for the mediator process.

## 10.0 **GENERAL**

10.1 **Notice** – Any notice, document, or communication required or permitted to be given hereunder shall be in writing and shall be deemed to be satisfactory if and deemed to have occurred when:

- (a) Sent by facsimile transmission or when delivered by hand, on the date of receipt;  
or
- (b) Mailed by prepaid registered mail, on the date received or on the fifth day after receipt of mailing by any Canada post office, whichever is earlier, address as follows:

if to the Regional District:

6300 Hammond Bay Road  
Nanaimo, BC  
V9T 6N2

if to the Tenant:

1644 MacMillan Road  
Nanaimo, BC  
V9X 1L9

PROVIDED the notice is sent to the party at the address and facsimile number provided herein or to whatever other address or facsimile number the Regional District and Tenant may from time to time advise by written notice. If normal mail service is interrupted by strike, slowdown, force majeure or other cause, then the party sending the notice, document or communication shall fax or deliver such notice, document or communication in order to ensure its prompt receipt.

10.2 **Holding Over** – If the Tenant should hold over after the expiration of the Term and the Regional District should accept rent, the new tenancy thereby created shall be a tenancy from month to month and not a tenancy from year to year, and shall be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month with the rent payable prorated in accordance with the Rent under this Agreement.

10.3 **Legal Costs** – Each of the Regional District and the Tenant is responsible for its own legal costs in relation to the preparation and negotiation of this Agreement.

10.4 **Own Cost** – The Tenant shall perform all of its obligations, covenants, and agreements under this Agreement solely at its own cost.

10.5 **Law to the Contrary** – Subject to section 10.2, this Agreement shall enure to the benefit of and be binding on the parties notwithstanding any rule of law or equity to the contrary.

10.6 **Severance** – If a court of competent jurisdiction holds any portion of this Agreement invalid, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

- 10.7 **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.
- 10.8 **No Waiver** – Waiver by the Regional District of any default by the Tenant shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.
- 10.9 **Amendment** – The Agreement may not be modified or amended except by an instrument in writing signed by the Regional District and the Tenant. Notice of a proposed change shall be made in writing to the other party (thirty) 30 days before the date upon which such amendment is to take effect, unless the notice period is waived by consent of both parties. The parties agree that no amendment shall take effect until approved in writing by the Board.
- 10.10 **Remedies Not Exclusive** – No remedy conferred upon or reserved to the Regional District is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.
- 10.11 **No Joint Venture** – Nothing in this Agreement shall constitute the Tenant as the agent, joint venture, or partner of the Regional District or give the Tenant any authority or power to bind the Regional District in any way.
- 10.12 **Charges on Title** – The Tenant shall abide and observe all requirements and restrictions on the title to the Land registered prior to the Commencement Date.
- 10.13 **Entire Agreement** – The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants, and agreements whether verbal or written between the parties with respect to the subject matter hereof.
- 10.14 **Time of Essence** – Time is of the essence of this Agreement.
- 10.15 **Further Assurances** – The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Agreement.
- 10.16 **Covenants and Conditions** – All of the provisions of this Agreement shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.
- 10.17 **No Abatement** – The Tenant is not entitled to any abatement, reduction, or deduction from the Rent.
- 10.18 **Estoppel Certificate** – The Tenant will, upon request, execute and deliver a certificate certifying the current status of this Agreement.
- 10.19 **Registration** – This Agreement is not in registerable form; however, the parties may by mutual consent register a copy of the Agreement in the Land Title Office and subject to their mutual agreement, shall execute all necessary actions to effect registration at the cost of the Tenant.
- 10.20 **Enurement** – This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, administrators and permitted assigns.



10.21 **No Derogation** – Nothing contained or implied in this Agreement will impair or affect the Regional District’s rights and powers in the exercise of its functions pursuant to the *Local Government Act* or any other enactment, and all such powers and right may be fully exercised in relation to the Premises as if this Agreement had not been entered into between the Tenant and the Regional District.

10.22 **Regional District’s Conditions** – This Agreement and the Regional District’s obligations hereunder shall be subject to the approval of the Regional District’s municipal council and the Regional District’s compliance with all requirements under the *Local Government Act* or any other enactment.

As evidence of their agreement to be bound by the above terms, the Regional District and the Tenant each have executed this Agreement on the respective dates written below:

**REGIONAL DISTRICT OF NANAIMO**

by its authorized signatories:

\_\_\_\_\_  
[name and title]

\_\_\_\_\_  
[name and title]

\_\_\_\_\_  
Date:

**CEDAR SCHOOL AND COMMUNITY ENHANCEMENT SOCIETY**

by its authorized signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Date