

LICENSE TO OCCUPY

This "**Agreement**" made the ____ day of _____ 2019

BETWEEN:

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 69 (Qualicum)
PO BOX 430; 100 JENSEN AVENUE EAST
PARKSVILLE, BC V9P 2G5

(The "**Licensor**")

AND:

PHYLLIS CARLYLE, CAO
REGIONAL DISTRICT OF NANAIMO
RECREATION
830 ISLAND HIGHWAY WEST
PARKSVILLE, BC V9P 2X4

(The "**Licensee**")

WHEREAS the Licensor is the registered owner of the lands located at the following addresses, and improvements thereon (the "**Premises**"): 330 Craig Street; Parksville, BC (Craig Street Commons) and 744 Primrose Street; Qualicum Beach, BC (Qualicum Commons);

AND WHEREAS the Licensee wishes to obtain, and the Licensor wishes to grant to the Licensee, a non-exclusive license (the "**License**") to occupy that portion of the Premises indicated on Schedule A and Schedule B attached hereto (the "**License Area**"), or such other area as may be designated by the Licensor hereunder, on the terms and conditions set forth herein.

GRANT OF NON-EXCLUSIVE LICENSE

In consideration of the covenants of the Licensee contained herein, and subject to the terms and conditions hereof, the Licensor does hereby grant the License to the Licensee. The interest granted pursuant to this Agreement constitutes a license only and does not constitute a lease or a sublease, nor create any other interest in land, nor any partnership, joint venture or agency relationship between the Licensor and the Licensee (collectively, the "**Parties**", and individually, a "**Party**").

The Licensee shall have a right of access, in common with the Licensor, over those portions of the common areas of the Premises that are reasonably required by the Licensee for proper use of the License Area. The Licensor may stipulate access limits and routes, and the Licensee shall ensure that its staff and invitees respect those stipulations.

a) **USE OF LICENSE AREA:**

This license areas are depicted in Schedule A (Craig Street Commons - Room 21) and schedule B (Qualicum Commons - Room 12) and are granted for the sole purpose of providing community recreation services programs.

The Licensee shall not use the License Area nor allow the License Area to be used for any other purpose other than that for which the License is granted, that is to say, for storage only, unless the consent in writing of the Licensor is first obtained, which consent may, in the Licensor's absolute discretion, be withheld or granted subject to conditions.

b) **TERM AND LICENSE FEES:**

Subject to early termination or renewal as may be provided herein or otherwise agreed in writing, the License shall be for a term of fifty-four (54) months commencing on the 1st day of January 2020 and ending on the 30th day of June 2024, subject to the Licensee's compliance with all the terms hereof, including timely payment to the Licensors in advance of license fees of \$2050.00 per month plus GST (\$2152.50) commencing January 1, 2020. (License Rate as Per Schedule C attached hereto.)

There shall be an option to renew for an additional sixty (60) months, subject to agreement on a license rate for the additional term.

The license fee includes a right for the Licensee to have a total of 160 hours per year of time for its exclusive use of the gymnasiums between either of two sites - Craig Street Commons and/or Qualicum Commons. These 160 hours must be used by June 30 of each year of the agreement and can be applied to either of two sites - Craig Street Commons and/or Qualicum Commons. Booking time is done on a first come first served basis through the office of the General Manager of Operations. In the management and operation of the Premises, the Licensors will not knowingly grant rights to other persons to use the Bookable Space to the point that the Licensee cannot reasonably obtain 160 hours per year to be shared between the two sites of Craig Street Commons and Qualicum Commons.

c) **NO NUISANCE:**

The Licensee shall not at any time during the said term or any renewal thereof permit anything to be done or kept on or around the License Area that shall be deemed a nuisance.

d) **COMPLY WITH LAWS:**

The Licensee shall observe, fulfill and comply at its expense with all laws, ordinances, regulations, requirements and recommendations, which may be applicable to the Licensee, or to the manner of use of the License Area, or any and all Federal, Provincial, Civic, Municipal, and other authorities and all notices in pursuance of same and whether served upon the Licensors or the Licensee. The Licensee shall save the Licensors harmless from all costs, charges or damages which the Licensors may incur or suffer by reason of the Licensee's breach of any such law, rule or regulation.

Without limiting the foregoing, the Licensee acknowledges that the Ministry of Education has introduced legislation that prohibits the use of tobacco and smoking in all School District buildings and on School District lands (the "Smoking Ban"). During the term and while the Licensee remains in possession of the Property, the Licensee will comply with the Smoking Ban and will use its best efforts to enforce the Smoking Ban on the Property.

e) **DAMAGE BY LICENSEE:**

The Licensee shall pay the cost of any damage to any property of the Licensors arising from the use of the License Area or the Licensors' property by the Licensee or its staff or invitees. Without limiting the foregoing, the Licensee shall reimburse the Licensors for costs incurred by the Licensors in making good any damage caused to the said License Area or any part thereof as a result of the negligence or willful act or omission of the Licensee, its invitees, licensees, agents, servants, clients or other persons from time to time in or about the License Area.

f) **INSURANCE:**

The Licensee shall maintain, at its own expense, property and liability insurance as the Licensors requires (minimum limits of \$5,000,000) and shall provide the Licensors with evidence of such coverage upon application of this agreement. Such coverage will include Tenants Legal Liability and will name the District as an additional insured.

The Licensee shall be responsible for securing its own property and the property of others in its care and control in the License Area, and for ensuring the safety of its staff and invitees, and hereby releases the Licensors from any and all liability whatsoever in respect thereof, except to the extent such results from the wrongful act or failure to act or negligence of the Licensors, or of the Licensors's agents or employees.

The renter shall indemnify and pay to the Board forthwith upon demand for any loss, damage or power wastage occurring to the property of the Board, either directly or indirectly as a result of the use of the facilities under the terms of this agreement.

g) **ASSIGNMENT OR SUBLICENSING:**

This Agreement and the License are personal to the Licensee and may not be assigned or sublicensed, including by succession or operation of law, except with the prior written consent of the Licensors, which may be withheld in the absolute discretion of the Licensors. In no event shall any assignment or sub-licensing release or relieve the Licensee from its obligations fully to perform all the terms, covenants and conditions of this License on its part to be performed. It is agreed that any change from the present control of the Licensee shall constitute an assignment of the License requiring the prior written consent of the Licensors.

h) **INDEMNITY OF LICENSOR:**

The Licensee shall indemnify and save harmless the Licensors (which indemnity shall survive the expiry or sooner determination of this License) from any and all liabilities, damages, costs, claims, suits, or actions, including all costs and actual legal fees and disbursements incurred, in connection with:

- (i) any breach, violation, or non-performance of any covenant, regulation, condition or agreement in this License set forth and contained on the part of the Licensee, to be fulfilled, kept, observed and performed;
- (ii) any act or omission of the Licensee;
- (iii) any damage to property while said property shall be in or about the License Area; or
- (iv) any injury to any licensee, invitee, agent or employee of the Licensee, including death resulting at any time therefrom, occurring in or about the License Area,

except to the extent such results from the wrongful act or failure to act or negligence of the Licensors, or of the Licensors's agents or employees.

i) **CONDITION OF LICENSE AREA, REPAIRS AND MAINTENANCE:**

The Licensee hereby accepts the License Area on an "as is" basis, subject to leasehold improvements as agreed upon in writing, and the Licensee shall, during the said term and any extension thereof, sufficiently repair, maintain, and keep all improvements on the License Area in good repair. All costs pertaining to leasehold improvements will be charged to the Licensee.

j) **ALTERATIONS AND INSTALLATIONS:**

The Licensee shall not make any alterations, repairs, installations, removals or improvements in or about the License Area or the improvements thereon without the Licensor's prior written consent, in the Licensor's absolute discretion, as to suitability and acceptability and only after having submitted adequate plans and specifications thereof to the Licensor. Such consent shall be at the approval of the Director of Facilities of the Licensor, and in the event of such consent, all work shall be done in good and workmanlike manner to a standard acceptable to the Director of Facilities of the Licensor.

k) **FIXTURES:**

At the expiration of the term hereby granted or if the License shall be otherwise terminated, all improvements erected or placed upon the License Area by the Licensee and all fixtures in or about the License Area placed by the Licensee shall be removed by the Licensee.

The Licensor shall have the right upon the termination of this License by effluxion of time or otherwise to require the Licensee by notice in writing, to remove the chattels and equipment located on the License Area and if the Licensee does not remove its personal property forthwith after written demand, the Licensor shall not be responsible for any loss or damage to such property because of such removal.

l) **LIENS AND ENCUMBRANCES:**

The Licensee covenants to forthwith discharge any liens and other encumbrances at any time filed against the License Area arising by reason of any work done or materials supplied at the direction of the Licensee, and to keep the said License Area free from any and all liens and other encumbrances, arising as a result of its acts or omission, and if the Licensee fails to do so, the Licensor may, but shall be under no obligation, to pay into court, the amount required to obtain a discharge of any such lien in the name of the Licensee and any amount so paid together with all disbursements and costs in respect of such proceedings on a solicitor and client basis shall be forthwith due and payable by the Licensee to the Licensor as additional license fees. The Licensee shall allow the Licensor to post and keep posted on the License Area any notices that the Licensor may desire to post under the provisions of the *Builders Lien Act* or any other legislation.

m) **UTILITIES AND OTHER COSTS:**

The License Fee is inclusive of electric, gas, water, janitorial, and maintenance to the building envelope, garbage collection and snow removal. The Licensee shall pay and be responsible for all other costs in connection with the License Area not specifically included in the license fee. This includes: tenant insurance, room and equipment maintenance costs, internet access, leasehold improvements, repairs, assessments, painting, and all other costs, charges, outlays and expenses in connection with the License Area or any improvements thereon. Should any taxes be levied against the License Area or improvements by any authority, then the parties shall enter into a renegotiation of the Licensee fee.

n) **ACCESS, SECURITY AND PARKING:**

The Licensee shall have access to the license areas as depicted in Schedule A (Room 21) and Schedule B (Room 12) via the door directly into the license area and the main doors next to the license area. The License Fee is inclusive of security service and will ensure adequate and proper parking of vehicles to a standard acceptable to the General Manager of Operations of the Licensor.

o) **LICENSOR'S ACCESS TO LICENSE AREA:**

The Licensor shall be entitled to enter, inspect and otherwise have access to the License Area throughout the term of the License, and upon the expiration or sooner determination of the term, or of any renewal thereof, the Licensee shall forthwith peaceably vacate and cease occupancy of the License Area without notice from the Licensor.

p) **TIME:**

Time is of the essence of this Agreement.

q) **TERMINATION:**

The Licensor may terminate the License on one month's notice in the event of non-payment of license fees or any other default or non-performance of any covenant hereunder by the Licensee.

The Licensor may terminate the License on three months' notice in the event that the School District requires the space for School District programs.

The Licensee may terminate the License with three months' notice.

This License may be terminated at any time by mutual agreement.

r) **ENTIRE AGREEMENT:**

This Agreement contains the entire agreement between the Parties. There are no other conditions, representations or warranties, express or implied, by either of the Parties to the other, and no amendment or addition hereto shall be valid unless set out in writing and executed on behalf of each of the Parties.

s) **NOTICES:**

Any notice, request, demand, direction or statement required or permitted to be given hereunder, shall be sufficiently given if mailed in Canada by registered mail, postage prepaid, to the appropriate Party at the address first set out above for that Party, or such other address as may be designated by written notice given by that Party to the other Party in accordance with this provision.

Any notice mailed as aforesaid shall be conclusively deemed to have been received on the third business day following the day on which such notice is mailed as aforesaid.

t) **REGISTRATION:**

The Licensee shall not in any circumstances apply to register this License or any other interest or notice of interest against or in respect of the License Area, the Premises or any part thereof. The Licensee further covenants not to mortgage or otherwise encumber this License or any interest hereunder.

u) **EXPROPRIATION:**

During the term of this License, if the whole of the License Area shall be expropriated, or otherwise taken by virtue of any power or authority having the power for such acquisition or condemnation, then the term of this License shall be deemed terminated from the date of entry of such authority without any liability to the Licensor or recourse by the Licensee to the Licensor whatsoever including, without limitation, for any refund of prepaid license fees or for any costs or damages.

Notwithstanding the foregoing, the Licensor shall refund all prepaid License Fees related to any period after the date of entry of the expropriating authority.

Additionally, nothing herein contained shall prevent the Licensor nor the Licensee or both from recovering damages from such authority for the value of their respective interests or for such other damages and expenses allowed by process of law.

v) **LIABILITY FOR DAMAGE TO PERSONS OR PROPERTY:**

The Licensor shall not be responsible in any way for any injury to any person or for the loss of or damage to any property belonging to the Licensee or to the employees, invitees, or licensees of the Licensee while such person or persons or property is in or about the buildings on the License Area or any part of the License Area, and the Licensee covenants to indemnify the Licensor against all loss, costs, claims or demands in respect of any injuries, loss or damage referred to in this paragraph.

w) **OVERHOLDING:**

If the Licensee continues to occupy the License Area with the express consent of the Licensor after the expiry of the term of this License without any further written agreement, the Licensee shall be a monthly licensee on the terms and conditions herein set out.

x) **COMMENCEMENT:**

The covenants expressed herein shall be binding on the Parties from the commencement of the term set out herein notwithstanding the dates of execution of this Agreement by the Parties.

y) **ENUREMENT:**

All of the provisions of this License shall be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

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

LICENSOR:



Ron Amos, CPA, CMA
Secretary-Treasurer
School District No. 69 (Qualicum)
250-248-4241


Witness

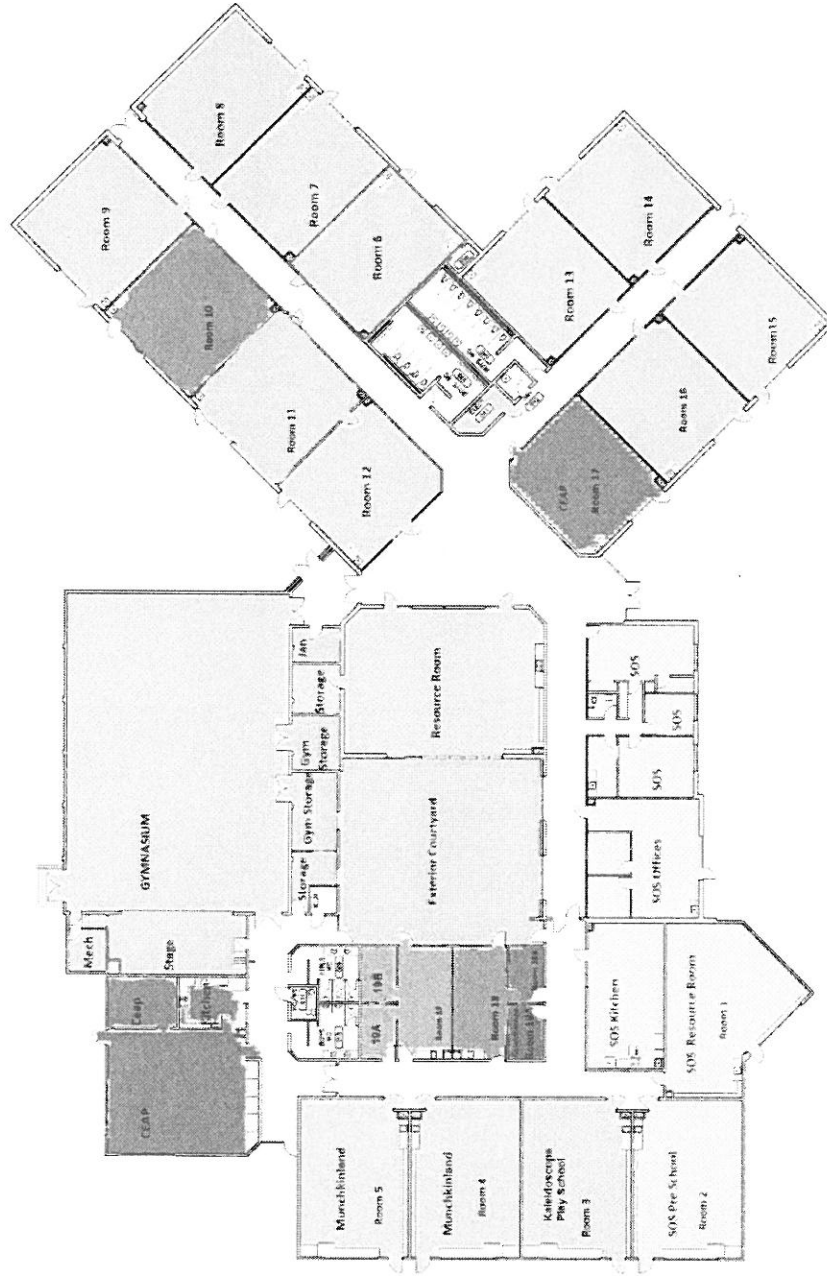
LICENSEE:

Phyllis Carlyle, CAO
Recreation Services
Regional District of Nanaimo
250-248-3252

Witness

The floor plan illustrates the layout of Parkville Middle School. A central corridor provides access to various rooms. On the left, a series of classrooms (Rooms 1-15) are arranged, with Rooms 14 and 15 designated as 'RON'. To the right, the plan includes a large Library, Library Storage, and a Gym. Other areas include a Cafeteria, several restrooms, and specialized rooms like 'Parkville Neutronics' and 'Parkville Storage'. The building's layout is designed to facilitate both individual classroom activities and larger group gatherings in the library and gym.

SCHEDULE B
 DIAGRAM OR DESCRIPTION OF LICENSE AREA (QUALICUM COMMONS)



SCHEDULE C
MONTHLY LICENSE FEES
CRAIG STREET COMMONS AND QUALICUM COMMONS

Monthly License Fee	\$2050.00*
GST @ 5%	<u>\$102.50</u>
Total Monthly Fee	<u>\$2152.50</u>

***License Fee will include free use of the gymnasium for up to a total of 160 hours per year to be used between the two sites – Craig Street Commons and/or Qualicum Commons - which must be booked through the Operations & Maintenance Department.**

Note: All costs pertaining to leasehold improvements will be charged to the Licensee.