

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") dated this \_\_\_\_ day of \_\_\_\_\_, 2019.

### BETWEEN:

**REGIONAL DISTRICT OF CENTRAL OKANAGAN**, a regional district continued under the Local Government Act, RSBC 1996, c 323, with an address at 1450 K.L.O. Road, Kelowna, British Columbia, V1W 3Z4

("RDCO");

### AND:

**THE CLUBHOUSE CHILD CARE CENTRE**, with an address at 839 Sutherland Avenue, Kelowna, British Columbia, V1Y 5X4

("Clubhouse");

### 1. **DEFINITIONS**

In this Lease:

(a) **"Additional Costs"** means the following operating costs:

- (i) other than as otherwise set out herein, all costs and expenses from time to time incurred by or levied on the RDCO in respect of maintaining, cleaning, heating, lighting, air conditioning and ventilating the Building and fixtures and appurtenances thereof and any improvements thereto;
- (ii) all utility charges from time to time levied on the Building, including but not limited to water and sewer; and

but excluding the RDCO's required repairs as set out in paragraph 6(b) and any other items not expressly included to be the responsibility of the Clubhouse in this paragraph 1(a) or otherwise in this lease.

(b) **"Building"** means the building which is shown in yellow on Schedule A located on the Lands;

(c) **"Lands"** means the property at 4711 Raymer Road, Kelowna, BC and legally described as: Lot C, District Lot 580A SDYD Plan 1775;

(d) **"Leased Premises"** means the building and the area outlined in red on the Lands all, as shown on attached Schedule A;

(e) **"MOU"** means the Memorandum of Understanding made by the parties and dated April 11, 2019;

(f) **“RDCO Bylaws”** means Regional District of Central Okanagan Bylaw No. 1427, 2018 appended hereto as Schedule B, as amended, replaced or supplemented from time to time;

(g) **“Rent”** means the rental described in paragraph 4 herein.

**2. DEMISE**

In consideration of the grants, rents, and mutual covenants hereinafter reserved and contained, the RDCO does lease to the Clubhouse the Leased Premises.

**3. TERM**

The Clubhouse may occupy the Leased Premises from May 1, 2019 to and including April 30, 2022 (the “Term”).

**4. RENT**

(a) The rent shall be the total sum of \$1.00/year.

(b) The Clubhouse shall, upon execution of this Lease, prepay to the RDCO the rent in its entirety in the sum of \$3.00.

**5. CLUBHOUSE’S COVENANTS**

Clubhouse covenants with the RDCO as follows:

(a) To pay promptly all charges for gas, electricity, internet, cable, telephone services, fuel and any other utilities supplied to or used by the Clubhouse or consumed in the Leased Premises;

(b) To keep the Leased Premises in a neat and tidy condition and free from pests, insects and vermin and to provide the Clubhouse’s own janitorial services for maintaining the condition of the Leased Premises;

(c) Except for repairs that are the responsibility of the RDCO as set out in this Lease, to keep and maintain in good repair the Leased Premises and all fixtures, fittings and improvements therein. From time to time the RDCO may enter and view the state of repair. Clubhouse will repair according to notice; however, failure of the RDCO to give notice shall not relieve the Clubhouse from its obligation to keep and maintain in good repair;

(d) If the Clubhouse fails to repair in accordance with these provisions, the RDCO, its agents or employees may enter the Leased Premises and make the required repairs and for that purpose the RDCO may bring and leave upon the Leased Premises all necessary tools, materials and equipment. The RDCO shall not be liable to the Clubhouse for inconvenience, annoyance or loss of business or any injury or damages suffered by the Clubhouse by reason of the RDCO effecting such repairs, unless caused by the negligence of the RDCO, and the cost of such repairs shall be borne by the Clubhouse, who shall pay such costs to the RDCO forthwith upon demand;

(e) To keep the Leased Premises adequately heated to prevent damage from frost or freezing;

- (f) Not to allow any waste or damage, disfiguration or injury to the Leased Premises;
- (g) Not to allow on to the Leased Premises any land fill, environmentally sensitive substances, P.C.B.'s, toxins or any other materials or substances which will or may materially affect the development, use or marketability of the Leased Premises or the Lands'
- (h) To notify the RDCO immediately if the Clubhouse becomes aware of any damage by fire or accident in the Leased Premises or any malfunctioning of any heating, electrical, plumbing, mechanical or ventilating system in the Building;
- (i) Not to make any alterations or additions to the Leased Premises without obtaining the RDCO's prior written consent, such consent not to be unreasonably withheld or delayed;
- (j) The Clubhouse shall be responsible for any loss or damage whatsoever caused to the Building owing to the leakage or escape of any water, gas or other substances from machinery or equipment installed or put therein by the Clubhouse whatsoever;
- (k) To seek approval and a permit from the RDCO for special events and gatherings outside of normal operations;
- (l) To comply at its own expense with all the requirements of federal, provincial and municipal laws and by laws relating to the Leased Premises;
- (m) Not to allow any liens to attach to the Lands;
- (n) To implement a double locking system on any gate so that each of the Clubhouse and RDCO can use their own key to open the gate(s) without the participation of the other and RDCO's access to the Leased Premises shall be on the terms and conditions set out in this Lease. RDCO shall be responsible for the cost of the double-locking system;
- (o) To deliver up the Leased Premises upon the expiry of the Term, or any renewals thereof, or such other earlier termination of this Lease;
- (p) The Clubhouse further covenants that it will not, upon expiration or sooner termination of this Lease, leave upon Leased Premises any rubbish or waste materials and will leave the Leased Premises in a clean and tidy condition;
- (q) To indemnify and save harmless the RDCO from and against any and all actions, claims, costs, expenses, damages, losses or fines incurred or suffered by the RDCO by reason of:
  - (i) any breach, violation, non-observance or non-performance by the Clubhouse of any of the Clubhouse's obligations set out in this Lease;
  - (ii) damage or injury to persons or property arising from any acts or omission of the Clubhouse or any sub tenant, agent, contractor, employee, invitee or licensee of the Clubhouse;
  - (iii) the RDCO observing, performing, exercising or enforcing any covenant, agreement, right or remedy of the RDCO hereunder.

Notwithstanding any other provision in this Lease, the parties agree that the Clubhouse shall not be responsible for any loss, damage or breach of this Lease if such event occurs as a result of a person who is not an invitee or a person permitted by the Clubhouse to be on the Leases Premises and is not someone for whom the Clubhouse is responsible in law.

- (r) To maintain the access portion of the Leased Premises including snow removal and yard cleanup, but excluding tree maintenance described in paragraph 6(f); and
- (s) To allow RDCO unrestricted access along the road which is part of the Leased Premises for RDCO's maintenance activities in the park, provided however;
  - (i) RDCO's use of the road is reasonable and does not interfere with the Clubhouses use and enjoyment of the leased Premises.

## **6. RDCO'S COVENANTS**

Subject to the terms and provisions of this Lease, the RDCO covenants with the Clubhouse as follows:

- (a) That provided the Clubhouse pays the Rent hereby reserved and observes and performs all the Clubhouse's obligations herein and subject to the other provisions herein contained the Clubhouse may peaceably possess and enjoy the Leased Premises for Term herein granted;
- (b) To arrange for, at the RDCO's cost, any required structural repairs to the building and to be responsible for replacement of all heating, plumbing, ventilation systems, appliances and for any repairs to any of the above which exceed \$500.00 unless such repairs are as a result of any negligence caused by the Clubhouse or the Clubhouse's invitees, or the failure of the Clubhouse to effect repairs as required in paragraph 5 of this Lease;
- (c) To pay when due all real property taxes levied on the Lands;
- (d) To erect signage around the perimeter of the Leased Premises where it borders on RDCO designated park land and at the beginning of the entranceway which signage states "Treehouse Forest Preschool. RDCO does hereby grant to the Clubhouse the right to erect signs on the Leased Premises as it sees fit which make clear that the Clubhouse has exclusive possession to the Leased Premises from 8:00 a.m. to 4:00 p.m. and that anyone entering the Leased Premises without the Clubhouse's invitation or consent will be in trespass;
- (e) Agrees to enforce to the full extent of its authority any breach by any person of the Clubhouse's exclusive and quiet possession of the Leased Premises granted under this Lease; and
- (f) To perform all tree maintenance activities within the Leased Premises on trees with a diameter of 150 mm or greater, and to provide pruning of plants in the Leased Premises, once at spring flush if required.

## **7. LANDLORD INSURANCE**

The RDCO covenants to effect and maintain property insurance on the Building, for and against such insurable perils and in amount for which a prudent landlord would protect itself but excluding all Clubhouse's fixtures, machinery, and equipment.

**8. CLUBHOUSE INSURANCE**

- (a) The Clubhouse covenants to purchase and maintain in force during the Term, insurance against those risks, in such forms and amounts as the RDCO may from time to time reasonably require, including, without limitation, the following:
- (i) all risk property insurance on Clubhouse's fixtures, machinery and equipment in an amount of not less than the full replacement costs thereof;
  - (ii) commercial general liability insurance, including tenants' legal liability coverage, with limits not less than \$5,000,000.00 per occurrence;
  - (iii) Clubhouse Commercial General Liability insurance will include RDCO as an Additional Insured, with respect to liability arising out of the use and occupancy of the Leased Premises by the Clubhouse or any sub-tenant, agent, contractor, employee, invitee or licensee of the Clubhouse.
- (b) The Clubhouse shall obtain from the Insurers, undertakings to notify the RDCO in writing at least 30 days prior to any material change or cancellation thereof. The Clubhouse shall furnish the RDCO a certificate of insurance as evidence of the required coverage and shall provide written evidence of the continuation of such policies not less than 10 days prior to their expected expiry dates. The cost or premium for each and every such policy shall be paid by the Clubhouse.

**9. NO EFFECT ON INSURANCE**

Clubhouse covenants not to do or omit, or permit to be done or omitted, upon the Leased Premises anything whereby any policy of insurance effected by the RDCO or Clubhouse pursuant to this Lease may be invalidated, or the coverage thereunder reduced or the premium thereon may be increased.

**10. USE OF LEASED PREMISES**

The Clubhouse covenants to use the Leased Premises solely for the purposes described in the MOU.

**11. ACCESS TO LEASED PREMISES TO REPAIR, ETC.**

The RDCO shall have the right at all reasonable times to enter on the Leased Premises to effect repairs, alterations, improvements or additions to the Leased Premises or the Lands, or to preserve either of them from injury or damage. No such entry or work shall constitute an eviction of the Clubhouse.

**12. LANDLORD MAY ENTER FORCIBLY**

If the Clubhouse shall not be personally present to open and permit entry or does not permit entry to the Leased Premises at any time when for any reason entry therein shall be necessary or permissible, the RDCO, its agents, employees or contractors may enter the Leased Premises by a master key or forcibly without rendering the RDCO or such agents, employees or contractors liable therefor and without any manner affecting the obligation or covenants of the Clubhouse herein, The RDCO shall, however, prior to such forcible entry make reasonable efforts to contact and notify the Clubhouse.

**13. NO REPRESENTATIONS**

Clubhouse agrees that no representation, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the RDCO unless in writing and signed on behalf of the RDCO.

**14. DAMAGE OR DESTRUCTION**

If the Leased Premises are damaged by fire or other casualty, then:

- (a) the rent, but not the Additional Costs, shall be abated in whole until such damage is repaired;
- (b) if the Leased Premises are so damaged that they are not capable of being restored to normal usage within 60 days of the occurrence of such damage, the RDCO shall forthwith advise the Clubhouse in writing (the "Damage Notice") and following such notice, both the RDCO and the Clubhouse shall have the option of terminating this Lease by giving the other written notice within 15 days of the RDCO delivering the Damage Notice to the Clubhouse. If either party so terminates the Lease, the Clubhouse shall vacate the leased Premises and surrender them to the RDCO as soon as reasonable possible and without further obligation to pay Rent but without affecting the Clubhouse's obligation to pay any outstanding Rent up to the time of such termination. If neither party terminates this Lease within the time provided herein, the RDCO shall promptly repair the Leased Premises to a standard equivalent to or superior to that which existed immediately before such damage.

**15. DEFAULT OF CLUBHOUSE**

If:

- (a) the Rent or any part thereof shall not be paid on the day appointed for payment whether lawfully demanded or not, and such non-payment shall continue for seven days;
- (b) there is breach or non-observance or non-performance of any of the obligations on the part of the Clubhouse to be kept, observed or performed, and such breach is not remedied or Clubhouse has not commenced action to so remedy within 10 days of Clubhouse's receipt of written notice of the breach,

then, and in every such case, it shall be lawful for the RDCO without notice to terminate this Lease.

**16. NON WAIVER**

No condoning, excusing or overlooking by the RDCO of any default, breach or non-observance by the Clubhouse at any time or times in respect of any obligation of the Clubhouse herein contained shall operate as a waiver of the RDCO's right hereunder in respect of any continuing or subsequent default, breach or non-observance.

**17. PAYMENTS BY CLUBHOUSE**

Without prejudice to any of the remedies of the RDCO herein, any money payable by the Clubhouse to the RDCO hereunder, other than the Rent referred to in paragraph 4 hereof, and without limiting the generality of the foregoing, including all money payable under paragraph 6 hereof, shall be deemed to be Rent and shall be paid as additional rent and shall be collectable as Rent and unless otherwise provided for in this Lease shall be payable either on demand or when stated herein to be due or if so stated and arising from payments made by the RDCO, then the same shall be due and be paid with the monthly instalment of Rent following the date the payment was made by the RDCO.

**18. LANDLORD MAY CURE CLUBHOUSES'S DEFAULT**

If the Clubhouse shall fail to perform or cause to be performed each and every of the obligations of the Clubhouse hereunder, the RDCO shall have the right (but shall not be obligated) to perform or cause to be performed the same and all payments, expenses, costs and levies incurred or paid by the RDCO in respect thereof shall be paid to the RDCO immediately on demand.

**19. NOTICE AND PAYMENTS**

Any notice required by this Lease shall be given to the RDCO at its address herein set out, and to the Clubhouse at the Leased Premises. The time of receipt of such notice shall be conclusively deemed to be the third business day after they day of mailing or if delivered by hand then when delivered. Provided that nay party may, by notice to the other, from time to time designate another address to which notices shall be addressed.

**20. ENTIRE AGREEMENT**

The provisions herein contained and the MOU defined in paragraph 1(e) and made between the parties shall constitute the entire agreement between the parties regarding the Lands and supersede all previous communications, representations, understandings, and agreements, whether verbal or written between the parties with respect to the subject matter thereof. In the event of any conflict or discrepancy between this Lease and the Memorandum of Understanding, the terms of this Lease shall prevail.

**21. HEADINGS**

The headings to the paragraphs of this Lease are for convenience only and shall not constitute part of this Lease.

**22. TIME**

Time shall be of the essence of this Lease.

**23. SUCCESSORS**

All rights and liabilities herein given to or imposed upon, the respective parties hereto shall extend to and be binding on their respective heirs, executors, administrators, successors and permitted assigns.

**24. INTERPRETATION**

In this Lease, except where otherwise expressly provided or unless the contract otherwise requires, words importing the masculine gender include the feminine and neutral gender and vice versa and words in the singular include the plural and vice versa.

**25. COUNTERPARTS/ELECTRONIC**

This Lease and any certificate or other writing delivered in connection with this Lease may be executed in any number of counterparts and any party to this Lease may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Lease or such other writing, as the case may be, taken together will be deemed to be one and the same instrument. The execution of this Lease or any other writing by any party will not become effective until all counterparts, as the case may be, have been executed by all the parties to this Lease. A copy of this Lease delivered by facsimile or other electronic means and bearing a copy of the signature of a party to this Lease shall for all purposes be treated and accepted as an original copy thereof.

**26. TERMINATION**

This Lease may be terminated by either party on not less than 90 days' notice to the other.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first set out above.

**REGIONAL DISTRICT OF CENTRAL OKANAGAN**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**THE CLUBHOUSE CHILD CARE CENTRE**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title: