

## AMENDING AGREEMENT

THIS AGREEMENT dated as of the 30<sup>th</sup> of June, 2022.

BETWEEN:

REGIONAL DISTRICT OF CENTRAL OKANAGAN, having offices at  
1450 K.L.O. Road, in the City of Kelowna, in the Province of British Columbia

(the "Regional District");

OF THE FIRST PART

AND:

THE TRUSTEES OF THE GELLATLY CEMETERY, of 3626 Yorkton Road  
in the City of West Kelowna, in the Province of British Columbia

(the "Trustees");

OF THE SECOND PART

WHEREAS:

- A. The Regional District owns a property located on Gellatly Road, West Kelowna, British Columbia, more particularly known and described as PID 004-856-881 Lot 1 District Lot 487 ODYD Plan 37173 Except Plan 40684 (the "Regional Park");
- B. The Trustees own and operate a cemetery located on Gellatly Road, West Kelowna, British Columbia, more particularly known and described as PID 011-030-526 Lot A District Lot 487 ODYD Plan 2217 (the "Cemetery");
- C. By a partnership agreement entered into on February 24, 1999 (the "Partnership Agreement"), the Regional District and the Trustees agreed on terms and conditions of operating and maintaining the Regional Park and the Cemetery as if they were one parcel of land; and
- D. The Regional District and the Trustees have reached an agreement on terms and conditions that modify the Partnership Agreement and wish to record such changes in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and of the mutual covenants and Agreements herein contained, the parties hereto covenant and agree each with the other as follows:

### 1.0 INTERPRETATION AND DEFINITIONS

1.1 Upon execution of this Agreement by both parties, the terms and conditions of this Agreement shall modify the terms and conditions of the Partnership Agreement.

1.2 To the extent that the terms and conditions of this Agreement do not alter the terms and conditions of the Partnership Agreement, the terms and conditions of the Partnership Agreement shall continue in full force and effect.

1.3 Where the following capitalized words and phrases are used in this Agreement, they shall have the following meanings:

- 1.3.1 “Caretaker House” means the house and associated garage which is situated within the Regional Park and identified in Schedule “A” of the Partnership Agreement;
- 1.3.2 “Fixed Term Tenancy” means a sublease agreement for the Caretaker House, entered into on the terms and conditions set out in Article 3.0;
- 1.3.3 “RTA” means the *Residential Tenancy Act*, SBC 2002, c. 78, as amended or replaced from time to time; and
- 1.3.4 “Subtenant” means a person who subleases the Caretaker House from the Trustees, in compliance with this Agreement.

## 2.0 TERM

2.1 The term of the Partnership Agreement shall continue for another three (3) years, ending on the 31<sup>st</sup> day of July, 2025 (the “Term”).

2.2 Provided that the Partnership Agreement has not been previously terminated, the parties agree that either party may provide written notice of intention to renew at least one (1) year prior to the expiration of the Term. In the event of exercising this notice, the Regional District and the Trustees shall meet as soon as reasonably possible thereafter with the intent of completing any renewal of the Term at least six (6) months prior to the expiration of the Term.

## 3.0 LEASE OF CARETAKER HOUSE

3.1 The parties agree that the Caretaker House and all improvements located within the boundaries of the Regional Park belong to the Regional District.

3.2 Subject to compliance with the terms and conditions of this Agreement, the Trustees may sublease the Caretaker House to a Subtenant under a Fixed Term Tenancy, who assists the Trustees in complying with their obligations under the Partnership Agreement, as amended by this Agreement.

3.3 The following are conditions precedent to the Trustees entering into a Fixed Term Tenancy with a Subtenant:

- 3.3.1 the Trustees must obtain the prior approval of the Regional District as to the identity of the Subtenant; and
- 3.3.2 the Trustees must obtain the prior approval of the Regional District as to the form and content of the sublease agreement creating the Fixed Term Tenancy.

3.4 The Trustees agree that the form and content of any sublease agreement which creates a Fixed Term Tenancy must include:

- 3.4.1 a specific agreement of both the Subtenant and the Trustees that the term of the Fixed Term Tenancy ends on a specific date, which must not exceed one year in length;
- 3.4.2 that the subtenancy created thereby ends on the last day set out in the agreement;
- 3.4.3 an agreement by the Subtenant that they shall keep a maximum of two (2) domestic pets not to exceed a weight of 12 kg (26.4 lbs) each contained within the premises; and
- 3.4.4 the Subtenant's acknowledgement of the impact of activity in the Regional Park on quiet enjoyment of residing in the Caretaker House.

#### 4.0 TRUSTEES' AGREEMENTS

4.1 The Trustees shall do the following:

- 4.1.1 have the day-to-day custody of the Caretaker House, with obligations to pay all the costs of utilities including electricity, water, sewer, garbage collection, natural gas, telephone, internet, television (cable) and site maintenance, including snow removal for the driveway from the parking lot to the Caretaker House;
- 4.1.2 permit the Regional District, with the minimum notice required under the RTA, to inspect the Caretaker House with such experts and technical personnel as the Regional District deems necessary;

4.1.3 immediately report to the Regional District, the following that they become aware of in the Regional Park or the Cemetery:

- (a) accidents;
- (b) incidents of major vandalism;
- (c) theft of equipment; or
- (d) any unsafe conditions;

4.1.4 lock and unlock the entrance gate to the Regional Park daily to ensure that the public has restricted access to the Regional Park or the Cemetery during regular facility operational hours as follows:

	<u>Open</u>	<u>Close</u>
January 1 to February 28	6:00 am	6:00 pm
March 1 to May 31	6:00 am	9:00 pm
June 1 to August 31	6:00 am	11:00 pm
September 15 to October 14	6:00 am	9:00 pm
October 15 to December 31	6:00 am	6:00 pm

4.1.5 shall pay all maintenance costs without limitation arising from the operation of the Caretaker House and shall pay capital replacement costs for all affiliated non operable or functioning capital asset items that have a replacement value cost of up to seven hundred and fifty dollars (\$750), all affiliated non operable or functioning capital asset items with a replacement value cost in excess of seven hundred and fifty dollars (\$750) arising from the operation of the Caretaker House will be the responsibility of the Regional District;

4.1.6 make every attempt to prevent any builders' liens for work, labour, services or materials ordered by Trustees, or for the cost of which Trustees may be in any way obligated during the term of this Agreement, to attach to the Caretaker House;

4.1.7 allow the Regional District to post and keep posted on the premises any notice that the Regional District may wish to post under the provisions of the Builders Lien Act or any legislation that may replace such Act; and

4.1.8 obtain and keep current, a policy or policies of general public liability insurance against claims for bodily injury, death or property damage arising out of the operation of the Caretaker House by Trustees in an amount not less than Five Million (\$5,000,000.00) dollars per single occurrence or such greater amounts as the Regional District shall require, as **additional insured** party thereto, and shall provide the Regional District with a certified copy of such policy or policies.

5.0 CONDITION OF PREMISES

5.1 The Trustees agree that, upon expiry or earlier termination of the Term, the Trustees shall leave the Caretaker House in the same or like condition as it was on the date of this Agreement, subject to normal wear and usage.

6.0 INDEPENDENT CONTRACTOR

6.1 Nothing in the Agreement constitutes Trustees as an agent for the Regional District for the purpose of incurring an expense to the Regional District of any nature or kind whatsoever. Further, the parties hereto agree that nothing contained herein shall deem Trustees to be the agent of the Regional District and the Trustees shall be an independent contractor in the performance of its obligations hereunder.

7.0 RENT

7.1 Any monies received for rent of the Caretaker House under a Fixed Term Tenancy shall be divided between the Regional District and the Trustees such that the Regional District receives 60% of the rent paid by a Subtenant and the Trustees receive 40% of the rent paid by a Subtenant. The RDCO's 60% share of the annual rent funds for a period extending between July 1<sup>st</sup> – June 30<sup>th</sup> of each year will be transferred to the RDCO on an annual basis prior by July 31<sup>st</sup>.

7.2 It is agreed by the Regional District and the Trustees that the rent to be charged to a Subtenant under a Fixed Term Tenancy shall be equal to a value that was equivalent to 30% of the "Other Secondary Rented Unit" rate as it was determined by the CMHC in its 2018 Primary Rental Market Report applicable to the Central Okanagan. From 2018 - 2021 the monthly rent value was identified as being =  $\$1738.33 \times 30\% = \$521.50$  per month. The annual rent charged to a Subtenant under a Fixed Term Tenancy from July 1<sup>st</sup> – June 30<sup>th</sup> for each year shall be adjusted (increased) on an annual basis as per the "maximum allowable rent increase" identified by the Province of BC's Residential Tenancy Act - Residential Tenancy Regulation. The annual rent charged to a Subtenant under a Fixed Term Tenancy from July 1<sup>st</sup>, 2022 – June 30<sup>th</sup>, 2023 shall be \$529.32 per month which is identified as a 1.5% increase under the Province of BC's annual allowable rent increase for 2022. Beginning in 2023, the Trustees shall provide the Tenant with a minimum of three (3) months notice of any annual rent adjustment (i.e. prior to March 31<sup>st</sup> of each year)

7.3 The Trustees and the Regional District agree that any rent received from a Fixed Term Tenancy as detailed in Section 7.1, shall be dealt with on the following basis:

7.3.1 the Regional District shall receive its share of the rent which it shall hold as a reserve to be used for long term capital obligations in relation to maintaining the Caretaker House; and

7.3.2 the Trustees shall receive their share of the rent to be used on an as needed or as mutually agreed with the Regional District for site maintenance related to the Cemetery.

#### 8.0 PHYSICAL CHANGES

8.1 The Trustees shall not undertake any structural changes or additions to the Caretaker House without the prior written approval of the Regional District.

#### 9.0 TERMINATION

9.1 This Agreement shall forthwith terminate, at the option of the Regional District:

9.1.1 in the event of bankruptcy, dissolution or winding up of the Trustees; or

9.1.2 if the Trustees fail to abide by the terms of this Agreement and remain in breach of this Agreement after receiving thirty (30) days notice in which to rectify said breach; or

9.1.3 if, at any time, the contract is assigned to any other persons without the written consent of the Regional District.

10.0 NOTICE

10.1 Any notice or correspondence to be given hereunder may be given by first class prepaid registered mail addressed as follows:

To Regional District:

Director of Park Services  
Regional District of Central Okanagan  
1450 K.L.O. Road  
Kelowna, BC, V1W 3Z4  
Email: parks@rdco.com

To Trustees:

Chairman – Trustees of the Gellatly Heritage Cemetery  
3626 Yorkton Road  
West Kelowna, BC, V4T 1C4  
Email: haller.a.d@gmail.com

Any notice given shall be deemed to have been received by the date addressed on the third (3rd) day next following the date of delivery of same into the custody of a Canadian post office at the point of mailing.

11.0 COUNTERPARTS

11.1 This Agreement may be executed in as many counterparts as may be necessary or by telecopy or other means of electronic transmission of documents and each such counterpart agreement or electronically transmitted copy so executed shall be deemed to be an original and such counterparts and electronically transmitted copies together shall constitute one and the same instrument.

11.2 [*Remainder of this page is blank – signature page follows*]

IN WITNESS TO THIS AGREEMENT the parties have duly executed this Agreement as of the day and year first above written.

REGIONAL DISTRICT OF CENTRAL OKANAGAN

By: \_\_\_\_\_  
Authorized Signatory

Print Name \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

Print Name \_\_\_\_\_

Executed and delivered under seal by the )  
Trustees of the Gellatly Cemetery: )

\_\_\_\_\_)  
Chairman )  
Print Name \_\_\_\_\_ )

\_\_\_\_\_)  
Trustee )  
Print Name \_\_\_\_\_ )