

Attachment # 1

**License Agreement between
the City and Early Steps Daycare**

PLAYGROUND LICENSE AGREEMENT

THIS AGREEMENT dated for reference April 1, 2023 is

BETWEEN:

CORPORATION OF THE CITY OF NEW WESTMINSTER, a municipal corporation having an address at 511 Royal Avenue, New Westminister, British Columbia, V3L 1H9

(the "City")

AND:

1252530 BC Ltd., a corporation incorporated in British Columbia under number BC01252530 and having an address at 601 Queens Avenue, New Westminister, BC, V3M 1L1

(the "Licensee")

GIVEN THAT:

- A. The City is the owner of Queens Avenue, New Westminister and more particularly, the portion of Queens Avenue, situated south of 601 Queens Avenue. (the "Land");
- B. The Licensee currently operates a day care facility on neighbouring land located at 601 Queens Avenue, New Westminister, British Columbia (the "Neighbouring Lands");
- C. The Licensee wishes to license those certain portions of the Land outlined in bold on the sketch attached as Attachment "A" (the "Premises"), and the City wishes to grant a license of the Premises to the Licensee, on the terms and conditions set out in this Agreement;

THIS AGREEMENT is evidence that in consideration of the mutual promises contained in this Agreement and the payment of \$1.00 by the Licensee to the City (the receipt and sufficiency of which the City acknowledges), the parties covenant and agree as follows:

2. **License of Premises** – The City hereby grants to the Licensee a license (the "License") to enter upon, use, and occupy the Premises for the Term, on the terms and conditions of this Agreement and for the purposes set out in this Agreement. The License granted hereby includes a license to enter upon and cross over the Land as may be reasonably necessary for the purpose of accessing the Premises.

3. **Play Equipment** – The Licensee will provide, maintain and use, play equipment, suitable for the use of the Premises as a day care facility and construct and maintain a fence along the perimeter of the Premises (together, the "Play Equipment") for the duration of the Term, exclusively and at its own risk, which Play Equipment was installed by and is owned by the Licensee. The Licensee acknowledges that the City is not responsible for and has not made any

representations or warranties regarding the condition, location, operation, or safety of the Play Equipment. The Licensee is solely responsible for the condition of the Play Equipment and the Licensee shall maintain and repair the Play Equipment throughout the Term and shall do everything necessary to ensure that the Play Equipment is safe for use by the Licensee and its permittees, including children. The Licensee acknowledges and agrees that the Licensee maintains, uses, and operates the Play Equipment at its sole risk.

4. **Fencing** – The Licensee will construct and maintain a fence along the perimeter of the Premises, subject to the prior written approval of the City and must obtain a permit for the construction of the fence. The fence shall not have a gate onto any part of Queens Avenue. The Premises will only be accessible through 601 Queens Avenue. The City acknowledges receipt of an arborist report and tree management plan listed in section 8 (d) that describes the proposed fencing, any excavation requirements and construction practices and other details of the proposed construction of the fence. The approval of the fence construction is at the sole discretion of the City.

5. **Term** – The term of this Agreement is 5 years (the “Term”), beginning on April 1, 2023 (the “Commencement Date”) and expiring on April 1, 2028, subject to earlier termination pursuant to the terms of this Agreement.

6. **License Fee** – The Licensee shall pay the City an annual license fee in the amount of \$1075.00 (the “License Fee”). The fee is based on the unit cost rate of \$26.91/m². (\$2.50/ft²) referenced in the Street and Sidewalk Patio Bylaw No. 8318, 2022. Increases to the unit cost rate will be applied to future license renewals. The License Fee is payable yearly in advance on the Commencement Date and thereafter on each anniversary of the Commencement Date. The Licensee acknowledges and agrees that the License Fee amount does not include GST or PST (as applicable) and the Licensee shall pay applicable taxes in addition to the License Fee.

7. **Purpose** – The Licensee shall only use the Premises for the purpose of operating a playground area in connection with its daycare facility on the Neighbouring Lands, and for no other purpose.

8. **City’s Use** – The Licensee agrees that the City may use the Premises, at no cost, from time to time during the Term, with the prior approval of the Licensee, which approval shall not be unreasonably withheld.

9. **Licensee's Covenants** – The Licensee covenants and agrees with the City:

- (a) to promptly pay, when due, the License Fee and any other amounts required to be paid by it under this Agreement;
- (b) not to do, suffer or permit anything in, on or from the Premises that may be or become a nuisance or annoyance to the owners, occupiers or users of land or premises adjacent to

or near the Premises or to the public, including the accumulation of rubbish or unused personal property of any kind;

- (c) to obtain the City's written approval to proceed with any activity that would required any excavation or soil disturbance whatsoever on the Land;
- (d) to protect the trees and critical root zone and all vegetation on the Premises as described in the:
 - (i) Arboricultural Report: Retention & Construction Impact Assessment for 601 Queens Avenue, New Westminster, prepared by Alpine Tree Care dated February 20, 2023 and attached as Attachment "B" (the "Arborist Report"); and the
 - (ii) 601 Queens Avenue, Tree Management Plan v1 prepared by Alpine Tree Care and attached as Attachment "C" (the "Tree Management Plan");

The City acknowledges receipt of the Arborist Report and the Tree Management Plan;

- (e) to place play structures or any other equipment on undisturbed soil only;
- (f) to ensure that the Critical Root zone of any City trees are protected by restricting the placement of the play structures or any other equipment to a minimum of 1m outside the drip line of the city trees
- (g) not to do, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the Premises;
- (h) not to levy any fees or charges for the use of the Premises or any part thereof;
- (i) to use the Premises only for the purposes set out in this Agreement;
- (j) to carry on and conduct its activities in, on and from the Premises in a good, efficient and business-like manner;
- (k) to provide all equipment, furnishings and supplies that may be required to use the Premises for its purposes;
- (l) to keep the Premises in a safe, tidy and sanitary condition;
- (m) to keep all grass and other landscaped areas on the Premises in a good condition in accordance with community standards prevailing from time to time, as determined by the City;
- (n) to take all reasonable precautions to ensure the safety of all persons using the Premises;

- (o) to keep the Premises free of any rubbish, litter and debris and keep the areas adjacent to the Premises free of any rubbish, litter and debris originating from the Premises;
- (p) to dispose of all waste and recycling materials associated with the its use of the Premises, at its own expense;
- (q) to repair and maintain the Licensee's property located within the Premises, including the Play Equipment and any other property brought into the Premises by the Licensee, so that they are at all times in a good condition and state of repair;
- (r) not permit the sale or consumption of liquor, as defined in the *Liquor Control and Licensing Act* (British Columbia), on the Premises; nor the use or consumption of cannabis products as defined in the *Cannabis Control and Licensing Act* R.S.B.C. 2018, c.26 within or around the Land;
- (s) to pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Premises and any business activity or operation conducted on or from the Premises, including without limitation, all taxes (including PST, GST and property tax, as may be applicable), levies, charges and assessments, permit and license fees, repair and maintenance costs, administration and service fees, and payments for work and materials;
- (t) to carry on and conduct its activities in, on and from the Premises in compliance with any and all laws, statutes, enactments, bylaws, regulations and orders from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on or from the Premises in contravention thereof;
- (u) not to erect or place any sign or advertising of any kind on the Premises, without the prior written approval of the City; to promptly discharge any builders lien which may be filed against the title to the Land or that might otherwise affect the Land or the Premises, and to comply at all times with the *Builders Lien Act* (British Columbia), in respect of any improvements, work or other activities undertaken in, on or to the Premises;
- (v) in the event of an emergency, that imperils the occupants or the improvements at 601 Queens Street, provide uninterrupted access to and within the license area by the City, including its employees, agents, licensees and contractors, with or without vehicles and equipment, including removal of fencing, play equipment or any other structure that impedes the City's undertaking;
- (w) as soon as weather and soil conditions permit, the City will regrade and grass any area of the Premises that the City disturbed during any emergency;
- (x) to provide the City with a Covid-19 Safety Plan and/or a Communicable Disease Safety Plan for use of the Premises and comply with the Plan(s);

10. **Maintenance by City** – Because the Premises are bare land, the City shall not be responsible for any repairs or maintenance issues associated with the Premises.
11. **Furnishings and Equipment** – The Licensee shall ensure that any furnishings or equipment it uses in the Premises are of the same standard of quality or greater as those furnishings and equipment used in related industry applications. All of the Licensee’s improvements, Play Equipment, fencing and other personal property must be removed from the Premises at the end of the Term in compliance with sections 32 and 38.
12. **Security** – The City shall have no responsibility whatsoever for the security of the Premises or the Licensee’s improvements or property on the Premises, the sole responsibility for which rests with the Licensee, and the Licensee hereby releases the City from all claims, actions, damages, liabilities, losses, costs and expenses whatsoever as may be suffered by the Licensee arising from or related to any lack of security at the Premises. The Licensee, at its sole cost, may contract its own alarm service and equipment and provide the City with the alarm codes for the Premises on the Commencement Date. The City will be responsible for providing locks for the Premises and will supply the Licensee with keys for such locks, and the City will repair and maintain such locks upon notice from the Licensee that such repair or maintenance is required.
13. **Weekend Restrictions** – The Licensee shall not use or conduct any activities in the Premises, in any capacity, on weekdays before 7:00 am or after 7:00 pm or anytime on weekends without written permission from the Director of Engineering.
14. **Liaison** – The Licensee shall appoint a liaison to work with the Director of Engineering and the Licensee shall notify the City of the name of its liaison upon execution of this Agreement.
15. **Acknowledgment and Agreements of the Licensee** – The Licensee acknowledges and agrees that:
- (a) the City has given no representations or warranties with respect to the Premises including, without limitation, with respect to the suitability of the Premises for the Licensee’s intended use;
 - (b) the Licensee accepts, uses, and occupies the Premises on an “as is” basis and the City has not made any representations, warranties or agreements as to the condition of the Premises (including subsurface nature or condition of the Premises or the environmental condition of the Premises);
 - (c) it is the sole responsibility of the Licensee to satisfy itself with respect to the environmental conditions of the Premises (including subsurface nature or condition of the Premises or the environmental condition of the Premises), including, without limitation, by conducting any reports, tests, investigations, studies, audits and other inquiries as the Licensee, in its sole discretion, considers necessary in order to satisfy itself as to the condition of the Premises; and

(d) the City may, on 60 days' written notice to it, terminate this Agreement if the City requires the Land for any purpose.

16. **No Interest in Land** – The Licensee acknowledges and agrees that this Agreement creates a non-exclusive contractual license only and the Licensee acquires no interest in the Land or the Premises but only the non-exclusive right to access and use the Premises in accordance with the terms and conditions of this Agreement.

17. **Routine Repair and Maintenance** – The Licensee will keep the Premises, and all fixtures and appurtenances thereon, in good repair consistent with standards of repair generally accepted in British Columbia with respect to comparable premises. The Licensee is responsible for notifying the Director of Engineering, 604-521-3711 of any routine maintenance and repairs with respect to park areas surrounding the Premises necessary for the Licensee's use and occupation of the Premises.

18. **City's Right of Repair** – If at any time during the Term the Licensee fails to keep the Premises in the condition required under this Agreement, the City may, by its employees, contractors and agents, enter upon the Premises for the purpose of remedying the Licensee's default if the Licensee fails to remedy such default within 30 days following notice thereof from the City. The Licensee shall reimburse the City for the City's costs of remedying such default within 21 days following receipt of an invoice from the City, which costs shall include a 15% administration fee.

19. **City May Grant Further Interests** – The City may, from time to time, grant licenses, rights of way, easements and other rights and privileges to third parties on, over, under, through, above and across the Premises, provided that such privileges do not substantially impair the Licensee's rights under this Agreement, and the Licensee agrees to execute such further instruments as may be necessary to give such rights and privileges priority over this Agreement.

20. **Licensee Alterations** – The Licensee shall not make any improvements or alterations to the Premises without the prior written consent of the City, which may be withheld at the City's sole discretion.

21. **Minimum Work Standards** – The Licensee must ensure that any repairs or work with respect to the Premises done by or on behalf of the Licensee pursuant to this Agreement comply with all applicable laws, statutes, enactments, regulations, bylaws and orders from time to time in force, including the applicable building code and bylaws of the City of New Westminster.

22. **Design Requirements** – In the case of improvements or alterations to the Premises, including the Play Equipment and fencing, approved by the City and with respect to other work required to be done by the Licensee under this Agreement, the City may require that the Licensee cause detailed drawings and specifications, acceptable to the City, to be prepared for such work.

In such circumstances the Licensee shall, prior to commencing the contemplated work, submit for approval by the City drawings and specifications for such work, prepared by and under seal of an appropriately qualified professional engineer or registered architect acceptable to the City and shall cause such drawings and specifications to be revised as necessary in order to obtain the City's approval before commencing such work.

23. **Insurance Requirements** – The Licensee must, at its sole expense, obtain and maintain during the Term:

- (a) commercial general liability insurance providing coverage for death, bodily injury, injury to participants, tenants legal liability, property loss and damage, water damage and sewer backup and all other losses, arising out of or in connection with the operations, use and occupation of the Premises in an amount of not less than \$5,000,000.00 per occurrence;
- (b) “all risks” insurance, for replacement cost, on all improvements from time to time making up part of the Premises and all of the Licensee’s fixtures and personal property on the Premises;
- (c) in its own name or through its contractor, during the course of construction of any improvement on the Premises:
 - (i) insurance protecting both the Licensee and the City against claims for personal injury, death or property damage arising from any accident or occurrence upon, in or about the Premises and from any causes, including the risks associated with the construction of the improvement, and to the amount reasonably satisfactory to the City;
 - (ii) “all risks” insurance protecting the Licensee and the City from loss or damage to the Premises and any building materials on the Premises from time to time during construction in respect of fire, earthquake and all other perils customarily included in the usual all risks builders’ risk form of policy applicable to similar properties during construction and effected in British Columbia by prudent owners, to the full insurable value thereof at all times and in any event in an amount sufficient to prevent the City and the Licensee from being deemed co-insurer; and

Equipment Breakdown Insurance to ensure that the Licensee’s equipment is not at risk in the event of a loss.

Auto Liability Coverage for owned and non-owned auto liability in the event that any Society or member owned vehicles cause damages to the Building or to the Premises with a minimum of \$2,000,000.

Cyber and Media Liability Insurance – please provide evidence of this coverage with a minimum of \$1,000,000 coverage.

- (d) any other form or forms of insurance that the City may require from time to time in amounts and for perils against which a prudent tenant acting reasonably would protect itself in similar circumstances.

24. **Insurance Policies** – All policies of insurance required to be taken out by the Licensee must be with companies satisfactory to the City and must:

- (a) name the City as an additional insured;
- (b) include that the City is protected notwithstanding any act, neglect or misrepresentation by the Licensee which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;
- (c) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
- (d) be primary and non-contributing with respect to any policies carried by the City and that any coverage carried by the City is in excess coverage;
- (e) not be cancelled without the insurer providing the City with 30 clear days written notice stating when such cancellation is to be effective;
- (f) be maintained for a period of 12 months per occurrence;
- (g) not include a deductible greater than \$5,000.00 per occurrence;
- (h) include a cross liability clause; and
- (i) be on other terms acceptable to the City.

25. **Insurance Certificates** – The Licensee shall obtain all required insurance at its sole expense and must, at least 14 days before the Commencement Date and on the anniversary date of the Commencement Date and promptly upon the City’s request at such other times during the Term, provide the City with certificates of insurance confirming the placement and maintenance of the insurance. The Licensee will provide a certificate of the insurance required under section 22(c) to the City before commencing to construct or place certificates of improvement on or to the Premises.

26. **City May Insure** – If the Licensee fails to insure as required, the City may, after 30 days’ notice to the Licensee, effect the insurance in the name and at the expense of the Licensee and

the Licensee must repay the City all costs reasonably incurred by the City within 21 days of receipt of an invoice. The Licensee hereby appoints the City as true and lawful agent to all things necessary for the purposes of this section. For clarity, the City has no obligation to insure the Premises during the Term.

27. **Release** – The Licensee releases the City from and against all liabilities, claims, demands, damages, costs, expenses, suits and actions which the Licensee may at any time have against the City in respect of this Agreement and the License granted hereby.

28. **Indemnity** – The Licensee will indemnify and save harmless the City, and its elected and appointed officials, employees, contractors and agents from and against any and all losses, claims, costs, expenses, damages and liabilities, causes of action, actions, suits and judgments including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City, arising, directly or indirectly, out of:

- (a) any breach of any obligation set forth in this Agreement to be observed or performed by the Licensee;
- (b) any act, omission, or negligence of the Licensee, its members, volunteers, employees, agents, contractors or others for whom it is responsible;
- (c) any personal injury, bodily injury, death or property damage occurring or happening on or off the Licence Area by virtue of the Licensee's entry on or use of the Licence Area; or
- (d) the granting of this Agreement;

and the amount of all such losses, claims, costs, expenses, damages and liabilities will be payable to the City immediately upon demand.

29. **Survival of Indemnities** – The obligations of the Licensee under sections 5 and 26 survive the expiry or earlier termination of this Agreement.

30. **Permission to Enter** – The City or its authorized representative may enter the Premises at all reasonable times for the purposes of inspection of the Premises and the Licensee's compliance with this Agreement and for the purpose of exercising its rights and obligations under this Agreement. For certainty, the City may enter the Premises at any time after 7:00pm and before 7:00am on weekdays and any time on weekends, without notice to the Licensee and without the Licensee's permission pursuant to section 6.

31. **Ownership of Improvements at Termination** – At the expiration of the Term or earlier termination of this Agreement, all improvements and alterations to the Premises done by or on behalf of the Licensee, whether during the Term or otherwise, excluding the Play Equipment, are

forfeited to and become the permanent property of the City, without compensation to the Licensee.

32. **Requirement for Improvement Removal** – Notwithstanding anything to the contrary in this Agreement, the City may, by providing written notice to the Licensee within 21 days following termination or expiry of this Agreement, require that the Licensee remove all its personal property, improvements, and equipment from the Premises, including the Play Equipment. If Licensee fails to remove such property within 21 days after receiving such notice from the City, the City may, without notice or compensation to the Licensee, dispose of such property as it sees fit and the Licensee shall reimburse the City for its costs of doing so (including a 15% administration fee) within 21 days of receipt of an invoice from the City. The City's rights and the Licensee's obligations under this section shall survive the expiry or earlier termination of this Agreement.

33. **State of Premises at Termination** – Upon the expiry or earlier termination of this Agreement, the Licensee shall leave the Premises in a good, neat and tidy condition, that is equal to or better than the condition that existed on the Commencement Date and otherwise in the condition they are required to be kept by the Licensee during the Term under the provisions of this Agreement. If the Licensee leaves the fence in place, the Licensee must have the prior written approval of the City to do so. If the Licensee does not do so, the City may do so on behalf of the Licensee and the Licensee shall pay all of the City's costs (including a 15% administration fee) in that regard within 21 days of receipt of an invoice. The City's rights and the Licensee's obligations under this section shall survive the expiry or earlier termination of this Agreement.

34. **Removal of Play Equipment at Termination** – Upon the expiry of the Term or earlier termination of this Agreement, the Licensee shall promptly remove the Play Equipment from the Premises. If the Licensee does not do so, the City may do so on behalf of the Licensee and the Licensee shall pay all of the City's costs (including a 15% administration fee) in that regard within 21 days of receipt of an invoice. The City's rights and the Licensee's obligations under this section shall survive the expiry or earlier termination of this Agreement.

35. **Workers Compensation** – The Licensee shall, in its use of and activities on the Premises, comply with the *Workers Compensation Act* (British Columbia) and all regulations and orders from time to time in force thereunder, including the Occupational Health and Safety Regulations, and, upon request from the City, provide evidence of any required registration under that Act and evidence of compliance with any requirement under that Act to make any payments or pay assessments. In addition, the Licensee shall be the "prime contractor" for the Premises under the *Workers Compensation Act* (British Columbia) and fulfill all of the "prime contractor's" obligations under that Act, including by ensuring that the activities of any employers, workers and other persons on the Premises relating to occupational health and safety are coordinated and by doing everything that is reasonably possible to establish and maintain a process that shall ensure compliance with that Act and regulations thereunder, including the Occupational Health and Safety Regulations.

36. **Environmental Matters** – In this section, the following definitions apply:

- (a) “Contaminants” means
 - (i) as defined in the *Environmental Management Act*: any biomedical waste, contamination, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
 - (ii) matter of any kind which is or may be harmful to safety or health or to the environment; or
 - (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Law.
- (b) “Environmental Law” means any past, present or future common law, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health.

The Licensee covenants and agrees with the City to:

- (c) carry on and conduct its activities in, on and from the Premises in compliance with all Environmental Laws;
- (d) not permit the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on, under or from the Premises, except in compliance with all Environmental Laws;
- (e) immediately notify the City of the occurrence of any of the following and provide the City with copies of all relevant documentation in connection therewith:
 - (i) a release of Contaminants in, on or about the Premises or any adjacent land; or
 - (ii) the receipt of any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person that is related to any Environmental Law;
- (f) promptly provide to the City a copy of any environmental site assessment, audit, report or test results relating to the Premises conducted at any time by or for the Licensee;
- (g) obtain from an independent environmental consultant, approved by the City, an environmental site assessment, audit, report or testing of the Premises, conduct or cause

to be conducted any additional investigations that the environmental consultant may recommend, all in order to determine compliance of the Premises with Environmental Laws, if requested by the City. The City may request such a report if the City suspects that the Licensee has not complied with its obligations under this section; and

- (h) promptly remove any Contaminants arising from the Licensee's use or occupation of the Premises in a manner that conforms to Environmental Laws governing their removal.

37. **No Assignment or Sublicense** – The Licensee must not assign the Licensee's interest in this Agreement or sublicense the Premises without the prior written consent of the City, nor may the Licensee charge, mortgage or encumber or purport to charge, mortgage or encumber the Licensee's rights in respect of the Premises or this Agreement without the prior written consent of the City. The City may withhold such consents for any reason whatsoever. If the City consents to a sublicense of the Premises, the City may grant such approval on condition that the Licensee and the proposed sub-licensee execute a sublicense agreement in a form satisfactory to the City.

38. **Termination Due to Default** – If and whenever:

- (a) the Term or any of the goods or chattels on the Premises are at any time seized or taken in execution or attachment by any creditor of the Licensee or under bill of sale or chattel mortgage;
- (b) a writ of execution issues against the goods and chattels of the Licensee;
- (c) the Licensee makes any assignment for the benefit of creditors or becomes insolvent or bankrupt;
- (d) the Licensee is in default in the payment any amount payable under this Agreement and the default continues for 30 days after written notice by the City to the Licensee;
- (e) the Licensee does not fully observe, perform and keep each and every term, covenant, agreement, stipulation, obligation, condition and provision of this Agreement to be observed, performed and kept by the Licensee, and persists in such default for 30 days after written notice by the City;
- (f) the Licensee vacates or abandons the Premises or uses or permits or suffers the use of the Premises for any purpose other than the purposes permitted by this Agreement, and such default persists for 5 days after written notice by the City; or
- (g) The Licensee agrees with the City that the City may, on 60 days' written notice to it, terminate this Agreement if the City requires the Land for any purpose.

then the City may, at its option, terminate this Agreement and the Term then becomes immediately forfeited and void and the Licensee must immediately cease all use and occupation of the Premises

and must vacate and deliver up possession of the Premises and the City may without notice or any form of legal process and without any adherence to public law duties or procedural fairness or the principles of natural justice, forthwith re-enter the Premises and repossess and enjoy the same.

39. **Holding Over** – If the Licensee continues to use and occupy the Premises after the expiration of the Term, then, without any further written agreement, the Licensee shall be a monthly licensee paying a monthly license fee in an amount determined by the City and subject always to the other provisions in this Agreement insofar as the same are applicable to a month to month license agreement and a tenancy from year to year shall not be created by implication of law, and nothing shall preclude the City from taking action to cease the Licensee's use of the Premises or for recovery of possession of the Premises.

40. **Distress** – If and whenever the Licensee is in default of the payment of any money, whether expressly reserved by this Agreement or deemed to be part of the License Fee, the City may without notice or any form of legal process whatsoever, enter the Premises and seize, remove and sell the Licensee's goods, chattels and equipment and seize, remove, and sell any goods, chattels and equipment at any place to which the Licensee or any other person may have removed them in the same manner as if they had remained and been distrained in the Premises, notwithstanding any rule of law or equity to the contrary, and the Licensee hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

41. **Remedies Cumulative** – No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Licensee to collect any License Fee not paid when due, without exercising the option to terminate this Agreement.

42. **No Joint Venture** – Nothing contained in this Agreement creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives the Licensee any power or authority to bind the City in any way.

43. **Interpretation** – In this Agreement:

- (a) reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;
- (b) a particular numbered section or lettered Attachment is a reference to the correspondingly numbered section or lettered Attachment of this Agreement;
- (c) an "enactment" is a reference to an enactment as that term is defined in the *Interpretation Act* (British Columbia) of the day this Agreement is made;

- (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced;
- (e) section headings are inserted for ease of reference and are not to be used in interpreting this Agreement;
- (f) a party is a reference to a party to this Agreement;
- (g) time is of the essence;
- (h) where the word “including” is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word “including”; and
- (i) a reference to a party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, elected and appointed officials, officers, directors, licensees and invitees of such party where the context so requires and allows.

44. **Notices** – Where any notice, request, direction or other communication must be given or made by a party under the Agreement, it must be in writing and is effective if delivered in person, sent by registered mail addressed to the party for whom it is intended at the address set forth above in this Agreement, or sent by fax or email, to the City at fax number [604-526-6358] or email address: active@newwestcity.ca or to the Licensee by mail or at email address karen@octopusacademy.ca as the case may be, provided that any notice to the City must be to the attention of the Manager of Business Operations. Any notice is deemed to have been given if delivered in person, when delivered; if by registered mail, when the postal receipt is acknowledged by the other party; and, if by fax or email, when transmitted. The address, fax number, or email address of a party may be changed by notice in the manner set out in this provision.

45. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the City’s rights and powers in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Premises, all of which may be fully and effectively exercised in relation to the Premises as if this Agreement had not been fully executed and delivered.

46. **City Discretion** – Wherever in this Agreement the approval or consent of the City is required, some act or thing is to be done to the City’s satisfaction, the City is entitled to form an opinion, or the City is given the sole discretion:

- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the City or its authorized representative;

- (b) the approval, consent, opinion or satisfaction is in the discretion of the City;
- (c) any discretion of the City is not subject to public law duties and the principles of procedural fairness and the rules of natural justice have no application; and
- (d) the sole discretion of the City is deemed to be the sole, absolute and unfettered discretion of the City.

47. **Binding on Successors** – This Agreement ensures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.

48. **Law of British Columbia** – This Agreement must be construed according to the laws of the Province of British Columbia.

49. **Entire Agreement** – The provisions in this Agreement 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 of the Agreement.

50. **Waiver or Non-Action** – Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.

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

CORPORATION OF THE CITY OF NEW WESTMINSTER

by its authorized signatories:

Date: _____

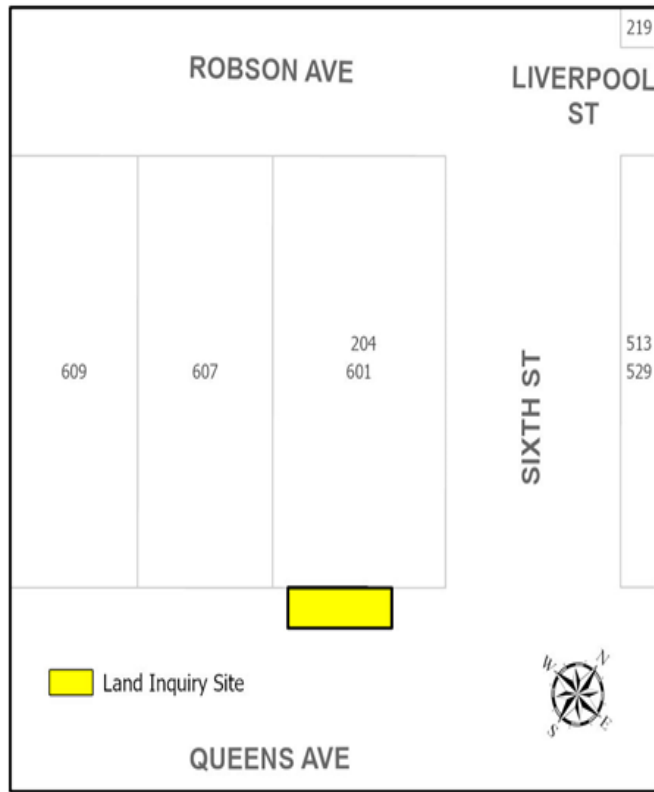
1252530 BC LTD. DOING BUSINESS AS EARLY STEPS

by its authorized signatories:

Name:

Signature

Date



Attachment A