

**LICENSE OF USE**

**THIS AGREEMENT** made the                      day of                      2008.

BETWEEN:

**CITY OF NANAIMO**  
455 Wallace Street  
Nanaimo, British Columbia  
V9R 5J6

(the "**Municipality**")

OF THE FIRST PART

AND:

DOUGLAS ISLAND GARDEN SOCIETY (DIGS)

(the "**Licensee**")

OF THE SECOND PART

**WHEREAS :**

- A. The Municipality is the owner of land described in Schedule "A" to this Agreement (the "**Land**");
- B. The Licensee wishes to be granted this license of use to use the Land and the Municipality has agreed.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and covenants and Agreements contained in this Agreement, the Municipality and the Licensee covenant and agree with each other as follows:

**1.0 RIGHT TO OCCUPY**

- 1.1 The Municipality, subject to the performance and observance by the Licensee of the terms, conditions, covenants and agreements contained in this Agreement and to earlier termination as provided in this Agreement, grants to the Licensee a right by way of license for the Licensee, its agents, employees, and invitees to use the Land and for the purpose of the enjoyment and recreation of members of the public and for no other purpose.

## **2.0 RESERVATION OF RIGHTS**

- 2.1 The Municipality hereby reserves to itself from the grant and the covenants made by it to the Licensee under clause 1 above the right for the Municipality, its agents, employees, contractors and subcontractors to have full and complete access to the Land to carry out any operations associated with the Municipality's use of the Land.

## **3.0 TERM**

- 3.1 The Term of the License granted under this Agreement shall be from the 1st day of September, 2008 to the 31st day of August, 2013 unless earlier terminated under this Agreement.

## **4.0 CONSTRUCTION**

- 4.1 The Licensee shall not construct or place any buildings or structures or make any improvements on the Land, unless prior to any construction, it has:
- (a) obtained the Municipality's approval in writing to the site plans, working drawings, plans, specifications, and elevations; and
  - (b) obtained a building permit from the local government authority having jurisdiction authorizing the construction of the buildings and structures set out in the permits and the plans and specifications attached to it; and
  - (c) obtained all required inspections, and the work shall be carried out at the cost of the Licensee; and
  - (d) delivered final as built drawings to the Municipality.
- 4.2 The Licensee shall not occupy the buildings without first obtaining an occupancy certificate.
- 4.3 The Licensee shall, at its cost, maintain any buildings, structures or improvements constructed or placed on the Land during the Term.

## **5.0 INDEMNIFICATION**

- 5.1 The Licensee releases and will indemnify and save harmless the Municipality, its elected and appointed officers, employees and agents from and against all lawsuits, damages, costs, expenses, fees or liability which the Licensee or any of them or anyone else may incur, suffer or allege by reason of the use of the Land by the Licensee or by any member of the public using any building, structure or improvement built or placed by the Licensee on the Land or the carrying on upon the Land of any activity in relation to the Licensee's use of the Land.

## **6.0 BUILDERS LIENS**

6.1 The Licensee will indemnify the Municipality from and against any liens for wages or materials, for damage to persons or property caused during the making of or in connection with any excavation, construction, repairs, alterations, installations and additions which the Licensee may make or cause to be made on, in or to the Land.

## **7.0 NOTICES**

7.1 It is hereby mutually agreed:

Any notice required to be given under this Agreement shall be deemed to be sufficiently given:

- (a) to be delivered at the time of delivery and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:
  - (i) if to the Municipality:

**CITY OF NANAIMO**

Attention: Director of Parks, Recreation and Culture  
500 Bowen Road  
Nanaimo, BC V9R 1Z7

- (ii) if to the Licensee:

or at the address a party may from time to time designate, then the notice shall be deemed to have been received forty-eight hours after the time and date of mailing. If, at the time of mailing the notice, the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lock-out or other labour dispute, then the notice may only be given by actual delivery of it.

## **8.0 TERMINATION**

8.1 If the Licensee is in breach of this Agreement, and if the default continues after the giving of notice by the Municipality to the Licensee, then the Municipality may terminate this Agreement and reenter the Land and the rights of the Licensee with respect to the Land shall lapse and be absolutely forfeited.

## **9.0 FORFEITURE**

- 9.1 The Municipality, by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of reentry upon breach of this Agreement, does not waive the Municipality's rights upon any subsequent breach of the same or any other provision of this Agreement.

## **10.0 FIXTURES**

- 10.1 Unless the Licensee upon notice from the Municipality removes them, all buildings, structures or improvements constructed on the Land by the Licensee shall at the termination of the Agreement, become the sole property of the Municipality at no cost to the Municipality.

## **11.0 REPAIRS BY THE MUNICIPALITY**

- 11.1 (a) If the Licensee fails to repair or maintain the Land or any building, structure or improvements on the Land in accordance with this Agreement, the Municipality may, by its agents, employees or contractors enter the Land and make the required repairs or do the required maintenance and the cost of the repairs or maintenance shall be a debt due from the Licensee to the Municipality;
- (b) In making the repairs or doing the maintenance the Municipality may bring and leave upon the Land the necessary materials, tools and equipment and the Municipality shall not be liable to the Licensee for any inconvenience, annoyance, loss of business or other injuries suffered by the Licensee by reason of the Municipality effecting the repairs or maintenance;
- (c) The Licensee releases the Municipality, its elected and appointed officers, employees and agents from and waives any claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability which the Licensee may have against any or all of them in respect of this Agreement or its performance or its breach except insofar as such claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability arises from the negligence of the Municipality, its elected and appointed officers, employees and agents.

## **12.0 TREE CUTTINGS, EXCAVATIONS AND HAZARDOUS SUBSTANCES**

- 12.1 (a) The Licensee will 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 shall not bring on or deposit any soil or fill on the Land except with the written consent of the Municipality;

- (b) The Licensee will not bring on, deposit, store, spray or apply nor cause or permit to be brought on, deposited, stored, sprayed or applied on the Land or to any trees, bush or vegetation on the Land any chemical fertilizer, herbicide, pesticide or other chemical or petroleum product or any substance which is capable of contaminating the Land or any water on the Land.

### **13.0 CLEAN UP**

- 13.1 At the end of the term, the Licensee shall clean up the Land and restore the surface of the Land as reasonably as may be possible to the condition of the Land prior to the commencement of the term of this Agreement.

### **14.0 REGULATIONS**

- 14.1 The Licensee will:
  - (a) comply promptly at its own expense with the legal requirements of all authorities, including an association of fire insurance underwriters or agents, and all notices issued under them that are served upon the Municipality or the Licensee;
  - (b) indemnify the Municipality from all lawsuits, damages, loss, costs or expenses that the Municipality may incur by reason of non-compliance by the Licensee with legal requirements or by reason of any defect in the Land or any injury to any person or to any personal property contained on the Land. The Licensee shall be responsible for any damage to the Land occurring while the Licensee is exercising its rights under this Agreement.

### **15.0 NO COMPENSATION**

- 15.1 The Licensee shall not be entitled to compensation for any loss or injurious affection or disturbance resulting in any way from the termination of the License or the loss of the Licensee's interest in any building, structure or improvement built or placed on the Land.

### **16.0 MISCELLANEOUS**

- 16.1 (a) The Licensee warrants and represents that the execution of this Agreement by the Licensee on behalf of a group or organization is a warranty and representation to the Municipality that the Licensee has sufficient power, authority, and capacity to bind the group or organization with his or her signature;

- (b) In consideration of being granted the use of the Land, the Licensee agrees to be bound by the terms and conditions of this Agreement and, if the Licensee represents a group or organization, the Licensee agrees to inform all responsible persons associated with the group or organization of the terms and conditions of this Agreement;
- (c) The Licensee covenants and agrees to use the Land in accordance with the terms of use attached to this Agreement as Schedule "B";
- (d) This Agreement shall not be interpreted as granting any interest in the Land to the Licensee;
- (e) Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default.

## **17.0 INTERPRETATION**

- 17.1 (a) That when the singular or neuter are used in this Agreement they include the plural or the feminine or the masculine or the body politic where the context or the parties require.
- (b) The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- (c) That this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- (d) This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- (e) All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.
- (f) A provision in this Agreement granting the Municipality a right of approval shall be interpreted as granting a free and unrestricted right to be exercised by the Municipality in its discretion.

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals as of the day and year first above written.

by its authorized signatories

)  
)  
)  
)

\_\_\_\_\_  
Director of Parks, Recreation & Culture

)  
)  
)  
)  
)

by its authorized signatories

)  
)  
)  
)

\_\_\_\_\_  
(Name of Organization here)

)  
)  
)  
)

\_\_\_\_\_  
(Name of Organization here)

)  
)  
)  
)

**SIGNED, SEALED AND DELIVERED**  
in the presence of:

)  
)  
)  
)

\_\_\_\_\_  
Witness

)  
)  
)  
)

\_\_\_\_\_  
Address

)  
)  
)  
)

\_\_\_\_\_  
Occupation

)  
)  
)  
)

\_\_\_\_\_

**SCHEDULE "A"**

The Municipality is the owner of land described as: 128 Captain Morgans Boulevard

Municipal Short Legal/Long Legal:

LT 193, DOUGLAS IS(ALSO KNOWN AS PROTECTION IS) PLN 14111, LD  
LOT 193, DOUGLAS ISLAND (ALSO KNOWN AS PROTECTION ISLAND), NANAIMO  
DISTRICT, PLAN 14111

BCA Short Legal/Long Legal:

LT 193, DOUGLAS IS(ALSO KNOWN AS PROTECTION IS) PLN 14111, LD  
LOT 193, DOUGLAS ISLAND (ALSO KNOWN AS PROTECTION ISLAND), NANAIMO  
DISTRICT, PLAN 14111

**SCHEDULE "B"**

Terms of Use

*[Other restrictions and conditions as appropriate, such as:]*

1. The Licensee shall ensure that the Licence Area is clean and litter free after every use of the Licence Area.
2. The Licensee shall cooperate with the Municipality and other users of the Land to permit other persons and organizations to have access to the Land at reasonable times.