

LICENSE TO OCCUPY

this "**Agreement**" made the 20 day of December, 2017 (the "**Effective Date**"),

BETWEEN:

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 43 (COQUITLAM)
550 Poirier Street, Coquitlam, B.C., V3J 6A7

(the "**Owner**")

AND:

THE OWNERS, STRATA PLAN LMS 3080
c/o Maria Ferreira, Strata Manager
Quay Pacific Property Management Ltd. (Tel. 604-521-0876 ext. 300)
535 Front Street New Westminster B.C. V3L 1A4

(the "**Licensee**")

WHEREAS the Owner is the registered owner of the Heritage Mountain Middle School located at 125 Ravine Drive, Port Moody, B.C., and Eagle Mountain Middle School located at 110 Dogwood Dr., Anmore B.C., and improvements thereon (the "**Premises**");

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

GRANT OF NON-EXCLUSIVE LICENSE

In consideration of and subject to the terms and conditions of this Agreement, the Owner hereby grants the License to the Licensee. The interest granted pursuant to this Agreement constitutes a contractual 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 Owner and the Licensee (collectively, the "**Parties**", and individually, a "**Party**"). The Owner may in its discretion relocate the License Area to a comparable area of the Premises upon reasonable notice to the Licensee, and the Licensee shall bear any resulting relocation costs.

The Owner may stipulate access points for the License Area, and the Licensee shall ensure that its staff and invitees respect those stipulations.

a) TERM AND LICENSE FEES:

Subject to the Licensee's compliance with all the terms hereof and early termination or renewal as may be provided herein or otherwise agreed in writing, the License shall be for a term (the "**Term**") of six (6) months commencing on the Effective Date, subject to compliance with the terms of this Agreement. In consideration for the granting of the License, the Licensee shall pay the Owner a fixed non-refundable cost-recovery license fee of \$11,000 plus GST (the "**License Fee**"), due and payable on the execution of this Agreement.

b) USE OF LICENSE AREA:

The Licensee shall not use the License Area nor allow the License Area to be used for any purpose other than:

1. for the first five months of the Term, to erect and maintain a fence and signage in accordance with requirements of the Pollution Abatement Order issued to the Licensee dated November 23, 2017 by The Ministry of Environment and Climate Change Strategy (Ministry), Environmental Protection Division; and
2. for the final month of the Term, to completely remove all of the Licensee's equipment, materials and waste from the License Area, and at the Licensee's sole risk and expense restore the License Area to the condition that it existed prior to the occupancy of the License Area by the Licensee;

unless the Owner's written consent is first obtained, which consent may, in the Owner's absolute discretion, be withheld or granted subject to conditions. Except in the case of an emergency, the Licensee shall avoid disrupting the normal operation of the school on the Premises and shall not carry out any work on the License Area between the hours of 8 a.m. and 4 p.m. Monday to Friday (excluding statutory holidays).

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 may be considered a nuisance to the Owner, any of the Owner's invitees, or any owner or occupier of any neighbouring lands.

d) **COMPLY WITH LAWS:**

The Licensee shall comply at its expense with all laws, regulations and requirements of any and all authorities, including the Owner, from time to time applicable to the Licensee or to the License Area or any improvements thereon, and all notices in pursuance of same. The Licensee shall save the Owner harmless from all costs and damages the Owner may incur or suffer by reason of the Licensee's breach of this provision.

Without limiting the foregoing, the Licensee acknowledges that the B.C. *Tobacco Control Act* prohibits the use of tobacco and smoking (the "**Smoking Ban**"), and that the Owner's policies prohibit the consumption of alcohol (the "**Drinking Ban**"), in all school district buildings and on all school district lands. During the Term the Licensee will comply with and will use its best efforts to enforce the Smoking Ban and the Drinking Ban in and about the License Area.

e) **DAMAGE BY LICENSEE:**

The Licensee shall pay the cost of any damage to any property of the Owner arising from the use of the License Area or the Owner's property by the Licensee or its staff or invitees. Without limiting the foregoing, the Licensee shall reimburse the Owner for costs incurred by the Owner 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 covenants and agrees with the Owner to maintain the following insurance coverage throughout the Term:

1. All risk property insurance in respect of the Licensee's equipment, inventory and stock in trade, and any other property of the Licensee in or forming part of the License Area to the full replacement cost value thereof. The policy shall contain a waiver of the insurer's rights of subrogation against the Owner.
2. General liability insurance including bodily injury, and property damage on an occurrence basis with respect to the activities carried on or in or from the License Area and Licensee's use and occupancy thereof. The limit of such insurance

shall be for not less than Five Million Dollars (\$5,000,000.00) inclusive per occurrence. This insurance shall name the Owner as an additional insured, and shall include a cross liability clause and Licensee's legal liability insurance in the minimum amount of Five Million Dollars (\$5,000,000.00).

3. Such other insurance of the License Area and activities conducted as would be carried by a prudent operator of premises similar in use, type and location.

If the Licensee does not provide or maintain in force such insurance, the Owner may take out the necessary insurance and pay the premium therefor. The Licensee shall pay to the Owner as additional fees the amount of such premium immediately on demand. If both the Owner and the Licensee have claims to be indemnified under any such insurance, then the indemnity shall be applied first to the settlement of the claim of the Owner and the balance, if any, to the settlement of the claim of the Licensee.

Insurance Certificates:

The Licensee shall obtain and provide to the Owner prior to occupying the License Area insurance certificates issued by the insurer or insurance broker of the Licensee containing the following information:

1. Name of insurance company and the binder or policy number.
2. Name and address of the Insured (user group).
3. Policy period (covering at least the period the License is in place).
4. Description of coverage.
5. Policy limits.
6. Description of insured operations and location(s).
7. Signature of authorized representative and date.

Acts Conflicting with Insurance:

The Licensee shall not do or permit to be done any act or thing which might render void or voidable or conflict with the requirements of any policy of insurance, including any regulations of fire insurance underwriters applicable to such policy, whereby the License Area or the Premises are insured or which may cause any increase in premium to be paid in respect of any such policy. If any policy is cancelled or threatened to be cancelled by reason of any act or omission of the Licensee, then the Owner shall, in addition to any other remedies under this License or otherwise available to the Owner, have the right at its option to terminate this License forthwith by giving notice of termination to the Licensee. If the premium to be paid in respect of any such policy is increased by any act or omission of the Licensee, including the use of the License Area as provided herein, then the Licensee shall immediately pay to the Owner the amount of such increase.

g) LIABILITY FOR DAMAGE TO PERSONS OR PROPERTY:

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 Owner from any and all liability whatsoever in respect thereof.

The Owner 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 License Area or any

part of the License Area, and the Licensee covenants to indemnify the Owner against all loss, costs, claims or demands in respect of any injuries, loss or damage referred to in this section.

h) INDEMNITY OF OWNER:

The Licensee shall indemnify and save harmless the Owner (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:

1. any default under any provision of this License by the Licensee;
2. any act or omission of the Licensee;
3. any damage to property while said property is in or about the License Area; or
4. any injury to any licensee, invitee, agent or employee of the Licensee or the Owner, 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 Owner, or of the Owner's agents or employees.

i) CONDITION OF LICENSE AREA, REPAIRS AND MAINTENANCE:

The Licensee hereby accepts the License Area on an "as is" basis, and the Licensee shall at its own expense, during the said Term and any extension thereof, sufficiently keep the License Area in good repair and before the end of the Term fully restore the License Area to the condition that it existed prior to the occupancy of the License Area by 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 Owner's prior written consent, in the Owner's absolute discretion, as to suitability and acceptability and only after having submitted adequate plans and specifications thereof to the Owner. Such consent shall be at the discretion of the Director of Facilities of the Owner, and if consent is given, all work shall be done at the Licensee's sole risk and expense in a good and workmanlike manner to a standard acceptable to the Director of Facilities of the Owner.

k) IMPROVEMENTS:

The Owner has no responsibility, risk or liability whatsoever for any loss of or damage to any work, improvements, fixtures or equipment installed or left on the Premises by the Licensee.

At the expiry or other termination of the License, 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 and the Licensee shall repair any resulting damage.

The Owner shall have the right upon the expiry or termination of this License to require the Licensee by written notice to remove the chattels and equipment located on the License Area and if the Licensee does not remove its property forthwith after written demand, then the Owner shall not be responsible for any loss or damage to such property.

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,

then the Owner 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 Owner as additional license fees. The Licensee shall allow the Owner to post and keep posted on the License Area any notices that the Owner may desire to post under the provisions of the *Builders Lien Act* or any other legislation.

m) **UTILITIES:**

The Licensee shall not be entitled to use any of the Owner's utilities or services at the License Area. The Licensee shall pay all telephone, electric, gas, water, cable, internet, garbage collection and other utility charges in connection with its use or occupancy of the License Area as and when the same become due. If at any time for any reason the Owner is required to pay all or any of the foregoing, such amount so paid shall forthwith become due and payable by the Licensee as additional license fees hereunder.

n) **OTHER COSTS:**

The Licensee shall pay and be responsible for all heat, fuel, electricity, scavenging, snow removal, insurance, janitorial and maintenance costs, repairs, utilities, assessments, security protection, water levies, 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 Licensee shall be responsible for those taxes relating to the License Area, and improvements located thereon or if no separate tax notice shall be issued for the License Area, then in such event the Licensee shall pay its proportionate share of the Owner's taxes attributable to the Licensee's occupancy of the License Area.

o) **SECURITY AND PARKING:**

Licensee and its invitees are not permitted to use the Owner's parking lots unless expressly authorized by the Owner in writing in the Owner's discretion. The Licensee shall not permit any of its vehicles or those of its employees or invitees to obstruct any roads, driveways or sidewalks in or around the Premises.

p) **OWNER'S ACCESS TO LICENSE AREA:**

The Owner shall be entitled to enter, inspect and otherwise have access to the License Area throughout the Term of the License, and upon the expiry 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 Owner.

q) **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 Owner, which may be withheld in the absolute discretion of the Owner. No assignment or sub-licensing will relieve the Licensee from its obligations under this License. Any change from the present control of the Licensee shall constitute an assignment of the License requiring the prior written consent of the Owner.

r) **TERMINATION:**

The Owner may terminate the License on one week's notice in the event of non-payment of license fees or expiry of security for payment of license fees, or any other material default or non-performance of any covenant hereunder by the Licensee.

The Licensee shall vacate the License Area on or before the effective date of any termination.

s) **NOTICES:**

Any notice 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 Owner or recourse by the Licensee to the Owner whatsoever including, without limitation, for any refund of prepaid license fees or for any costs or damages. Nothing herein contained shall prevent the Owner 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) **COMMENCEMENT:**

The covenants expressed herein shall be binding on the Parties from the Effective Date notwithstanding the dates of execution of this Agreement by the Parties.

w) **RENEWAL AND OVERHOLDING:**

The Licensee does not have any right or option to renew or extend this License. If the Licensee continues to occupy the License Area with the express consent of the Owner after the expiry of the Term of this License but without any express written agreement as to the term of such occupancy, then the Licensee shall be a monthly licensee on the terms and conditions herein set out in this Agreement except as to Term.

x) **TIME:**

Time is of the essence of this Agreement.

y) **ENTIRE AGREEMENT:**

This Agreement contains the entire agreement between the Parties. There are no other conditions, representations or warranties, express or implied, and no amendment hereto shall be valid unless in writing signed by the Parties.

z) **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.

aa) **COUNTERPARTS:**

This License may be executed in counterparts (which may be facsimile copies) but shall not take effect until each Party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

IN WITNESS WHEREOF the Parties have duly executed and delivered this Agreement as of the Effective Date.

OWNER:

for The Board of Education of
School District No. 43 (Coquitlam)

LICENSEE:

THE OWNERS, STRATA PLAN LMS 3080



Authorized Signatory

Name: EWAN STEWART
Title: _____

SCHEDULE A DIAGRAM OR DESCRIPTION OF RESTRICTED AREA

