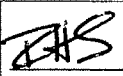
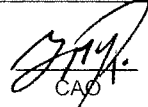


COUNCIL AGENDA/INFORMATION		
<input type="checkbox"/> Closed	Date: _____	Item # _____
<input checked="" type="checkbox"/> Reg. Council	Date: <u>02.6 '08</u>	Item # _____ <u>A</u>
<input type="checkbox"/> Supplemental	Date: _____	Item # _____

 Director	 CAO
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DISTRICT OF WEST VANCOUVER
750 – 17TH STREET, WEST VANCOUVER, BC V7V 3T3

COUNCIL REPORT

Date: September 5, 2008 File: 1145-02 Dun Pres
 From: Gordon Reid, Land & Property Agent
 Subject: Dundarave Preschool by the Sea Society Modification Agreement

RECOMMENDED THAT:

1. The agreement dated July 22, 2008 entitled "Dundarave Preschool by the Sea Society – Modification Agreement" be received for information.

Purpose

At a Closed Meeting of Council on July 14th, 2008, Council consented to a 5 year extension of the existing Licence Agreement with the Dundarave Preschool by the Sea Society.

The executed Modification Agreement is now presented for public information.

Author: 
 Gordon Reid, Land & Property Agent

Schedule A – a copy of the executed Agreement.

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Schedule "A"

**DUNDARAVE PRESCHOOL BY THE SEA SOCIETY
- MODIFICATION AGREEMENT**

THIS MODIFICATION AGREEMENT dated for reference the 22nd day of July, 2008 to have effect as at September 15, 2008.

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, having offices at 750 – 17th Street, West Vancouver, BC V7V 3T3

(the "District")

AND:

OF THE FIRST PART

DUNDARAVE PRESCHOOL BY THE SEA SOCIETY, a Society under the laws of the Province of British Columbia, of 2478 Bellevue Avenue, West Vancouver, BC V7V 1E2

(the "Licensee")

WHEREAS:

OF THE SECOND PART

- A. By a licence agreement effective September 15, 2003 (the "Licence"), the District granted to the Licensee a licence to use the Dundarave Fieldhouse for a not for profit preschool program;
- B. The Licence commenced on September 15, 2003 and expired on June 15, 2008;
- C. The District and the Licensee have agreed to modify the Licence as set forth in this Agreement,

NOW THEREFORE in consideration of the sum of One Dollar paid by each party to the other and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the District and the Lessee agree as follows:

1.01 The Licence is hereby amended as follows:

- (a) the Term of the Licence is extended for a further 5 years commencing September 15, 2008 and ending on June 30, 2013 (the "Extension");

- (b) an extended week of tenancy on either end of the term for set-up and close-up annually will be granted rent free;
- (c) extra-curricular activities such as grad night and pumpkin carving will be allowed to take place during 3 week end days and 3 evenings annually throughout the term;
- (d) the Licensee shall pay an annual fee that has been increased annually by 3% from the current amount paid for this term, in accordance with the following schedule, payable monthly in advance and inclusive of property taxes, payable on or before September 15 in each year of the Extension;

September 15, 2008 - June 15, 2009	Year 1	\$6,781.76 (\$753.00/month)
September 15, 2009 - June 15, 2010	Year 2	\$6,985.21 (\$776.00/month)
September 15, 2010 - June 15, 2011	Year 3	\$7,194.77 (\$799.00/month)
September 15, 2011 – June 15, 2012	Year 4	\$7,410.61 (\$823.00/month)
September 15, 2012 – June 15, 2013	Year 5	\$7,632.93 (\$848.00/month)

- (e) A one-time administrative fee of Three Hundred and Twenty Dollars (\$320) without GST as the Licensee is GST exempt, is payable upon execution of this Modification Agreement, which covers the document preparation fee and the Report to Council;

- 1.02 The Licensee shall be responsible for all repairs, renovations and upgrades to all structural components including but not limited to the electrical, mechanical, structural, exterior and interior of the Building. None of this work to be done without the written authorization of the Director of Parks & Community Services.
- 1.02 Except as otherwise provided in this Modification Agreement, the provisions in the Licence shall continue to be in full force and effect and binding upon both the District and the Licensee and their permitted assigns.
- 1.03 This Modification Agreement forms an integral part of the Licence and should be attached thereto.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

Signed by the authorized signatories of THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

P. Goldsmith-Jones
Mayor Pamela Goldsmith-Jones

A. Scholes
Clerk Sheila Scholes

Signed by the authorized signatories of DUNDARAVE PRESCHOOL BY THE SEA SOCIETY

[Signature]
Name:

[Signature]
Name:

[Signature]
Witness as to both signatures

Print Name: Danny Vaughan

Address: 4855 Shirley Ave

North Vancouver, BC

Occupation: Self Employed

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LICENCE TO OCCUPY

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER AND DUNDRAVE PRESCHOOL BY THE SEA SOCIETY

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LICENCE TO OCCUPY

THIS AGREEMENT made as of _____, 2003 to have effect as of September 15th, 2003.

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality under the laws of the Province of British Columbia, having its principal office at 750 – 17th Street, West Vancouver, British Columbia, V7V 3T3

(the "District")

AND:

OF THE FIRST PART

DUNDARAVE PRESCHOOL BY THE SEA SOCIETY, a Society under the laws of the Province of British Columbia, of 2478 Bellevue Avenue, West Vancouver, British Columbia, V7V 1E2

(the "Licensee")

OF THE SECOND PART

WHEREAS:

- A. The Licensee and its predecessors has operated a not for profit preschool program for many years in the Dundarave Fieldhouse by way of licence agreements which have been granted from time to time by the District.
- B. The Licensee has been accepted by the District as the operator of the preschool as a result of a Request For Proposal process initiated in late 2002 and the District has agreed to grant to the Licensee a further licence to occupy the Dundarave Fieldhouse for pre-school purposes on the terms and conditions herein contained.

NOW THEREFORE in consideration of the premises and other good and valuable consideration, the parties hereto mutually covenant and agree as follows:

LICENCE

- 1.1 The District hereby grants to the Licensee a non-exclusive licence (the "Licence") to use and occupy that portion of a building located on Lot 3 Block 31 District Lot 555 Plan 2261 (the "Lands") and commonly known and referred to as the Dundarave Fieldhouse as shown in heavy dark shading on the plan attached as Schedule "A" hereto (the "Premises").

- 1.2 The Licensee understands and agrees that the Lands and Dundarave Park, including the playground equipment, are not reserved for the exclusive use of the Licensee.

TERM.

- 2.1 The term of the Licence shall be from September 15, 2003 of each year to June 15th of the next year continuing consecutively for 5 years until June 15, 2008 (the "Term").
- 2.2 During the Term the Licensee's hours of occupation of the Premises shall be from 8:00 a.m. to 4:00 p.m., Monday through Friday.
- 2.3 The District may allow the Licensee to use the Premises prior to September 1 in each year or, occasionally, on Saturdays or Sundays, if prior permission is received from the District's Director of Parks and Community Services (the "Director").

FEE

- 3.1 The Licensee shall pay an annual fee in accordance with the following schedule, payable monthly in advance and inclusive of property taxes:
- (a) September 15, 2003 – June 15, 2004 (year 1) - \$5,850.00 (\$650.00/month)
 - (b) September 15, 2004 – June 15, 2005 (year 2) - \$6,025.50 (\$669.50/month)
 - (c) September 15, 2005 – June 15, 2006 (year 3) - \$6,206.27 (\$689.50/month)
 - (d) September 15, 2006 – June 15, 2007 (year 4) - \$6,392.45 (\$710.00/month)
 - (e) September 15, 2007 – June 15, 2008 (year 5) - \$6,584.23 (\$731.00/month)
- (collectively the "Licence Fee").
- 3.2 The Licensee has advised the District that it is GST exempt and its exemption number is 10748 5880 RT0001.

USE OF PREMISES:

- 4.1 The Licensee shall not use the Premises nor allow the Premises to be used for any purpose other than those for which the Premises are hereby licensed, namely, for the operation of a preschool.
- 4.2 The Licensee shall submit attendance records to the District's Parks and Community Services Department as required by the District.
- 4.3 The Licensee shall submit to the Director annually, within 60 days of the Licensee's fiscal year end, a Statement of Revenues and Expenditures prepared and signed by a person with a professional accounting designation (the "Financial Statement"). For the purposes of this agreement, "Revenue" means the total of gross sales/income, whether for cash, credit or otherwise for all services rendered by the Licensee and shall not include provincial social services tax or federal goods and services tax. Deductions must not be made for uncollected or uncollectible credit accounts.

- 4.4 The Licensee shall be responsible for the storage of equipment in the assigned storage area after each session and for the daily clean-up and lock-up of the Premises.
- 4.5 The Licensee shall not permit the attendance at any session to exceed eighteen (18) pupils or as may be otherwise permitted by the Council of Parent Participation Pre-Schools or the Ministry of Health, Province of British Columbia.
- 4.6 The Licensee shall not carry on or do or allow to be carried on or to do any work, business, occupation, act or anything whatever which may be or become a nuisance or annoyance to the District or the public.
- 4.7 The Licensee shall ensure that any interior or exterior signage is approved in advance by the Director or the Director's delegate in such matters.

UTILITIES

- 5.1 The Licensee shall pay utilities and telephone from September 15 to June 15 inclusive in each year of the Term (based on actual meter readings and telephone bills) and the District will pay their share of utilities and telephone in June, July and August in each year of the Term.

ALTERATIONS, MAINTENANCE AND REPAIR

- 6.1 The Licensee shall not construct, reconstruct, alter or modify the Premises without prior written consent of the District.
- 6.2 The Licensee shall maintain the Premises in a good, clean and sanitary condition and shall repair any damage which occurs during the Term, reasonable wear and tear, damage by fire, lightning, earthquake and tempest excepted.
- 6.3 The Licensee shall leave the Premises in good repair.
- 6.4 The Licensee shall not allow liens or judgments to be filed in relation to its use of the Premises.
- 6.5 The District agrees that on or before August 31st in each year of the Term, it will return the Premises to a condition that is acceptable to Community Care Facilities Licensing Office, Vancouver Coastal Health Authority, for use of the Premises as a pre-school.

INDEMNIFICATION OF DISTRICT

- 7.1 The Licensee will and hereby does indemnify and save harmless the District and its elected and appointed officials, officers, employees, agents and others of the District for whom it is responsible from and against any and all liabilities, damages, costs, claims, suits or actions whatsoever, including all costs of defending or denying the same, and all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the District and its elected officials, officers,

employees, agents and others of the District for whom it is responsible, arising, directly or indirectly, out of or in connection with:

- (a) any breach of any obligation set forth in this Licence to be observed or performed by the Licensee;
- (b) any act, omission, or negligence of the Licensee, its members, officers, directors, employees, agents, contractors, subcontractors, subtenants, licensees, invitees or others for whom it is responsible;
- (c) any damage to property occasioned by the Licensee's use and occupation of the Licensed Premises or any injury to person or persons, including death, resulting at any time from the Licensee's use and occupation of the Land and Premises;
- (d) the granting of this Licence.

INSURANCE

- 8.1 The Licensee will during the Term, at its sole cost and expense, obtain and carry insurance from an insurance company satisfactory to the District as follows:
- (a) Five Million Dollars (\$5,000,000) for loss or damage in respect of injury or death of one or more persons from any one incident;
 - (b) Two Hundred Thousand (\$200,000) for loss or damage to property from any one incident;
- 8.2 The Licensee shall also insure its own possessions in the Premises against loss or damage.
- 8.3 The Licensee shall pay all premiums and sums of money in connection with such aforesaid insurance and provide to the District proof of such insurance each year or as may be required by the District.
- 8.4 The Licensee shall name the District as an additional insured on all insurance policies.

TERMINATION

- 9.1 The District reserves the right to revoke this Licence without notice for cause, including a breach of this Licence.
- 9.2 The Licensee shall peaceably surrender and give up possession of the Premises without notice from the Municipality at the expiration of the Term of this Licence or other determination of this Licence for lawful or just cause, pursuant to the terms of this Licence, any right to notice to quit or vacate being hereby expressly waived by the Licensee, any law, usage or custom to the contrary notwithstanding.

*Note - Insurance
Provisions 8.1(b)
Amended by
letter dated
Dec 16/2003
SEU*

SUBLETTING AND ASSIGNMENT

- 10.1 The Licensee shall not assign this Licence, nor any of its interest in the Licence, or sublet the Premises without the prior written consent of the District, which consent may be withheld at the District's sole discretion.

PARTIES BOUND

- 11.1 This agreement shall enure to the benefit of and be binding upon the District, its successors and assigns and to successors and permitted assigns of the Licensee.

NON-WAIVER BY DISTRICT

- 12.1 The waiver by the District of, or the failure of the District to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition therein contained. The subsequent acceptance of payments due hereunder by the District shall not be deemed to be a waiver of any preceding breach by the Licensee of any term, covenant, or condition of this Licence.

NOTICES

- 13.1 Any notice which is required or permitted to be given hereunder shall be in writing and may be delivered personally or may be forwarded by first class prepaid registered mail to the addresses set forth below.

if to the District:

Municipal Clerk
The Corporation of the District of West Vancouver
750 - 17th Street
West Vancouver BC V7V 3T3

if to the Licensee to:

The President
Dundarave PreSchool by the Sea Society
2478 Bellevue Avenue
West Vancouver BC V7V 1E2

Any notice mailed as aforesaid shall be deemed to have been given and received on the expiration of five (5) business days after it has been posted, addressed to the parties at their respective addresses hereinbefore set forth or at such other address or addresses as may from time to time be notified in writing by the parties hereto provided that if there shall be between the time of mailing and the actual receipt of the notice a

mail strike, slow down, or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effective if actually delivered.

ENTIRE AGREEMENT

14.1 The Licensee acknowledges and agrees that this Licence constitutes the entire agreement between the Licensee and the District and upon commencement of the Term of this Licence, all previous licences or agreements between the parties relating to the Premises shall be at an end.

CAPTIONS

15.1 The captions appearing in this Licence 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 of any provision thereof.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

The seal of THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER was hereunto affixed in the presence of:

R. K. Wood

Mayor: R. K. Wood

A. Scholes

Municipal Clerk: Sheila Scholes

Signed by the DUNDARAVE PRESCHOOL BY THE SEA SOCIETY

Leah Marks

Authorized Signatory
Print Name

LEAH MARKS
PRESIDENT OF PARENT BOARD

Tracy A. Ullrich

Witness

Print Name: TRACY A. ULLRICH

Address:

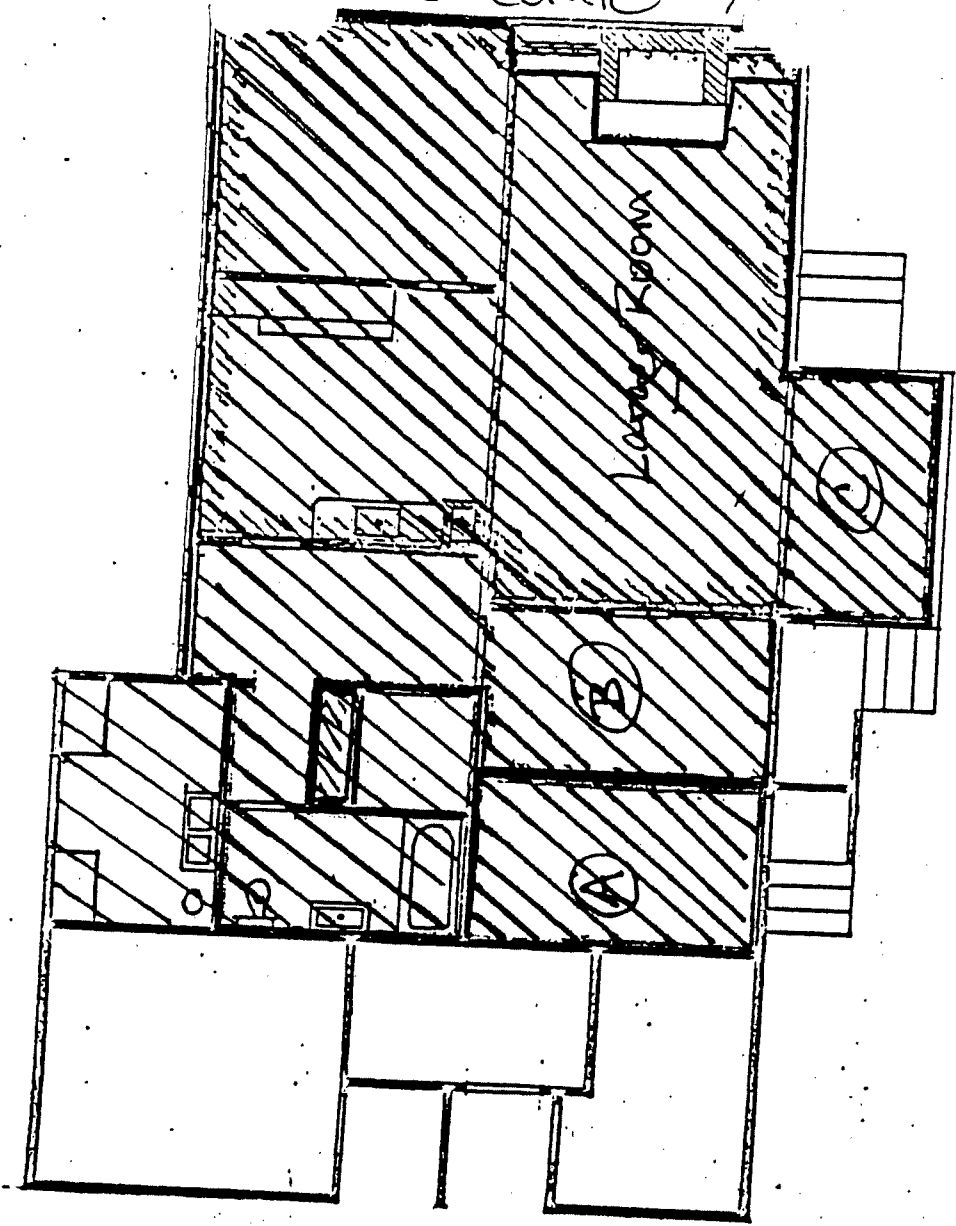
6515 Cypress Lake Road
West Vancouver, B.C.

Occupation: REGISTERED JUDGE


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Schedule A



RENTAL AREA



- A - Storage area with outside access
- B - Part of larger room now
- C - Closed in out area

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