

LICENCE TO OCCUPY

THIS AGREEMENT dated for reference January 1, 2024

00BETWEEN:

THE CORPORATION OF THE CITY OF COURTENAY, a municipal corporation incorporated pursuant to the Community Charter and having its offices at 830 Cliffe Avenue, Courtenay, BC, V9N 2J7

(the "**City**")

AND:

COMOX VALLEY ART GALLERY (INC. NO. 11024.), a society duly registered in accordance with the laws of British Columbia, having its mailing address at 580A Duncan Avenue, Courtenay, BC, V9N 2M7

(the "**Society**")

WHEREAS:

- A. The City owns lands having a civic address of 580 Duncan Avenue, Courtenay, British Columbia, legally described as PID: 028-799-925 Lot B, Section 61, Comox District Plan EPP15696(the "**Land**") on which the Art Gallery, commonly known as the Comox Valley Centre for the Arts (the "**Facility**"), has been constructed on the Land, and is owned by the City;
- B. The Society wishes to manage and operate the Comox Valley Art Gallery comprising that part of the of the Facility highlighted in Schedule A (the "**Art Gallery**") under the terms and conditions of this Agreement, and the City wishes to grant to the Society a licence to occupy and operate the Art Gallery in the Facility under the terms of this Agreement; and
- C. This Agreement is intended to provide sufficient flexibility so as to satisfy the Society's mandate and the City's ownership of the Land and the Facility;

NOW THEREFORE in consideration of mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. LICENCE TO OCCUPY

- 1.1 Subject to the terms of this Agreement, the City hereby grants to the Society the licence to occupy the following parts of the Facility and the Land:

- (a) that part of the basement and main floor of the Facility outlined in red in Schedule A (the “**Society’s Exclusive Use Areas**”);
- (b) that part of the second floor of the Facility outlined, in red in Schedule B (the “**Society’s 2nd Floor Exclusive Use Areas**”); and
- (c) that part of the Land outlined in blue in Schedule C (the “**Plaza**”)

with the right of ingress and egress for the Society’s employees, servants, agents, customers and invitees, and the use of entrances, lobbies, hallways, stairways, second floor boardroom, second floor washrooms, second floor kitchen and mail room of the Facility (the “**Common Areas**”) as they may apply and subject to all of the terms and conditions including earlier termination as set out in this Agreement for the purpose of operating and managing the Art Gallery and inviting members of the general public to enter and enjoy the Facility (the “**Licence**”).

- 1.2 Subject to the terms of this Agreement, and in consideration of the payment of a Licence fee in the sum of one dollar (\$1.00), the receipt and sufficiency of which is hereby acknowledged, the City hereby grants to the Society the right by way of the Licence to occupy the Land and Facility in accordance with this Agreement.

2. TERM AND NEW AGREEMENT

- 2.1 The term of this Agreement shall be:

- (a) five (5) years less a day, commencing on January 1, 2024 and terminating on December 31, 2028 for the Society’s Exclusive Use Areas, the Common Areas, and the Plaza,; and
- (b) one (1) year, commencing on January 1, 2024 and terminating on December 31, 2024 for the Society’s 2nd Floor Exclusive Use Areas;

(the “**Term**”).

- 2.2 With respect to the Society’s Exclusive Use Areas, the Common Areas, and the Plaza, the City and Society may agree to extend this Agreement, for three (3) additional five (5) year terms less a day by mutual agreement in writing no later than six (6) months before the end of the Term, under the same terms and conditions as outlined in this Agreement unless mutually amended in writing at the approval of the Director of Recreation, Culture, and Community Services.

- 2.3 If the City and Society have not negotiated a further term under subsection 2.2 and the Society should hold over after the expiration of the Term and the City should accept the Society’s holding over, the new term created shall be on a month to month basis and the holding over shall be subject to the covenants and conditions herein contained so far as the same are applicable on a month to month basis.

- 2.4 With respect to the Society's 2nd Floor Exclusive Use Areas, if the Society should hold over after the expiration of the Term and the City should accept the Society's holding over, the new term created shall be on a month to month basis and the holding over shall be subject to the covenants and conditions herein contained so far as the same are applicable on a month to month basis.

3. SOCIETY'S RESPONSIBILITY AND EXPENSES

3.1 The Society shall at its own expense:

- (a) obtain all licenses required by statutory authority in connection with this Agreement and the Management and Operating Grant for Services Agreement contained in Schedule D herein;
- (b) operate and maintain the Art Gallery, the Society's Exclusive Use Areas and Society's 2nd Floor Exclusive Use Areas in a good state of repair and cleanliness to a reasonable standard agreed by the City;
- (c) assume the operating and maintenance cost of the Art Gallery, the Society's Exclusive Use Areas and the Society's 2nd Floor Exclusive Use Areas which will include: cable, telephone, internet, interior window cleaning, interior janitorial service and interior janitorial supplies (including janitorial service to the Common Areas), lamp and tube replacement, interior security, cost of all risk property insurance, liability and contents insurance, operations related remodeling or upgrades, and cost and maintenance of all equipment and furnishings related to the operation of the Art Gallery which will include computers, furniture, fixtures, telephone, and any equipment not attached to the structure of the Facility in accordance with Schedule E;
- (d) undertake fundraising projects and the proceeds of such projects will be directly related to the Society's mandate and the Society's responsibilities under this Agreement through operating, programming, staffing, maintenance and special projects associated with preservation and interpretation of the Art Gallery's collection for the purpose of capital improvements or purchase of furnishings, fixtures or equipment for the Art Gallery or to increase the Art Gallery's collection;
- (e) designate one of its staff members to act as the Society's representative to deal on its behalf with the affairs of the Society in relation to the operation and management of the Art Gallery (the "**Society Representative**");
- (f) subject to section 4, make such rules and regulations as are required to provide for the proper operation and governance of the Art Gallery provided that such rules and regulations are consistent with:
 - (i) the bylaws of the Society;
 - (ii) the provisions, terms and conditions of this Agreement; and

- (iii) all applicable Federal and Provincial laws and City bylaws, regulations and policies; and

comply with the Society's constitution and bylaws at all times, and must notify the City whenever a change in the Society's constitution or bylaws occurs; and

- (g) utilize the Common Areas on the Main Floor of the Facility for temporary exhibition purposes provided that:
 - (i) said temporary exhibitions do not interfere with the egress and ingress of that area; and
 - (ii) the Society will be responsible for all expenses related to the temporary exhibitions.

3.2 During the Term for which the Society has the Licence for the Society's 2nd Floor Exclusive Use Area, the Society will provide at its own expense the following activities as the primary licensee for the second floor:

- (a) managing the booking of the second floor boardroom for other Facility tenants and licensees;
- (b) coordinating garbage and recycling service for recyclables from the Common Areas;
- (c) supply and maintain a photocopier for the second floor tenants for which the Society may recover costs; and
- (d) maintain a mail room on the second floor common area for receipt of incoming mail for other tenants and licensees.

3.3 The Society will provide at its own expense the following activities as the primary licensee for the Plaza:

- (a) partner with community organizations and provide risk management, public safety coordination and insurance coverage for partnered events held on the Plaza; and
- (b) facilitate permanent public art installations subject to advance written approval from the City and in accordance with any future City public art policies.

4. ACCESS AND USE

4.1 The Society will occupy and use the Land and the Facility for the purpose of cultural programming for community benefit to the satisfaction of the City.

4.2 Access to and use of the Art Gallery by the Society and by the general public must be in accordance with policies developed by the Society for the operation of the Art Gallery, as approved by the City having regard to relevant guidelines contained in applicable City

documents.

- 4.3 The Society may not, except as required by section 3.1 or with prior written approval of the City:
- (a) alter the grade or surface of the Land;
 - (b) trim, cut, remove or in any way alter or damage trees on the Land;
 - (c) use the Land or Facility for any use or activity that exposes the City to liability toward any person; or
 - (d) do anything on or in respect of the Land which could detrimentally affect use of the Land by the City after the Term.
- 4.4 Without limiting the generality of the foregoing, the Society must not release or introduce any pollution, contamination, waste, toxic waste, or toxic substance into or onto the Land or the environment, or commit or permit any nuisance or waste to be committed or exist on or from the Land.
- 4.5 The Society must not use the Land or Facility in any manner that causes a nuisance to the owners or occupiers of neighboring lands, and without limiting the foregoing, must ensure that traffic to and from the Land, for special events or otherwise, does not cause a nuisance to those owners or occupiers.
- 4.6 The Society must reimburse the City for any damage or loss which occurs to the Land in connection with its use under this Agreement. The City may repair any damage or loss so that the Land is in the condition in which it existed immediately before the damage or loss occurred, at the expense of the Society. The expense incurred by the City in making any repair, plus an amount equal to 15% on account of overhead incurred by the City, is a debt due and owing by the Society to the City and is payable by the Society within fifteen (15) days after delivery of an invoice by the City.
- 4.7 The Society must carry on and conduct its activities on the Land and in, on and from the Facility in compliance with any and all laws, statutes, enactments, bylaws, regulations and orders from time to time in force and obtain all required approvals and permits thereunder and not to do or omit to do anything in, on or from the Art Gallery or on or from the Land in contravention thereof. The Society must comply with all applicable laws and requirements in respect of its employees, including income tax, pension, insurance requirements and Workers' Compensation requirements.
- 4.8 The City may inspect the Facility, Art Gallery or Land at any time to ascertain its state of repair or operation and to ascertain whether the terms and conditions of this Agreement are being observed.
- 4.9 The Society must promptly pay for all work and materials supplied at its order or request to the Facility and the Land and it must comply with all builder's lien legislation. If any lien is filed or the City should be subject to the payment of any claim by an unpaid worker

or supplier, the Society must discharge the lien or otherwise take all steps required by the City to protect the City's interests.

5. CONSTRUCTION

5.1 In addition to the Society's obligation to repair and maintain the Society's Exclusive Use Areas and the Society's 2nd Floor Exclusive Use Areas under section 3.1(c), the Society may undertake improvements, construction or renovations of the Society's Exclusive Use Areas, Society's 2nd Floor Exclusive Use Areas and Common Areas at the Society's sole expense ("**Improvements**") subject to the Society:

- (a) not being in default under this Licence;
- (b) having obtained the prior written consent of the City; and
- (c) having achieved all necessary permits and approvals, including, without limitation, compliance with the *Building Code*.

5.2 In giving its consent to the Improvements, the City may impose any conditions, including, without limitation, location requirements, use restrictions, financial restrictions, insurance requirements and security obligations.

5.3 The Society acknowledges and agrees that any Improvements made by it do not constitute a partnership or other form of relationship between itself and the City, other than as licensor and licensee, and that any capital investment in the Land or Facility by the Society does not create an obligation or expectation of future Licence renewals.

5.4 The Society acknowledges and agrees that all Improvements become the property of the City upon affixation to the Facility, without any obligation by the City to pay for such Improvements.

5.5 The Society acknowledges that all Improvements, past and present, are to remain affixed to the Land.

6. CITY'S RESPONSIBILITY AND EXPENSES

6.1 The City shall, at its own expense, subject to annual budget approval, provide:

- (a) maintenance of the Facility, including:
 - (i) window replacement and repair;
 - (ii) replacement of major heating, ventilation and cooling equipment;
 - (iii) roof and drain repairs and replacement;
 - (iv) plumbing repairs and maintenance;
 - (v) facility envelope repair and maintenance;

- (vi) parking area maintenance including snow removal and line painting;
- (vii) structural repairs and maintenance; and
- (viii) electrical repairs and maintenance;
- (b) landscape maintenance on the Lands;
- (c) maintenance and repair of the Facility's fire safety systems;
- (d) water and sewage service to the Facility;
- (e) maintenance and repair of the elevator;
- (f) preventative servicing and repairs of the major heating, ventilation, and cooling equipment;
- (g) Facility insurance against perils and under the terms and conditions that the City insures other similar types of facilities owned by the City;
- (h) security patrols; and
- (i) garbage removal, water, sewer, hydro and heating fuels.

7. THE CITY'S RIGHTS

- 7.1 The City hereby reserves from the grant of Licence to the Society under section 1.1 the right for the City, its agents, employees and contractors to access any part of the Facility upon reasonable notice, with or without tools and equipment, for purposes of inspection, maintenance, installation and for purposes of fulfilling the City's obligations under section 6.1, without compensation to the Society.
- 7.2 If at any time the Society does not perform its obligations under this Agreement, the City may, but it is not required to, perform those obligations on the Society's behalf and at the Society's cost.

8. MUNICIPAL TAXES

- 8.1 The City will, subject to the authority provided by current legislation, exempt the Land from taxation for general municipal purposes, pursuant to the tax exemption provisions of the Community Charter.

9. SOCIETY'S PROPERTY

- 9.1 The Society agrees that it has sole responsibility for loss or damage to personal property of the Society or its members located on the Land from time to time.

10. INSURANCE

10.1 The City shall maintain the following insurance coverage with respect to the Facility:

- (a) fire and comprehensive property damage insurance against all risks, against loss or damage to any personal property located on the Land or in the Facility which insurance must be for replacement cost.

10.2 The Society shall:

- (a) unless otherwise agreed in writing by the City, provide and maintain in force during the Term a commercial general liability insurance policy or policies of not less than five million dollars (\$5,000,000) inclusive per occurrence and including the following provisions:
 - (i) coverage for personal injury and property damage, including but not limited to, all premises and operations necessary or incidental to the performance of this Agreement;
 - (ii) Blanket Contractual Liability, Products and Completed Operations, Tenants' Legal Liability, Non-Owned Automobile Liability, Owner's and Contractor's Protective Liability, Contingent Employers' Liability, Breach of Conditions clauses;
 - (iii) a waiver of subrogation clause in favour of the City;
 - (iv) the City named as an additional insured; and
 - (v) a Cross Liability Clause;
- (b) provide and maintain in force during the Term all- risks property insurance and business interruption insurance with extended coverage endorsement upon its merchandise, stock-in-trade, furniture, fixtures and improvements to the full replacement value thereof to include earthquake, flood, vandalism and other risks;
- (c) provide and maintain in force during the Term motor vehicle insurance, including personal injury and to provide a certificate confirming liability insurance in the amount of not less than two million dollars (\$2,000,000) with the Insurance Corporation of British Columbia on any licensed motor vehicles of any kind used by the Society in providing services;
- (d) on every contract of insurance required to be maintained pursuant to the provisions of this Agreement include a provision requiring the insurer to give the City thirty (30) days prior written notice before making any material change in said insurance, or termination, or cancellation thereof;
- (e) on the first day of the Term and thereafter immediately upon demand, deliver to the City a certificate or certificates of insurance as evidence that such insurance is in

force, including evidence of any insurance renewal policy or policies and certification by the insurer that the certificate or certificates of Insurance specifically conforms to all of the provisions required herein;

- (f) ensure that all insurance required to be maintained by the Society under this Agreement is:
 - (i) underwritten by a responsible insurance company or companies licensed to do business in the province of British Columbia; and
 - (ii) primary and does not require the sharing of any loss by any insurer that insures the City;
- (g) have the full responsibility to provide and maintain, at its own expense, additional insurance coverage, if any, including workers' compensation, that are necessary and advisable for its own protection or to fulfill its obligations under this Agreement; and
- (h) deliver a certified copy of any required certificate of insurance to the City within ten (10) days after demand therefore by the City.

10.3 The Society shall neither cancel nor approve any material change to the insurance policy(s) without having first received written approval of the City.

11. INSURANCE RECOVERIES

11.1 The parties agree that any recovery of insurance proceeds by the Society in respect of damage to or destruction of the Art Gallery and fixtures and contents installed by the Society shall be applied to replace or repair the same unless the Society and the City agree otherwise.

12. INDEMNIFICATION AND RELEASE

12.1 The Society will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and successors from and against any and all liabilities, obligations, damages, penalties, claims, costs fines, suits, demands and causes of action to, by or on behalf of any person, group, firm or corporation arising from the occupation or use of the Facility or the Land by the Society or its invitees, employees, agents, contractors, subcontractors, officers, members or any other person or persons for whose acts the Society is liable in law, or from any breach of the Society of any covenant, term of provision of this Agreement by the Society or its members, servants or agents or that might arise during the occupancy of the Facility and the Land by the Society under this Agreement, save and except where any such matter is the cause of an act by the City or anyone for whom the City is in law responsible. The Society releases the City from all claims and demands which the Society may at any time have against it or its elected officials, officers, employees, agents or others, in respect of any matter arising from or related to this Licence.

13. SOCIETY'S STANDING

13.1 The Society shall ensure that it complies with all legal requirements to maintain its standing as a Society under the Society Act.

14. SOCIETY NOTIFICATION OF CHANGE TO CONSTITUTION OR BYLAWS

14.1 The Society shall advise the City in writing of any material changes to its constitution or bylaws.

15. AMENDMENT OF AGREEMENT

15.1 This Agreement may only be amended by a subsequent written agreement signed by the parties.

16. ASSIGNMENT AND SUBLICENSING

16.1 The Society shall not assign the benefit of this Agreement in whole or in part without the prior written consent of the City and, except as specifically and expressly provided in this Agreement.

17. TERMINATION OF THE AGREEMENT

17.1 Either party may terminate this Agreement by giving the other party six (6) months advance notice of its intention to terminate, such notice to be given in writing on the last day of any month.

17.2 Upon breach by the Society of any term or condition of this Agreement, the City may give to the Society thirty (30) days' notice to correct such breach to the satisfaction of the City. If such breach is not corrected within a reasonable period in the City's discretion, or if the Society fails to begin and diligently pursue steps to cure the breach to the reasonable satisfaction of the City within 30 days after notice of the breach is given by the City, the City may terminate the License and this Agreement by giving notice of termination to the Society. The License and this Agreement, except section 12.1 terminate immediately on the giving of notice of termination by the City to the Society. The City may recover all fees, costs and damages due to the City under this Agreement by suit or otherwise.

17.3 The City may immediately terminate this Agreement if any of the following events arise:

- (a) the Society makes an assignment for the benefit of creditors;
- (b) that the Society fails to hold a general meeting of members for a consecutive period of eighteen (18) months or longer;
- (c) the Society becomes bankrupt or insolvent or takes the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors;
- (d) that any order is made for the winding up of the Society;

- (e) the Society is struck off the Corporate Register by the Registrar for any just reason whatsoever; or
- (f) the Society or the City terminates the Management and Operating Grant Fee for Services Agreement contained in Schedule D herein.

17.4 The City may give to the Society 30 days' notice to rectify a matter listed in section 17.3 after which time, if the problem is not rectified to the satisfaction of the City, the License will be forfeited and void.

17.5 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 Society to collect any moneys not paid when due, without exercising the option to terminate this Agreement.

18. SURRENDER OF CONTROL OF ART GALLERY

18.1 The Society shall, at the expiration or earlier termination of the Agreement, unless the parties enter into a new agreement, peaceably surrender and yield the Facility to the City in good and substantial repair in all aspects, reasonable wear and tear only accepted. The Society is not entitled to any compensation for any loss, including economic loss, or injurious affection or disturbance resulting in any way from the termination of the Licence in this Agreement.

19. DEFAULT

19.1 Should the Society default in the observance or performance of any of the terms and conditions of this Agreement the City may, in addition to its right to terminate this Agreement pursuant to section 17.2 herein, pursue such other remedies as are provided to it in law.

20. STRICT PERFORMANCE

20.1 The failure of the City to insist upon strict performance of any covenant or condition contained in the Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition, right or option and no waiver shall be inferred from or implied by anything done or omitted by the City save only express written waiver in writing.

21. NOTICE

21.1 Any notice or instrument required to be given or made under this Agreement shall be in writing and either delivered in person, faxed or sent by registered mail to the other party at the address set out below, or at such other address as each party may designate by notice

in writing to the other party:

City of Courtenay
830 Cliffe Avenue
Courtenay BC, V9N 2J7
Attention: Director of Recreation, Culture and Community Services

Any notice herein provided or permitted to be given by the City to the Society will be sufficiently given if delivered to the Society addressed to:

Comox Valley Art Gallery
580A Duncan Ave
Courtenay, BC V9N 2M7
Attention: Executive
Director

The address for notice may be changed by either party from time-to-time by providing written notice of such change as herein contained.

- 21.2 If any question arises as to when notice was given, it shall be deemed to have been received by the intended recipient on the earlier of the day it was received, or on the fifth day after it was mailed, faxed or otherwise given to the intended recipient.

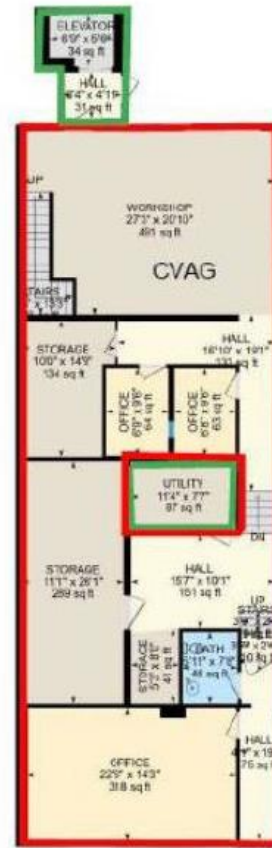
22. GENERAL

- 22.1 Wherever the singular or masculine is used herein, the same shall include the feminine, plural and body corporate or politic where the context or the parties so require.
- 22.2 Headings are provided for convenience only and do not form part of the terms of this Agreement. Wherever the singular or masculine is used herein, the same shall include, the feminine, plural and body corporate or politic where the context or the parties so require.
- 22.3 If any section of this Agreement shall be found to be illegal or unenforceable, then such section shall be considered to be separate and severable from this Agreement and the remaining sections of this Agreement shall be unaffected thereby and shall remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable section had never been included in this Agreement.
- 22.4 There are no promises or obligations by or on behalf of either party other than the express covenants and provisions contained in this Agreement upon which any rights against either party may be founded. This Agreement constitutes the entire agreement between the parties hereto, and shall supersede all negotiations representations, documents, and previous agreements made by either party in respect to the management, operations and maintenance of the Facility and Land.

SCHEDULE A
SOCIETY'S EXCLUSIVE USE (OUTLINED IN RED) & COMMON AREAS (OUTLINED IN GREEN)



Main Floor Total Exterior Area 4138 sq ft
 Total Interior Area 3948 sq ft



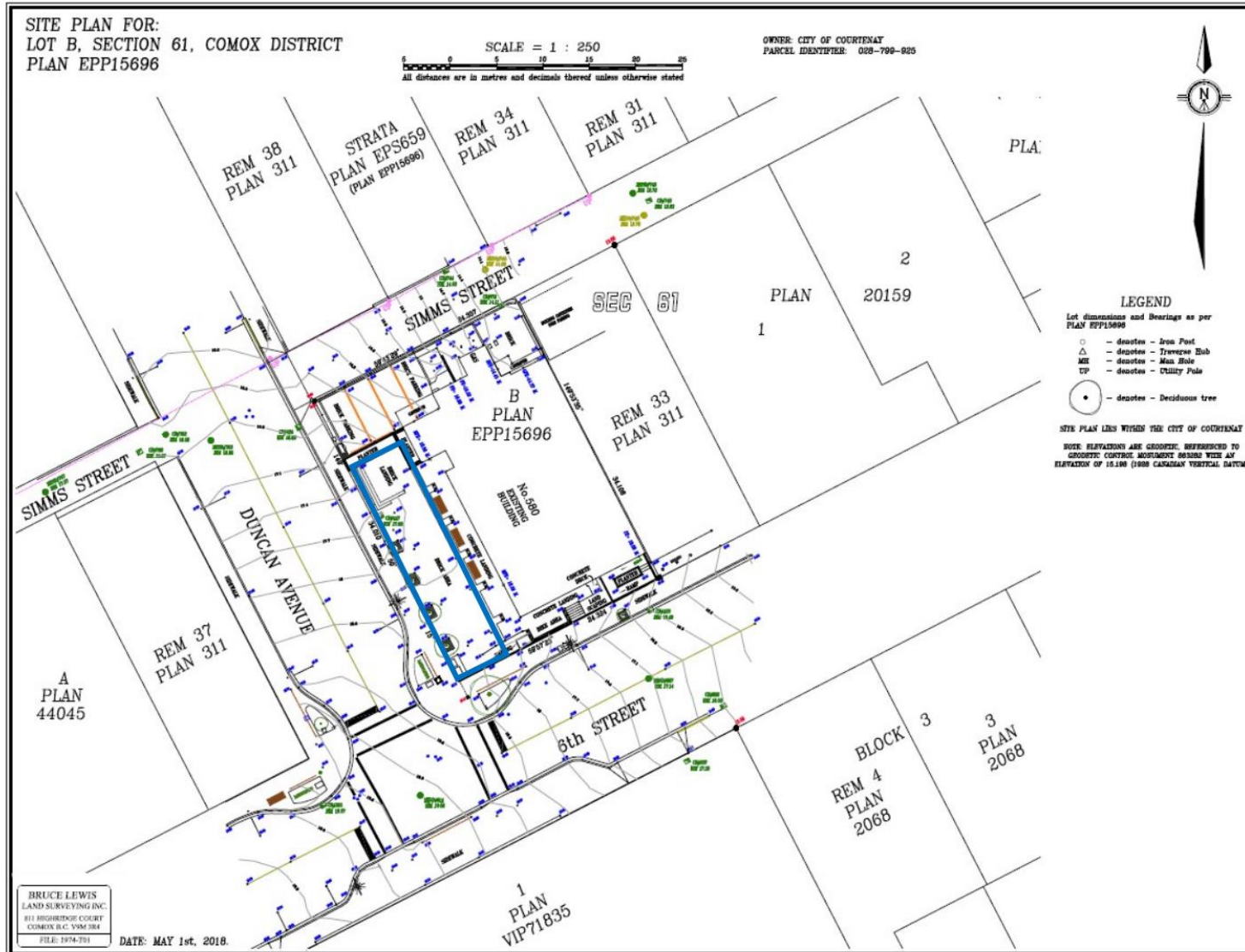
Basement Total Exterior Area 2325 sq ft
 Total Interior Area 2166 sq ft

SCHEDULE B
SOCIETY'S 2ND FLOOR EXCLUSIVE USE (OUTLINED IN RED) & COMMON AREAS (OUTLINED IN GREEN)



2nd Floor Total Exterior Area 4152 sq ft
Total Interior Area 3963 sq ft

SCHEDULE C PLAZA (OUTLINED IN BLUE)



SCHEDULE D
MANAGEMENT AND OPERATING GRANT FEE FOR SERVICE AGREEMENT

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SCHEDULE E
COST APPORTIONMENT

	ITEM	CITY	SOCIETY
1	Heating Fuels	100% All Year	
2	Water	100% All Year	
3	Electricity	100% All Year	
4	Preventative maintenance and repairs and replacement of HVAC systems	100% All Year	
5	Dumpster rental and garbage removal	100% All Year	
6	Parking area snow removal	100% All Year	
7	Snow removal from exterior entrances.	100% All Year	
8	Landscaping of common areas outside of the Facility	100% All Year	
9	Window cleaning-interior		100% All Year
10	Window cleaning-exterior	100% once a year	
11	Furnishings and equipment supply and repair		100% All Year
12	Janitorial services and supplies in Licensee's Exclusive Use Areas and interior Common Areas.		100% All Year
13	Security patrol services	100% All Year	
14	Facility security alarm hardware and installation services	100% All Year	
15	Telephone equipment and maintenance		100% All Year
16	Telephone service plan, cable and internet.		100% All Year
17	Parking lot maintenance	100% All Year	
18	Exterior perimeter waste cleanup	100% All Year	
19	Fire safety systems maintenance	100% All Year	

20	Exclusive Use Area operational maintenance & repairs including repainting, paint touch up and lamp and tube replacement.		100% All Year
21	Common Area repairs and maintenance	100% All Year	100% if damage caused by Society's use.
22	Structural, Facility envelop, plumbing, and electrical repairs and maintenance.	100% All Year	100% if damage caused by Society
23	Elevator repair and maintenance	100% All Year	