

**CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 1999-34**

A by-law authorizing a Lease Agreement between the Corporation of the Town of Amherstburg and The Discovery Tree Early Years Center Inc. and Frank DiPasquale and Sandra DiPasquale for the use of a portion of the former Anderdon Municipal Building, Part Lot 7, Concession 3.

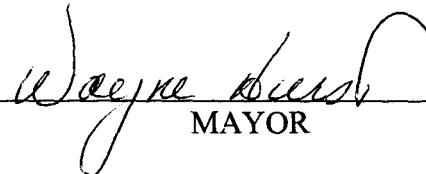
**WHEREAS** the Corporation of the Town of Amherstburg is desirous of leasing out a portion of the former Anderdon Municipal Building, Part Lot 7, Concession 3 and;

**WHEREAS** The Discovery Tree Early Years Center Inc. and Frank DiPasquale and Sandra DiPasquale have made a proposal to the Town of Amherstburg to lease the premises for the purpose of operating a Day Care Center; and;

**WHEREAS** the parties are desirous of entering into a lease agreement.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION  
OF THE TOWN OF AMHERSTBURG ENACTS AS FOLLOWS:**

1. That the Corporation of the Town of Amherstburg enter into a lease agreement with The Discovery Tree Early Years Center Inc. and Frank DiPasquale and Sandra DiPasquale which is attached as Schedule 'A' to this by-law and forms part of this by-law.
2. That the Mayor and Clerk be authorized to sign the lease agreement between the Corporation of the Town of Amherstburg and The Discovery Tree Early Years Center Inc. and Frank DiPasquale and Sandra DiPasquale.
3. That this by-law shall come into force and take effect on the final passing thereof.

  
MAYOR

  
CLERK

1<sup>st</sup> Reading - June 28, 1999

2<sup>nd</sup> Reading - June 28, 1999

3<sup>rd</sup> Reading - June 28, 1999

**LEASE AGREEMENT**

THIS INDENTURE, made in quadruplicate, to take effect as of the 1st day of July, one thousand, nine hundred and ninety-nine.

IN PURSUANCE OF THE *SHORT FORMS OF LEASES ACT*

**B E T W E E N :**

**THE CORPORATION OF  
THE TOWN OF AMHERSTBURG,**  
a municipal corporation under the  
the laws of the Province of Ontario,

(Hereinafter called the "Landlord")

OF THE FIRST PART

- and -

**THE DISCOVERY TREE  
EARLY YEARS CENTRE INC.,**  
a corporation validly incorporated  
and existing under the laws  
of the Province of Ontario,

(Hereinafter called the "Tenant")

OF THE SECOND PART

- and -

**FRANK DiPASQUALE,**  
of the Town of Amherstburg, in the County of Essex  
and Province of Ontario

OF THE THIRD PART

- and -

**SANDRA DiPASQUALE,**  
of the Town of Amherstburg, in the County of Essex  
and Province of Ontario

OF THE FOURTH PART

(Frank DiPasquale and Sandra  
DiPasquale being hereinafter collectively  
referred to as the "Guarantors")

HEREINAFTER collectively called the "Parties"

WHEREAS the Landlord is the owner in fee simple of the lands and premises more particularly described in Schedule "A", which are municipally known as 3400 Middle Side Road, Amherstburg, Ontario (the "Property");

AND WHEREAS the Tenant is desirous of leasing that portion of the Property, having an area of ONE THOUSAND, SEVEN HUNDRED SQUARE FEET (1,700 sq. ft.), more or less, as outlined on the floor plan attached as Schedule "B" hereto (the "Demised Premises"), and the Landlord has consented to lease same to the Tenant, upon the terms and conditions hereinafter contained;

AND WHEREAS the Guarantors are the principals of the Tenant;

NOW THEREFORE WITNESSETH that in consideration of the premises herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are respectively acknowledged and confirmed by each of the Parties hereto, the Parties hereto mutually covenant, promise, agree, warrant and undertake as follows:

## ARTICLE I

### GRANT AND TERM

#### 1.01 DEMISED PREMISES

- (a) IN CONSIDERATION of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord doth demise and lease unto the Tenant the Demised Premises.
- (b) THE TENANT SHALL ALSO be permitted to utilize up to FIFTEEN (15) parking spaces in the parking area to the east of the building on the Property.
- (c) THE TENANT SHALL ALSO be permitted to utilize an area of up to TWO THOUSAND, FOUR HUNDRED SQUARE FEET (2,400 sq. ft.) in an outside area of the Property in the immediate vicinity of the building on the Property, said area to be utilized as an outside playground area for the day-care centre to be carried on by the Tenant (the "Playground Area"). The exact location of the Playground Area on the Property shall be subject to the prior written approval of the Town, with regard to any applicable governmental authorities requirements and guidelines. For greater certainty, the Tenant shall be responsible for the provision, installation, repair and maintenance of any playground equipment the Tenant may require for the Playground Area.

#### 1.02 TERM

- (a) THE TENANT SHALL have and hold the Demised Premises, for and during the term of ONE (1) year (the "Term"), with said Term to commence on September 1st, 1999, and to be fully completed on August 31st, 2004.

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- (b) NOTWITHSTANDING THE FOREGOING, the Tenant shall be allowed to take possession of the Demised Premises on July 1st, 1999 (the "Possession Date") for the purposes of renovating, fixturing and decorating the Demised Premises. For greater certainty, the Tenant shall also be permitted, as of the Possession Date, to access the Property for the purpose of the preparation of the Playground Area, which shall include the installation of playground equipment. For greater certainty, save and except for the deposit of first and last months' rent contemplated by Paragraph 2.01(b) hereof, no rental shall be payable by the Tenant until the above-described commencement date of the Term.

**1.03 OPTION TO RENEW**

- (a) THE TENANT SHALL have the option to renew this Lease for a further renewal period of FIVE (5) years at a rental as hereinafter set forth, commencing the FIRST (1st) day of September, 2004, and from thenceforth ensuing and to be fully completed and ended on August 31st, 2009. The option herein conferred shall be effectively exercised by notice in writing given by the Tenant to the Landlord on or before February 28th, 2004.
- (b) THE RENTAL TO BE PAID during such renewal period shall be subject to agreement between the Parties subsequent to the Tenant's exercise of the above-described right of renewal. For greater certainty, rental for such renewal period shall be determined with reference to fair market rentals for like properties and facilities in the area. However, if the Parties are unable to agree on rental for the renewal period on or before May 31st, 2004, then the Parties agree to submit the issue of the amount of rental payable during the renewal period to arbitration in accordance with Section 17.01 herein.

**1.04 TENANT'S RIGHT OF FIRST REFUSAL**

- (a) DURING the Term or any renewal thereof, if the Landlord receives a *bona fide* Offer to Purchase (the "Offer") the Property from an arm's-length third party, which the Landlord is willing to accept, then the Landlord shall give written notice of the Offer to the Tenant by sending to the Tenant a true copy thereof, and the Tenant shall have the right, during the next FIFTEEN (15) business days after its receipt of such notice, to elect to purchase the Property, by giving written notice of such election to the Landlord, for the price and upon the terms and conditions contained in the Offer.
- (b) IF the Tenant does so elect, the notice given by the Tenant shall constitute a binding Agreement of Purchase and Sale between the Parties. If the Tenant does not so elect, the Landlord shall be free to sell the Property to the above-described arm's-length third party on the terms and conditions set forth in the Offer. If the Property is not sold under the terms and conditions of the Offer, the Landlord shall be obliged to submit any further offer or offers to the Tenant by giving written notice thereof to the Tenant in the manner provided for in this Section.

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## ARTICLE II

### RENT

#### 2.01 RENT

- (a) THE TENANT COVENANTS with the Landlord to pay annual rent unto the Landlord, the amount of THIRTEEN THOUSAND, SIX HUNDRED DOLLARS (\$13,600.00), payable at par at Amherstburg, Ontario, in TWELVE (12) equal monthly payments of ONE THOUSAND, ONE HUNDRED, THIRTY-THREE DOLLARS & THIRTY-THREE CENTS (\$1,133.33), said payments to be made on the FIRST (1st) day of each month during the Term. The Parties confirm and acknowledge that the above-described rental amount is based on an agreed upon rental rate of EIGHT DOLLARS (\$8.00) per square foot multiplied by the Parties' present estimate of the usable and rentable area of portion of the Property which makes up the Demised Premises, and is thus subject to adjustment once such area is absolutely determined, either by measurement or by the provision of an acceptable floor plan.
- (b) THE TENANT SHALL PAY to the Landlord the sum of TWO THOUSAND, TWO HUNDRED, SIXTY-SIX DOLLARS & SIXTY-SEVEN CENTS (\$2,266.67), representing first and last months' rent, prior to Possession Date, as contemplated by Paragraph 1.02 (b) hereof.
- (c) THE TENANT FURTHER COVENANTS and agrees to pay as additional rent or charges the additional items which are payable as rent and hereinafter referred to.

#### 2.02 ADDITIONAL RENT / ADDITIONAL CHARGES

THE TENANT COVENANTS to pay rent and to pay as additional rent or additional charges any money required to be paid pursuant to Sections 3.01, 3.02, 6.01, 7.01 and 8.02 hereof and all other sums of money or charges required to be paid by the Tenant under this Lease whether or not the same be designated as "additional rent" or "additional charges" pursuant to this Lease. If such additional rent or additional charges are not paid at the time provided in this Lease, they shall nevertheless be due and payable with the next installment of rent thereafter falling due hereunder as rent, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or limit any other remedy of the Landlord.

#### 2.03 PAST DUE RENT AND ADDITIONAL RENT/CHARGES

IF the Tenant shall fail to pay when the same are due and payable, any rent or additional rent or additional charges due under this Lease, such unpaid amounts shall bear interest from the due date thereof to the date of payment of the rate of TWO PERCENT (2%) per annum above the prime rate of interest per annum charged from time to time by the Bank of Nova Scotia to its preferred corporate customers.

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## **2.04 PLACE OF PAYMENT**

ALL PAYMENTS to be made by the Tenant under or in respect of this Lease shall be made to the Landlord at 271 Sandwich Street South, Amherstburg, Ontario, or to such agent or agents of the Landlord or at such other place as the Landlord shall hereafter from time to time direct in writing to the Tenant.

## **ARTICLE III**

### **TAXES**

#### **3.01 BUSINESS AND PERSONAL PROPERTY TAX**

THE TENANT SHALL pay all taxes, rates, charges and licenses fees assessed, levied or imposed in respect of the personal property, business or income of the Tenant as and when the same become due and payable.

#### **3.02 TAX ON RENTS**

IN THE EVENT that any Federal, Provincial, Municipal or other governmental authority shall impose or assess any tax, levy, or other charge on or against all or any part of the rentals and/or charges paid or to be paid by the Tenant under the terms of this Lease, and Landlord is required to collect from the Tenant and/or pay such tax, levy or charge to such authority, the Tenant shall, upon the same date as such rentals or charges are due to be paid to the Landlord by the Tenant, pay to or reimburse the Landlord (as the case may be) all such charges as may be imposed or assessed which, for the purposes of this Lease, shall be deemed to be due from the Tenant as additional charges under this Lease Agreement; it being the intention of the Parties hereto that the rents payable hereunder shall be paid to the Landlord absolutely net, without deduction of any nature whatsoever, except as in this Lease otherwise expressly provided; provided, the Tenant shall not be required to pay any estate, inheritance, succession, transfer, income or similar taxes which may be payable by the Landlord.

#### **3.03 LAND TAXES**

- (a) During the Term herein granted, the Landlord shall pay and discharge as the same become due and payable all applicable taxes, if any, including rates, duties, and assessments that may be levied, rated, charged or assessed against the Property, or any fixtures or chattels situate thereon, or any part thereof by any Municipal, Provincial, Parliamentary, school or other body during the term hereby demised, including without being limited to every tax, charge, rate, assessment or payment which may become a charge or encumbrance or levied upon or collected in respect of the Property or any part thereof (herein collectively called the "Land Taxes").
- (b) A COPY OF THE TAX BILL submitted by the Landlord to the Tenant shall be sufficient evidence of the amount of the said Land Taxes assessed or levied against the Property.

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- (c) IN THE EVENT of the Tenant being assessed as Separate School Supporter, and by reason thereof the amount of the taxes payable on the said premises being increased over the amount payable on an assessment as a Public School Supporter, then and in such event the Tenant covenants and agrees with the Landlord to pay to the Landlord the amount of such increase.

#### ARTICLE IV

#### USE, WASTE, NUISANCE, GOVERNMENTAL REGULATIONS

##### 4.01 CONDUCT OF BUSINESS

- (a) THE TENANT SHALL NOT, without the prior written consent of the Landlord, which may be arbitrarily refused and/or with-held, utilize the Demised Premises at any time for any other purpose than that of a day-care centre, as well as any related uses, and including any such other lawful activities or services compatible or consistent with such use.
- (b) THE TENANT SHALL conduct its business in the Demised Premises and occupy the Demised Premises in an up-to-date and reputable manner, shall keep the Demised Premises in a clean and tidy condition, shall not bring thereon any machinery, equipment, article or thing that might damage the same, shall not overload the floors, and shall not permit ashes, waste or objectionable material to accumulate on or near the Demised Premises.

##### 4.02 WASTE OR NUISANCE

THE TENANT SHALL NOT use or permit the Demised Premises to be used or occupied for any unlawful purpose, or commit or suffer to be committed any waste upon the Demised Premises, or do or permit to be done anything the doing or omission of which shall be or result in a nuisance or which may disturb the quiet enjoyment of any neighboring properties, tenants or tenements.

##### 4.03 GOVERNMENTAL REGULATIONS

THE TENANT SHALL, at the Tenant's expense, faithfully observe and promptly comply with all the requirements of Federal, Provincial, Municipal and other applicable governmental authorities, and all applicable orders, rules and regulations of the Canadian Fire Underwriters Association, or any other body having similar functions, now in force, or which may hereafter be in force, pertaining to the Demised Premises, and likewise observe and comply with the requirements of all policies of public liability fire and other insurance now in force, or which may hereafter be in force with respect to the Demised Premises and any equipment used in connection therewith.

ARTICLE V

UTILITIES

**5.01 UTILITY CHARGES**

THE LANDLORD SHALL BE RESPONSIBLE for the payment of all charges for heat, water, gas, electricity, or any other utility (save as set out below) or energy used or consumed in the Property and all charges for any utility service or energy supplied to the Property. For greater certainty, the Tenant shall remain solely responsible for the payment of any telephone or other private utility charges relating to its business and to the Demised Premises. The Landlord shall not be liable for any interruption or failure in the supply of any such utilities or energy to the Demised Premises, save and except where said interruption or failure is caused by the negligent act or act of omission of the Landlord, and/or the Landlord's agents, employees, servants or contractors.

ARTICLE VI

MAINTENANCE, REPLACEMENT AND REPAIRS

**6.01 MAINTENANCE, REPLACEMENT AND REPAIRS**

- (a) THE LANDLORD SHALL, at the Landlord's expense, and save as set out herein, maintain and keep the Property and every part thereof in good, substantial repair and condition, both interior and exterior, and shall promptly make all needed repairs of a quality and kind at least equal to the original, including without being limited to the drains, pipes, electrical wiring, heating and air-conditioning, plant and equipment and all other machinery, facilities and equipment belonging to and used in connection with the Property, unless such repairs result from damage caused by the Tenant, and/or the Tenant's agents, employees, servants, invitees or contractors.
- (b) THE LANDLORD SHALL, at the Landlord's expense, provide snow removal for the parking area of the Property, and shall provide grass-cutting/landscaping in all grassed areas of the Property, save and except for: 1) any grassed area (including the Playgournd Area) which is fenced off for use in connection with the day-care centre contemplated by the Tenant, and 2) up to TEN (10) feet of any further grassed area surrounding such grassed area. For greater certainty, all remaining snow removal and grass-cutting/landscaping is to be provided by the Tenant, at its expense.

**6.02 SURRENDER OF DEMISED PREMISES AT END OF TERM**

UPON THE EXPIRY of this Lease, the Tenant shall surrender the Demised Premises to the Landlord in the same condition in which they were delivered to the Tenant at the commencement of the Term hereof, subject to alterations to the Demised Premises permitted by this Lease Agreement, reasonable wear and tear and damage by fire, lightning, tempest, structural defects, *vis major*, act of the Queen's enemies, riot, mob violence, civil commotion, earthquake, structural, latent or inherent defect or by reason of any explosion, accident or agency not the result of some negligent act or omission of the Tenant, or the Tenant's agents, employees, servants, invitees or contractors only excepted.



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## ARTICLE VII

### ACCESS BY LANDLORD

#### 7.01 RIGHT OF ENTRY

THE LANDLORD and the Landlord's agents shall have the right to enter the Demised Premises at all reasonable times to inspect the same, and in the event an inspection reveals any maintenance work or repairs are necessary and required by this Lease to be done by the Tenant, the Landlord shall give the Tenant notice in writing and thereupon the Tenant shall, within a reasonable time after receipt thereof, do such maintenance work or make the necessary repairs or replacements in a good and workmanlike manner. If the Tenant shall fail to do so, the Landlord and its contractors, agents or workmen shall be allowed to take all material into and upon the Demised Premises and do such maintenance work or make such repairs or replacements. The rent reserved shall not abate while the said maintenance work, repairs or replacements are being made (either by the Landlord or the Tenant, as the case may be); in addition, the Landlord shall not be liable for any inconvenience, disturbance, loss of business or other damage resulting therefrom.

## ARTICLE VIII

### INSURANCE AND INDEMNITY

#### 8.01 FIRE INSURANCE AND OTHER RISKS

THE LANDLORD SHALL keep all buildings, improvements, equipment, fixtures, motors, machinery and equipment in or upon the Property (other than the Tenant's trade fixtures and equipment) insured against loss or damage by fire and such other perils which similar properties are usually insured against in the Province of Ontario by prudent owners, including without being limited to fire, lightning, windstorm, hail, explosion, riot, civil commotion, damage from aircraft and vehicles and smoke damage in an amount equal to the full insurable value thereof.

#### 8.02 LIABILITY INSURANCE

THE TENANT SHALL, at the Tenant's sole expense, keep in full force and effect a policy of general public liability insurance with respect to the Demised Premises and the business conducted by the Tenant protecting against claims for personal injury, death and property damage in which the limits shall be not less than ONE MILLION DOLLARS (\$1,000,000.00), with the policy in question to have an inflation factor. The policy shall name the Landlord and the Tenant as insureds. A copy of the policy or a certificate of insurance shall be delivered to the Landlord on or before the Possession Date.

#### 8.03 INDEMNIFICATION OF LANDLORD

THE TENANT HEREBY INDEMNIFIES and saves harmless the Landlord from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Property or any part thereof occasioned wholly or in part by any act or omission of the Tenant

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and/or the Tenant's agents, employees, servants, invitees or contractors. In case the Landlord shall be made a party to any litigation commenced by or against the Tenant, then the Tenant shall indemnify and hold the Landlord harmless and shall pay all costs, expenses and reasonable counsel fees incurred or paid by the Landlord in connection with such litigation. The Tenant shall also pay all costs, expenses and reasonable counsel fees that may be incurred or paid by the Landlord in enforcing the covenants and agreements in this Lease.

## ARTICLE IX

### DAMAGE AND DESTRUCTION

#### 9.01 TOTAL AND PARTIAL DESTRUCTION OF THE DEMISED PREMISES

- (a) SUBJECT TO Section 9.04 hereof, if the Demised Premises and/or the building on the Property are damaged or destroyed, in whole or in part, by fire or other peril, then the following provisions shall apply:
- (i) If the damage or destruction renders the Demised Premises unfit for use and occupancy and impossible to repair or rebuild using reasonable diligence within ONE HUNDRED AND TWENTY (120) days from the date on which such damage or destruction took place (the "Event"), then the Term shall cease from the date of such Event, and the Tenant shall immediately surrender and give possession of the Demised Premises to the Landlord, and rent shall abate from the time of such surrender;
  - (ii) If the Demised Premises can, with reasonable diligence, be repaired and rendered fit for use and occupancy within ONE HUNDRED AND TWENTY (120) days from the Event, but the damage or destruction renders the Demised Premises wholly unfit for use or occupancy, the rent reserved hereunder shall not accrue after the Event or while the repairs to such damage or destruction are being carried out. Upon completion of such repairs, the Tenant's obligation to pay rent shall resume immediately; and
  - (iii) If the Demised Premises can, with reasonable diligence, be repaired and rendered fit for use and occupancy within ONE HUNDRED AND TWENTY (120) days from the Event, and the damage or destruction renders the Demised Premises partially fit for use or occupancy, then, until repairs to such damage or destruction have been completed, the Tenant shall continue in possession of the Demised Premises and the rent shall abate proportionately.
- (b) Any questions as to the degree of damage or destruction or the period of time required to repair or rebuild shall be determined by an architect retained by the Tenant.
- (c) Apart from the provisions of Paragraph 9.01(a) hereof, there shall be no abatement of rent payable by the Tenant, nor shall the Tenant be entitled to claim against the Landlord for any damages, general or special, caused by such damage or destruction of the Demised Premises, unless said damage or destruction results from the negligence and/or act of omission by the Landlord or any of its employees, servants and agents.

**9.02 TERMINATION OF LEASE**

NOTWITHSTANDING Section 9.01 hereof, if, during the Term of this Lease, the Demised Premises and/or the building on the Property are totally or partially damaged or destroyed such that, in accordance with Section 9.01 hereof, this Lease is terminated, all proceeds from the said insurance on the Property shall belong absolutely to the Landlord and the Tenant shall forthwith execute all releases as may be necessary in respect of the insurance monies.

**ARTICLE X**

**ADDITIONS, ALTERATIONS, FIXTURES**

**10.01 PERMITTED ALTERATIONS**

- (a) THE TENANT SHALL BE PERMITTED to make any structural alterations, changes in the partitions, additions or renovations to the Demised Premises (the "Alterations") that the Tenant may deem appropriate, provided that the following terms and conditions are complied with:
- (i) All Alterations shall conform to all statutes, regulations, building by-laws and rules and regulations of any governmental body (including, without limiting the generality of the foregoing, the rules and regulations of the Canadian Underwriters Association or any successor body thereto) if any, then in force affecting the Demised Premises, and that all necessary permits and authorizations shall have been obtained prior to the commencement of work on said Alterations;
  - (ii) The Alterations will not be of such kind or extent as to in any manner weaken the structure of the Demised Premises after the alterations are completed, or reduce the value of the Demised Premises;
  - (iii) All plans and blueprints for the Alterations shall be submitted to the Landlord for its written consent of same prior to any work on the Alterations commencing, which consent shall not be unreasonably withheld; and
  - (iv) The Alterations shall be completed in a good and workmanlike manner within a reasonable time of commencement.
- (b) IF structural alterations become necessary because of the application of the laws or governmental regulations to the business conducted by the Tenant, the Tenant shall make such alterations or additions, at the Tenant's expense, after all necessary municipal and other governmental permits and authorizations have been obtained. Such alterations or additions shall be completed in a good and workmanlike manner and within a reasonable time, and the same shall be in compliance with the building and zoning by-laws of the municipality in which the Demised Premises are situated and with all federal, provincial and municipal by-laws and regulations of the Canadian Underwriters Association or any other body successor thereto.

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- (c) IT IS UNDERSTOOD by the Parties that, at the conclusion of the Term, the Tenant shall not be required to restore the Demised Premises to their former state, provided that this Article X of the Lease has been complied with by the Tenant; in addition, all alterations, additions, renovations etc. made to the Demised Premises by the Tenant (exclusive of fixtures) shall be surrendered to and become the property of the Landlord.

#### 10.02 FIXTURES

- (a) THE TENANT SHALL have the right to deliver to, and install in the Demised Premises, or to cause to be delivered to, or installed in, the Demised Premises, any equipment, fixtures, stock or other material to be used by the Tenant in the operation of its business, PROVIDED THAT no structural damage to the Demised Premises is caused thereby.
- (b) SAVE AS SET OUT HEREIN, the fixtures placed in or on the Demised Premises by the Tenant shall continue to be the property of the Tenant.
- (c) THE TENANT may remove its fixtures so long as all rent and other sums due or to become due hereunder are fully paid, and so long as the Tenant does not remove or carry away from the Demised Premises, any plumbing, heating, electrical or ventilating plant or equipment or other services, and so long as the Tenant repairs any damage caused by such removal; PROVIDED THAT all electric light fixtures, alterations, additions and improvements to the Demised Premises which in any manner are or shall be attached to the walls, floors, ceilings or any linoleum tile, carpet or similar floor covering which may be cemented or otherwise affixed to the floor of the Demised Premises or any paneling or other covering affixed to the walls thereof shall remain upon the Demised Premises and shall become the property of the Landlord at the expiration or other termination of the Lease.

#### 10.03 CONSTRUCTION LIENS

THE TENANT SHALL NOT suffer or permit any construction or mechanic's liens for work, labour, services or materials ordered by the Tenant, or for the cost of which the Tenant may be in any way obligated, to attach to the Property, and whenever any such lien shall attach or a claim therefor shall be registered, the Tenant shall, within TWENTY (20) days after the Tenant have notice of the claim for lien, procure the discharge thereof by payment or by giving security or in such other manner as is or may be required or permitted by law.

### ARTICLE XI

#### DEFAULT OF TENANT

##### 11.01 PROVISO FOR RE-ENTRY

PROVISO FOR RE-ENTRY by the Landlord on non-payment of rent or non-performance of covenants; and in case, without the written consent of the Landlord, the Demised Premises shall become and remain vacant or not used to a period of THIRTY (30) days while the same are suitable for use by the Tenant or be used by any other person than the Tenant or taken in execution or in attachment by any credit of the Tenant or the Tenant shall make any assignment for the benefit

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of creditors or become bankrupt or insolvent or take the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or any other shall be made for the winding-up of the Tenant, then and in every such case all rental payable pursuant to this Lease shall immediately become due and payable and at the option of the Landlord, this Lease shall cease and terminate and the said Term shall immediately become forfeited and void, in which event the Landlord may re-enter and take possession of the Demised Premises as though the Tenant or any occupant or occupants of the Demised Premises was or were holding over after the expiration of the Term without any right whatever.

#### **11.02 DISTRESS**

NOTWITHSTANDING THE BENEFIT of any present or future statute taking away or limiting the Landlord's right of distress none of the goods and chattels of the Tenant on the Demised Premises at any time during the same term shall be exempt from levy by distress for rent in arrears.

#### **11.03 TENANT'S CHATTELS**

PROVIDED THAT in the case of removal by the Tenant of the goods and chattels of the Tenant from the Demised Premises out of the ordinary course of business, the Landlord may follow the same for THIRTY (30) days in the same manner as is provided for in the *Landlord and Tenant Act*.

### **ARTICLE XII**

#### **ASSIGNMENT AND SUBLETTING**

##### **12.01 CONSENT OF LANDLORD**

- (a) THE TENANT SHALL BE PERMITTED to assign this Lease or sublet the whole or any part of the Demised Premises only with the prior written consent of the Landlord, which may be arbitrarily unreasonably refused and/or with-held.
- (b) NOTWITHSTANDING ANY SUCH ASSIGNMENT OR SUBLETTING, the Tenant shall remain fully liable with respect to its obligations under this Lease, and shall not be released from performing any of the terms, covenants and conditions of this Lease.
- (c) IMMEDIATELY AFTER any such assignment or subletting pursuant to the above provisions, the rent payable by the Tenant to the Landlord shall not be less than the rent paid by the Tenant to the Landlord immediately prior to such assignment or subletting.

### **ARTICLE XIII**

#### **OVERHOLDING**

##### **13.01 OVERHOLDING**

IF upon the termination of this Lease or any renewal thereof for any reason whatsoever the Landlord permits the Tenant to remain in possession of the Demised Premises and accepts rent in

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respect thereto, a tenancy from year to year shall not be created by implication of law, but the Tenant shall be deemed to be a monthly tenant only subject in all respects to the provisions of this Lease.

#### ARTICLE XIV

#### TERMINATION

##### 14.01 TERMINATION

THE LEASE herein contained shall be terminated, at the option of the Landlord, on the happening of any of the following events:

- (a) The bankruptcy or insolvency of the Tenant;
- (b) The breach by the Tenant of any of the covenants herein contained; PROVIDED THAT such breach has not been corrected within SEVEN (7) days after written notice has been given by the Landlord to the Tenant specifying such breach, or the correction of such breach has not been commenced within SEVEN (7) days after written notice has been given by the Landlord to the Tenant specifying such breach where the correction of such breach cannot reasonably be completed within SEVEN (7) days;
- (c) The Tenant being in default of any payment hereunder in excess of FIFTEEN (15) days from the due date for such payment (notwithstanding any other provision otherwise herein contained);
- (d) By mutual agreement of the Parties hereto under a memorandum in writing signed by both the Landlord and the Tenant; or
- (e) In the event of expropriation or other involuntary forfeiture of the Demised Premises.

#### ARTICLE XV

#### QUIET ENJOYMENT

##### 15.01 QUIET ENJOYMENT

THE LANDLORD COVENANTS with the Tenant that, upon the Tenant duly paying the rent hereby reserved together with all additional charges herein secured and duly keeping, observing and performing the covenants, agreements and conditions herein on the Tenant's part to be kept, observed, and performed, the Tenant shall and may peaceably possess and enjoy the Demised Premises for the term hereby granted without hindrance, interruption or disturbance from the Landlord.

**15.02 SIGNAGE**

THE TENANT may place, erect, maintain or paint any sign or signs upon the Demised Premises, and the Tenant may remove such sign or signs at the expiration of the Term or any extension thereof; PROVIDED THAT the Tenant covenants that, in the erection of any such permitted signs, they shall comply with all relevant federal, provincial and municipal laws, ordinances and requirements; FURTHER PROVIDED THAT the Tenant covenants that, in the removal of any such signage, the Tenant shall repair any damage caused thereby.

**ARTICLE XVI**

**OFFSET STATEMENT, SUBORDINATION**

**16.01 OFFSET STATEMENT**

THE TENANT SHALL, within FIFTEEN (15) days after request therefor by the Landlord, or in the event that upon any sale, assignment or hypothecation of the Property an offset statement shall be required from the Tenant, deliver a certificate to any proposed purchaser or mortgagee, or to the Landlord certifying (if such be the case) that this Lease is in full force and effect that there are no defenses or offsets thereto, or stating those claimed by the Tenant.

**16.02 SUBORDINATION**

UPON REQUEST of the Landlord, the Tenant shall subordinate the Tenant's rights hereunder to the lien or any mortgage or mortgages, or the lien resulting from any other method of financing or refinancing now or hereafter in force against to be made upon the security thereof; PROVIDED THAT the Landlord shall provide to the Tenant a Non-Disturbance Agreement by such mortgagee, pursuant to which shall be entitled to continue to occupy the Demised Premises so long as the Tenant are not in default under the terms of this Lease or any renewal thereof. The Tenant shall execute all documentation required by the Landlord to give effect to any such subordination.

**ARTICLE XVII**

**MISCELLANEOUS**

**17.01 ARBITRATION**

- (a) IN THE EVENT of any dispute arising between the Parties hereto relating to any matter herein contained, such dispute shall be submitted to arbitration by notice being given by any of the Parties to the others. Upon such notice being given, the dispute shall be determined by the award of THREE (3) Arbitrators, or by a majority of them. The Landlord shall nominate ONE (1) Arbitrator within THIRTY (30) days of the giving of such notice, and the Tenant shall nominate ONE (1) Arbitrator within THIRTY (30) days of the giving of such notice; the THIRD (3rd) Arbitrator shall be selected by the Arbitrators chosen by the Parties within SEVEN (7) days of their nomination.
- (b) IF either the Landlord or the Tenant shall neglect or refuse to name an Arbitrator in the time specified, or if the Arbitrators selected by both Parties are unable to agree upon a THIRD

(3rd) Arbitrator, or are unwilling for any reason to proceed with the arbitration, either Party may apply to a judge of the Ontario Court (General Division), who shall name an Arbitrator and/or fix the terms of the arbitration, and the Parties agree to be bound by any person so named and/or any terms of conditions so fixed.

- (c) THE ARBITRATORS shall have all the powers given by the *Arbitrations Act*, R.S.O. 1990, Chap. A. 24, as from time to time amended, and may proceed at any time in such manner as they see fit on such notice as they may deem reasonable. The Landlord and the Tenant shall pay their own costs, and shall share equally the costs of the arbitration. The award and determination of the Arbitrators shall be final and binding upon both Parties hereto, and each Party agrees not to appeal any such award or determination.

#### 17.02 NOTICES

- (a) ANY NOTICE to be given by one Party to this Agreement to the other Party to this Agreement shall be sufficiently given if made in writing and addressed to the other Party by means of Telex, Telegraph or Facsimile or by prepaid registered mail. In the event such notice shall be given by Telex, Telegraph, or Facsimile, it shall be deemed to have been received on the day next following the transmission of such notice, and in the event that such notice shall be given by registered mail, it shall be deemed to have been received upon the THIRD (3rd) day next following the date of deposit of such notice in a government post office.

- (b) IN the case of notice being given to the Landlord, such notice shall be sent to the following address:

THE CORPORATION OF THE TOWN OF AMHERSTBURG  
271 Sandwich Street South  
AMHERSTBURG, Ontario  
N9V 2Z3  
Facsimile: (519) 736-5403  
Attention: Mr. William J. King, Administrator-Clerk

- (c) IN the case of notice being given to the Tenant, such notice shall be sent to the following address:

THE DISCOVERY TREE EARLY YEARS CENTRE INC.  
3400 Middle Side Road  
AMHERSTBURG, Ontario  
\*\*\* \*\*  
Facsimile: (519) \*\*\*-\*\*\*\*  
Attention: Mrs. Sandra DiPasquale, President

- (d) ANY PARTY to this Agreement may change particulars of its address for notice by notice to the other Party to this Agreement in the manner set out herein.

#### 17.03 GUARANTEE OF TENANT'S OBLIGATIONS

- (a) IN CONSIDERATION of the sum of TWO DOLLARS (\$2.00) now paid by the Landlord to the Guarantors, the receipt and sufficiency of which is hereby acknowledged by the Guarantors, and to induce the Landlord to execute and deliver this Lease Agreement, the Guarantors hereby jointly and severally covenant with the Landlord that the Tenant will



duly perform and observe each and every covenant and obligation of the Tenant hereunder, including, without limiting the generality of the foregoing, the payment of rent and/or additional rent hereunder.

(b) THE GUARANTORS ACKNOWLEDGE AND AGREE that their guarantee of the Tenant's obligations hereunder is given upon the following terms:

- (i) the liability of the Guarantors to the Landlord shall be for all purposes as if the Guarantors were (jointly and severally) primarily liable under this Lease Agreement, and not as sureties for the obligations of the Tenant hereunder, and the Landlord shall not be obliged to resort to or exhaust any recourse which it may have against the Tenant or any other person before being entitled to claim against the Guarantors;
- (ii) no dealings between the Landlord and the Tenant of whatsoever kind, whether with or without notice to the Guarantors, will exonerate or relieve the Guarantors, in whole or in part, from their covenants and obligations hereunder, and in particular, and without limiting the generality of the foregoing, the Landlord may modify or amend this Lease Agreement, grant any indulgence, release, postponement or extension of time, waive any covenant or other provision of this Lease Agreement and/or any obligation of the Tenant, take or release any securities or other guarantees for performance by the Tenant, and otherwise deal with the Tenant, this Lease Agreement, and any other person, firm or corporation as the Landlord may see fit without affecting, lessening or in any way limiting the liability of the Guarantors hereunder;
- (iii) no assignment of this Lease Agreement, no sublease of the Demised Premises, and no other dealings with this Lease Agreement, the Tenant, or the Demised Premises, whether with or without the consent of the Landlord, will in any way affect, lessen or limit the liability of the Guarantors hereunder; and
- (iv) upon demand therefor, the Guarantors shall make any payment to the Landlord of any sums properly payable by the Tenant to the Landlord pursuant to the terms of this Lease Agreement, and the Guarantors will, upon demand therefor, perform any other obligation of the Tenant which the Tenant has failed to perform.

#### **17.04 UPGRADE OF THE SEPTIC SYSTEM**

Prior to the commencement of the Term, the Landlord shall, at its own expense, remove and replace the septic system currently servicing the Property, such that the new septic system shall be sufficient to meet all applicable governmental requirements and guidelines (including, without limiting the generality of the foregoing, those of the provincial Ministry of Health) so as to provide sufficient service for the Tenant's planned use of the Demised Premises as a day-care centre (with an estimated enrollment of 25-30 students, as well as 3-5 staff); said new septic system must also be sufficient to address the Landlord's remaining use, if any, of the balance of the Property.

**17.05 GENERAL PROVISIONS**

- (a) ANY WAIVER by the Landlord of 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 any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by the Landlord shall not be deemed to be a waiver of any preceding breach by the Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular rent so accepted, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by the Landlord, unless such waiver be in writing and signed by the Landlord.
- (b) NO PAYMENT by the Tenant or receipt by the Landlord of a lesser amount than the monthly rent stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment of rent be deemed on accord and satisfaction, and the Landlord may accept such cheque or payments without prejudice to the Landlord's right to recover the balance of such rent to pursue any other remedy in this Lease provided.
- (c) IN THE EVENT that either the Landlord or the Tenant is delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labour troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the Party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not operate to excuse the Tenant from prompt payment of rent, additional charges or any other charges or payments required by the terms of this Lease.
- (d) THE TENANT SHALL NOT register this Lease in this form but if the Tenant desires to register notice of this Lease, then the Parties hereto shall contemporaneously with the execution hereof, execute a short form Notice of Lease solely for the purpose of registration.
- (e) IF any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- (f) SAVE AS AFORESAID, this Lease shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.
- (g) THE WORDS importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.

- (h) UNLESS THE CONTEXT otherwise requires, the word "Landlord" and the word "Tenant" wherever used herein shall be construed to include and shall mean the executors, administrators, heirs, permitted successors and/or assigns of the said Landlord and Tenant, respectively.
- (i) THE PARTIES HERETO AGREE for themselves, and their executors, administrators, heirs, permitted successors and/or assigns, to execute any instrument which may be necessary or proper to carry out the purposes and intent of this Lease. For greater certainty, this Lease Agreement shall be binding upon the Parties as well as their executors, heirs, permitted successors and/or assigns.
- (j) THE DIVISION of this Lease Agreement into Sections, subsections, etc. and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation hereof.
- (k) ANY SCHEDULES and other documents attached to this Lease are an integral part of this Lease Agreement and are incorporated into this Lease by reference.
- (l) THIS AGREEMENT may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and shall be effective as of the date set out above.
- (m) THIS LEASE AGREEMENT constitutes the entire agreement among the Parties and except as herein stated and in the instruments and documents referred or to be delivered pursuant hereto, contains all of the representations and warranties of the respective Parties. There are no oral representations or warranties among the Parties of any kind. This Lease Agreement may not be amended or modified in any respect except by written instrument signed by all Parties.

IN WITNESS WHEREOF the Parties hereto have executed these presents, in the case of the Landlord and the Tenant by the hands of their respective proper officers, duly authorized in that behalf, as of the date set out above.

**THE CORPORATION OF  
THE TOWN OF AMHERSTBURG**

per: Wayne Hurst, Mayor

per: William J. King, C.A.O.

We have authority to bind the Corporation.

**THE DISCOVERY TREE  
EARLY YEARS CENTRE INC.**

per: Frank DiPasquale, President

per: Sandra DiPasquale, Sec.-Treas.

We have authority to bind the Corporation.

3400 Middle Side Road, Amherstburg 19

Witness: \_\_\_\_\_

FRANK DIPASQUALE

Witness: \_\_\_\_\_

SANDRA DIPASQUALE

The Discovery Tree - Amherstburg Lease 20  
3400 Middle Side Road, Amherstburg

## SCHEDULE "A"

### LEGAL DESCRIPTION OF THE PROPERTY

Part of Lot 7, Concession 3, Town of Amherstburg (formerly the Township of Anderdon), County of Essex [exact metes and bounds description to be added]