

## OCCUPANCY AGREEMENT

This OCCUPANCY AGREEMENT made as of the 1<sup>st</sup> day of September, 2017.

BETWEEN:

**HURON-PERTH CATHOLIC DISTRICT SCHOOL**  
(hereinafter "HPCDSB")

OF THE FIRST PART

- AND -

**COUNTY OF HURON – CHILDREN’S SERVICES**  
(hereinafter the "Occupant")

OF THE SECOND PART

WITNESSETH AS FOLLOWS:

### ARTICLE 1 - BASIC TERMS, DEFINITIONS

#### 1.01 Basic Terms

- (a) HPCDSB: Huron-Perth Catholic District School Board  
Address: 87 Mill Street, P.O. Box 70  
Dublin, Ontario N0K 1E0  
Attention: Superintendent of Business & Treasurer
- (b) Occupant: County of Huron- Children’s Services  
Address: 777220 London Road, R.R. #5  
Clinton, Ontario N0M 1L0  
Attention: Social Services Manager
- (c) Premises: The area designated in yellow and pink on Schedule A hereto of the school building located at 225 Cornyn Street, Wingham, Ontario.

#### 1.02 Definitions

In this Occupancy Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms have the following respective meanings:

- (a) "Applicable Laws" means all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction over HPCDSB, the

School, Occupant or any of them, and all amendments thereto, at any time and from time to time;

- (b) **“Building”** means the building located at 225 Cornyn Street, Wingham, Ontario;
- (c) **“Building Systems”** means:
  - (i) The heating and ventilation systems and all other systems, services, installations and facilities from time to time installed in or servicing the Premises (or any portion thereof) including, but not limited to, the following systems, services, installations and facilities: mechanical (including plumbing, drainage and sewage), electrical and other utilities, lighting, life safety (including fire prevention, communications, security and surveillance), and refuse removal; and
  - (ii) All machinery, appliances, equipment, apparatus, components, computer software and appurtenances forming part of or used for or in connection with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls, and the structures and shafts housing and enclosing any of them;
- (d) **“Commencement Date”** means September 1, 2017;
- (e) **“Day Care Expiry Date”** has the meaning set out in Section 2.03;
- (f) **“Day Care Program”** means the day care program operated by the Occupant or by the Day Care Third Party Provider authorized by the Occupant at the Premises as contemplated in Section 5.01 hereof;
- (g) **“Day Care Space”** means the area designated in yellow on Schedule A being approximately 398 square meters;
- (h) **“Day Care Third Party Provider”** means the Clinton Co-operative Childcare Centre or such other day care third party provided agreed to by the Occupant;
- (i) **“Event of Default”** has the meaning set out in Section 13.01;
- (j) **“Family Resource Centre Expiry Date”** has the meaning set out in Section 2.03;
- (k) **“Family Resource Centre Space”** means the area designated in pink on Schedule A being approximately 58 square meters;
- (l) **“Family Resource Program”** means the family resource program operated by the Occupant at the Premises as contemplated in Section 5.01 hereof;
- (m) **“Leasehold Improvements”** means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Occupant including doors, hardware, partitions (including moveable partitions) and wall-to-wall carpeting but excluding trade fixtures and furniture and equipment not in the nature of fixtures;
- (n) **“Occupant”** means the County of Huron – Children’s Services and its successors and assigns;
- (o) **“Occupancy Costs”** means the costs payable by Occupant pursuant to Section 3.02;
- (p) **“Premises”** means the premises identified in Section 1.01 (c);

- (q) **"Principal"** means the Principal, from time to time, of the School;
- (r) **"Programs"** mean the Day Care Program and Family Resource Program;
- (s) **"School"** means the HPCDSB's school located at 225 Cornyn Street, Wingham, Ontario;
- (t) **"Term"** means the period specified in Section 2.03 and, where the context requires, any renewal, extension or overholding thereof;
- (u) **"Transfer"** means an assignment of this Occupancy Agreement in whole or in part, any transaction whereby the rights of the Occupant under this Occupancy Agreement or to the Premises are transferred to another person, any transaction by which any right of use or occupancy of all or any part of the Premises is shared with or conferred on any person or the Premises of any part thereof, or any transaction or occurrence whatsoever which has changed or will change the identity of the person having lawful use of occupancy of any part of the Premises; and
- (v) **"Transferee"** means any person or entity to whom a Transfer is or is to be made.

## **ARTICLE 2 – USE AND TERM**

### **2.01 Use**

In consideration of the Occupancy Costs, covenants and agreements to be paid, observed and performed by the Occupant, HPCDSB shall allow the Occupant use of the Premises. The HPCDSB recognizes that the Occupant will sublet the space to a licensed childcare operator of the Occupant's choice.

### **2.02 Resolution of Unspecified Matters**

The Principal, Occupant and the Executive Director of the Day Care Third Party Provider shall, in good faith, endeavour to reach agreement on all matters relating to Occupant's use of the Premises to the extent not specified herein, it being understood and acknowledged by Occupant that the Principal is responsible for the management and supervision of the School. Failing resolution of any such matters, the decision of the school Principal shall be final and binding.

### **2.03 Term**

- (a) The Term for the Day Care Space is for a period of 10 years and ends 10 years after the Commencement Date (the **"Day Care Expiry Date"**).
- (b) The Term for the Family Resource Centre Space is for a period of 10 years and ends 10 years after the Commencement Date (the **"Family Resource Centre Expiry Date"**).

### **2.04 Holding Over**

If at the expiration of the Term, Occupant shall hold-over with the consent of HPCDSB, the use of the Day Care Space and Family Resource Centre Space, Occupant thereafter shall, in the absence of a written agreement to the contrary, be on a month to month basis and such use shall be subject to all other terms and conditions of this Occupancy Agreement, including, section 3.03 hereof; and, provided that, HPCDSB

may by notice in writing terminate any such month to month use on sixty (60) days prior written notice to Occupant.

### **2.05 Early Termination by Occupant**

Provided the Occupant is not in material default under this Occupancy Agreement, the Occupant shall have the right to terminate this Agreement at any time after the first anniversary of the Commencement Date. The Occupant may exercise its right to terminate this Occupancy Agreement by delivering to HPCDSB a written notice of termination six (6) months prior to the early termination date.

### **2.06 Early Termination by HPCDSB**

HPCDSB shall have the right to terminate this Agreement at any time after the first anniversary of the Commencement Date. HPCDSB may exercise its right to terminate this Occupancy Agreement by delivering to the Occupant a written notice of termination six (6) months prior to the early termination date.

## **ARTICLE 3 – OCCUPANCY COSTS**

### **3.01 Covenant to Pay**

Occupant covenants to pay Occupancy Costs as provided in this Occupancy Agreement.

### **3.02 Payment of Occupancy Costs**

Subject to Section 3.03, Occupant covenants and agrees to pay, from and after the Commencement Date, to HPCDSB at the office of HPCDSB, or to such other person or at such other location as HPCDSB shall direct by notice in writing, the annual total costs, including operating costs and minor maintenance or renewal costs described in Projected Schedule of Costs Recovery attached as Schedule A hereto, with the first payment due on the Commencement Date and continuing every year thereafter throughout the Term.

### **3.03 Amendment to Amount of Occupancy Costs**

- (a) Occupant acknowledges that a portion of the Occupancy Costs includes charges to Occupant for operating costs including utilities, custodial services and snow removal and that these charges are based upon the Ministry of Education Benchmark for Operating Costs which are currently (17/18 fiscal year) set at \$87.27/M2 per annum (**Operating Costs**). To the extent that the Operating Costs are amended, at any time during the Term, the amount of Occupancy Costs to be paid by Occupant pursuant to the provisions of this Occupancy Agreement, shall be amended accordingly.
- (b) Occupant also acknowledges a portion of the Occupancy Costs includes charges to Occupant for minor maintenance or renewal costs related to Occupant's share of HPCDSB's cost of maintaining the area occupied by Occupant and that such cost is based on the Ministry of Education Benchmark for Renewal Costs which is currently (17/18 fiscal year) set at \$7.89/M2 per annum (**Renewal Benchmarks**). Renewal Benchmarks shall be included in the calculation of Occupancy Costs. To the extent that the Renewal Benchmarks are amended at any time after the Commencement Date

and during the Term, the amount of Occupancy Costs to be paid by Occupant pursuant to the provisions of this Occupancy Agreement shall be amended accordingly.

## **ARTICLE 4 – UTILITIES AND BUILDING SYSTEMS**

### **4.01 Utilities and Other Services**

HPCDSB shall be responsible for providing heat, hydro, water, custodial services, snow removal, lawn maintenance security and life safety system monitoring. Notwithstanding the generality of the foregoing, HPCDSB's responsibility to provide custodial services shall extend only to those times that HPCDSB has assigned a custodian to the School generally. In the event that Occupant wishes to operate at the Premises at any time when HPCDSB has not assigned a custodian to the School generally, Occupant shall request that HPCDSB provide a custodian during such time and the direct costs of such custodian (actual wages and benefits) shall be the responsibility of Occupant. HPCDSB shall provide an invoice to Occupant for all such costs incurred by Occupant. As of the date of this Occupancy Agreement, custodians will not be assigned by HPCDSB to schools generally on school holidays, Easter Monday, Civic Holiday (August), December 24<sup>th</sup> and December 31<sup>st</sup> in each year.

### **4.02 No Overloading**

Occupant will not install any equipment which would exceed or overload the capacity of the utility facilities in the Premises or the electrical wiring and service in the Premises. Occupant shall ensure that any equipment used by it in the Premises shall have and bear the appropriate standard and/or approval of the Canadian Standards Association.

### **4.03 No Liability**

In no event shall HPCDSB be liable for any injury to Occupant, its employees, agents or invitees, or to the Premises, or to any property of Occupant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses or damages of whatsoever kind arising from any interruption or failure in the supply of any utility or service to the Premises.

### **4.04 Building Systems**

HPCDSB shall, throughout the Term, operate, maintain, repair, replace and regulate the Building Systems in such a manner as to maintain reasonable conditions of temperature and humidity within the Premises and so as to maintain the Building Systems in a good and working order.

## **ARTICLE 5 – USE OF PREMISES**

### **5.01 Use of Premises**

Occupant acknowledges that the Premises will be used solely for the purpose of a day care and family resource centre.



## **5.02 Conduct of Operations**

- (a) Occupant shall maintain and conduct its operations and shall cause the Day Care Third Party Provider to maintain and conduct its operations in a reasonable and proper manner, so as not to interfere with HPCDSB's use of the remainder of the Building. In operating the Programs, Occupant shall comply and cause the Day Care Third Party Provider to comply with all applicable laws. Without in any way limiting the generality of the foregoing, Occupant shall comply and cause the Day Care Third Party Provider to comply with all police, fire and health regulations and requirements.
- (b) Occupant, its employees, servants, volunteers, invitees and others under its control or for whom it is otherwise responsible for at law shall comply and cause the Day Care Third Party Provider to comply with all policies, procedures, rules and regulations adopted by Occupant and HPCDSB, from time to time, relating to the Building, the School and HPCDSB's operation of the School, including, without limitation, emergency procedures. All such policies, procedures, rules and regulations shall be deemed to be incorporated into and form part of this Occupancy Agreement.

## **5.03 Staffing**

Occupant agrees to provide at its expense sufficient staff to ensure continuous supervision of the children in its care at the Premises.

## **5.04 Interference with Use and Enjoyment**

The Premises shall not be used or occupied by Occupant in a manner which is likely to damage or injure any person or the School. Occupant agrees that it shall use the Premises, at all times, in a manner that is compatible with the safe and proper operation of the School.

## **5.05 Safety**

Occupant hereby agrees to strictly follow and adhere to and cause the Day Care Third Party Provider to strictly follow and adhere to all of HPCDSB's safety policies and procedures, cooperate with HPCDSB and to take any and all steps necessary in order to promote and maintain user safety.

# **ARTICLE 6 – DROP-OFF ARRANGEMENTS**

## **6.01 Drop-Off**

Occupant shall ensure that parents of children in the Programs utilize only such areas as may be designated by the Principal, from time to time, for purposes of dropping off and picking up their children at and from the Programs. In addition, Occupant shall ensure that any such areas are only utilized by parents of children in the Programs at such times as the Principal shall, from time to time, designate. Occupant shall ensure that none of its employees, agents or any other persons associated with the Programs (including, any parents of children in the Programs), park or leave idling any vehicle in any such areas or elsewhere on any School property. For purposes of certainty and without limiting the foregoing, Occupant shall ensure that none of its employees, agents or any other persons associated with the Programs (including, any parents of children in the Programs), leave any vehicle unattended in or on any

driveway or roadway on the School property and Occupant shall take all such actions as are necessary to ensure same does not occur.

## **ARTICLE 7 – MAINTENANCE**

### **7.01 Completion of Premises**

HPCDSB covenants and agrees with Occupant that HPCDSB shall, subject to and in compliance with the floor plan attached as Schedule A hereto and the provisions of this Occupancy Agreement and all Applicable Laws, design and complete the Premises.

## **ARTICLE 8 – MAINTENANCE, REPAIRS AND ALTERATIONS OF PREMISES**

### **8.01 Occupant's Obligations**

Except as otherwise specifically contemplated by this Occupancy Agreement, Occupant shall have no responsibility for any maintenance or repairs to the Premises, unless required as a result of the negligence or misconduct of Occupant, its agents, employees or invitees, the children in the Programs or those for whom it is responsible at law. Occupant shall notify HPCDSB as soon as it becomes aware of there being need for any maintenance or repairs to the Premises. Notwithstanding the foregoing, it is understood that should Occupant request any improvements to the Premises, such improvements will be at the discretion of HPCDSB and at the cost of Occupant.

### **8.02 HPCDSB's Obligations**

Subject to Occupant's specific obligations under this Occupancy Agreement, HPCDSB shall be responsible for all maintenance and repairs to the Premises.

### **8.03 Inspection and Repair on Notice**

HPCDSB, its servants, agents and contractors shall be entitled to enter on the Premises at any time, without notice, for the purpose of making emergency repairs, and during normal business hours on reasonable prior written notice, for the purpose of inspecting and making repairs, alterations or improvements to the Premises. Occupant shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby. HPCDSB, its servants, agents and contractors may, at any time and from time to time, on reasonable prior written notice, enter on the Premises to remove any article or remedy any condition which, in the opinion of HPCDSB, would likely lead to the cancellation of any policy of insurance. HPCDSB will take reasonable precautions and attempt to schedule such work so as not to unreasonably interfere with the operation of the Program and to minimize interference with Occupant's use and enjoyment of the Premises.

### **8.04 Damage Caused by Occupant**

Occupant shall not permit or suffer to be permitted any damage or injury to the Premises or the School. Occupant shall forthwith report HPCDSB, in writing, any damage or injury to the Premises or School. The repair of any damage or injury to the Premises or the School caused by Occupant, its employees, servants, volunteers, invitees or others for whom it is responsible for at law shall be completed (to the



extent HPCDSB elects to) by HPCDSB, at the cost of Occupant, and Occupant confirms its responsibility to, forthwith, pay for and otherwise indemnify HPCDSB in respect of all costs associated with the repair of any such damage or injury to the Premises or the School.

#### **8.05 Alterations, Improvements and Installations**

Occupant shall not make any alterations, improvements or installations in or to the Premises without HPCDSB's prior written consent which consent shall not be unreasonably withheld. Regardless, if consent is so provided, any such alterations, improvements or installations made shall be: (a) at Occupant's expense; and (b) in compliance with all policies, procedures, rules, regulations and directives of HPCDSB relating thereto.

#### **8.06 Ownership of Leasehold Improvements**

All Leasehold Improvements shall immediately on their placement become HPCDSB's property, without compensation to Occupant. Except as otherwise agreed by HPCDSB in writing, no Leasehold Improvements or trade fixtures shall be removed from the Premises by Occupant, either during or on the expiry or earlier termination of the Term.

#### **8.07 Surrender of the Premises**

At the expiration or earlier termination of this Occupancy Agreement, Occupant shall peaceably surrender and give up to HPCDSB vacant possession of the Premises.

### **ARTICLE 9 – INSURANCE AND INDEMNITY**

#### **9.01 Occupant's Insurance**

- (a) Occupant shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:
  - (i) Loss Payee insurance on property of every description and kind owned by Occupant, or for which Occupant is legally liable, or which is installed by or on behalf of Occupant, within the Premises including, without limitation, stock-in-trade, furniture, equipment, partitions, trade fixtures and Leasehold Improvements, in an amount not less than the full replacement cost thereof from time to time;
  - (ii) General liability and property damage insurance, including personal liability, contractual liability, occupier's legal liability, non-owned automobile liability, and owners' protective insurance coverage with respect to the Premises, which coverage shall include the operations conducted by Occupant and any other person on the Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than Two Million Dollars (\$2,000,000.00) or such higher limits as HPCDSB may reasonably require from time to time; and
  - (iii) Such other forms of insurance as may be reasonably required by HPCDSB from time to time.



- (b) All such insurance shall be with insurers and shall be on such terms and conditions as HPCDSB reasonably approves. The insurance described in Sections 9.01(a)(i) shall name HPCDSB as loss payee and shall provide that any proceeds recoverable in the event of damage to Leasehold Improvements shall be payable to HPCDSB. The insurance described in Section 9.01(a)(ii) shall name HPCDSB as an additional insured.
- (c) All of the foregoing policies shall contain a waiver of any right of subrogation or recourse by Occupant's insurers against HPCDSB, its contractors, agents and employees, whether or not any loss is caused by the act, omission or negligence of HPCDSB, its contractors, agents or employees. Occupant shall obtain from the insurers under such policies undertakings to notify HPCDSB in writing at least thirty (30) days prior to any cancellation thereof. Occupant shall furnish to HPCDSB certificates of all such policies.

### **9.02 Occupant Indemnity**

Occupant shall indemnify HPCDSB and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury and/or damage to or loss of property: (a) arising out of any occurrence in or about the Premises occasioned or caused wholly or in part by any act or omission of Occupant or anyone for whom it is in law responsible; or (b) arising from any breach by Occupant of any provision of this Occupancy Agreement.

### **9.03 Indemnity By HPCDSB**

HPCDSB shall indemnify and hold Occupant harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions by HPCDSB, its officers, agents, assigns, licensees, employees or those for whom it is responsible at law, arising out of any cause whatsoever through the carrying out of its obligations under this Occupancy Agreement.

## **ARTICLE 10 – ASSIGNMENT**

### **10.01 Assignment**

Occupant shall not effect any Transfer without the prior written consent of HPCDSB, which may not be unreasonably withheld.

## **ARTICLE 11 – QUIET ENJOYMENT**

### **11.01 Quiet Enjoyment**

Occupant, on paying the Occupancy Costs and performing and observing the covenants and provisions herein required to be performed and observed on its part, shall peaceably enjoy the Premises for the Term.

## **ARTICLE 12 – DAMAGE AND DESTRUCTION**

### **12.01 Damage or Destruction to Premises or the School**

If the Premises or any portion thereof or the School or any portion thereof are damaged or destroyed by fire or by other casualty, HPCDSB may elect, within thirty (30) days of such damage or destruction, on written notice to Occupant, to terminate this Occupancy Agreement. For greater certainty, HPCDSB shall have no obligation to rebuild any part of the Premises or the School.

## **ARTICLE 13 – DEFAULT**

### **13.01 Default and Right to Re-enter**

Any of the following constitutes an Event of Default under this Occupancy Agreement:

- (a) Occupancy Costs due by Occupant are not paid within five (5) days after notice in writing from HPCDSB to Occupant;
- (b) Occupant has breached any of its obligations in this Occupancy Agreement and has not rectified such breach within ten (10) days after notice of such breach from HPCDSB;
- (c) Occupant abandons the Premises.

### **13.02 Default**

If and whenever an Event of Default occurs, then, without prejudice to any other rights which it has pursuant to this Occupancy Agreement or at law, HPCDSB shall have the right to terminate this Occupancy Agreement by notice to Occupant.

## **ARTICLE 14 – GENERAL**

### **14.01 Annual Meeting**

HPCDSB and the Occupant agree to meet annually, on or about the anniversary of the Commencement Date, to review services offered and costing and to discuss and resolve any conflicts or issues.

### **14.02 School Closure**

In the event that HPCDSB, in its discretion, decides to cease to operate the School, it shall provide Occupant with not less than nine (9) months prior notice of its intention to do so. Upon the expiry of nine (9) months from the date upon which any such notice is provided to Occupant this Occupancy Agreement shall terminate and be at an end, except for the obligation of Occupant to pay any amounts owing by Occupant to HPCDSB for the period ending on the date of such termination.

### **14.03 Effect of Waiver or Forbearance**

No waiver by any party of any breach by the other party of any of its covenants, agreements or obligations contained in this Occupancy Agreement shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations, nor shall

any forbearance by any party to seek a remedy for any breach by the other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach.

#### **14.04 Notices**

Any notice, delivery, payment or tender of money or document(s) to the parties hereunder may be delivered personally, sent by prepaid registered or certified mail or prepaid courier to the address for such party as set out in Section 1.01(a) or 1.01(b), as applicable, or paid by electronic fund transfer and any such notice, delivery or payment so delivered or sent shall be deemed to have been given or made and received on delivery of same or on the third business day following the mailing of same, as the case may be. Each party may, by notice in writing to the others from time to time, designate an alternative address to which notices given more than ten (10) days thereafter shall be addressed.

#### **14.05 Number, Gender, Effect of Headings**

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include firms and corporations and *vice versa*. The division of this Occupancy Agreement into Articles and Sections and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Occupancy Agreement.

#### **14.06 Severability**

If any Article or Section or part or parts of an Article or Section in this Occupancy Agreement is or is held to be illegal or unenforceable, it or they shall be considered separate and severable from the Occupancy Agreement and the remaining provisions of this Occupancy Agreement shall remain in full force and effect and shall be binding on HPCDSB and Occupant as though such Article or Section or part or parts thereof had never been included in this Occupancy Agreement.

#### **14.07 Entire Agreement**

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Occupancy Agreement, save as expressly set out or incorporated by reference herein, and this Occupancy Agreement constitutes the entire agreement duly executed by the parties, and no amendment, variation or change to this Occupancy Agreement shall be binding unless the same shall be in writing and signed by the parties.

#### **14.08 Successors and Assigns**

The rights and liabilities of the parties shall enure to the benefit of their respective successors and assigns.



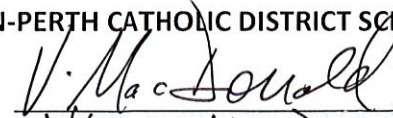
IN WITNESS WHEREOF the parties have duly executed this Occupancy Agreement.

**HURON-PERTH CATHOLIC DISTRICT SCHOOL BOARD**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

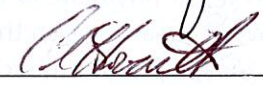
Title: \_\_\_\_\_

  
Vince MacDonald  
Director of Education

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
CHRIS HOWARTH  
SUPERINTENDENT OF BUSINESS

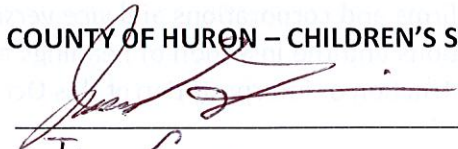
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**COUNTY OF HURON – CHILDREN'S SERVICES**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

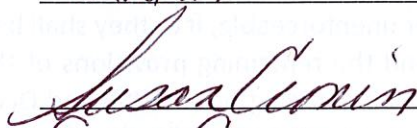
Title: \_\_\_\_\_

  
Jim Ginn  
Warden

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
Susan Cronin  
Clerk

(I/We have authority to bind Occupant)