

MABEL LAKE COMMUNITY HALL Facility Occupancy and Use Agreement

This Agreement dated for reference this January day of _____ 1st _____, 2017.

Between:

REGIONAL DISTRICT of NORTH OKANAGAN
9848 Aberdeen Road
Coldstream, British Columbia
V1B 2K9

(hereinafter referred to as the "Regional District")

AND:

MABEL LAKE COMMUNITY CLUB
111 Shuswap Falls Road
Lumby, B.C.
V0E 2G6

(hereinafter referred to as the "Club")

WHEREAS:

- A. The Regional District is the owner of the building and property commonly known as Mabel Lake Community Hall / Tolley Park site, hereinafter called "the Facility".
- B. The Facility has been developed to serve the recreational needs of the residents of the south Mabel Lake / rural Lumby area.
- C. The Club wishes to occupy and operate the Facility.
- D. The Regional District and the Club wish to establish the terms and conditions under which the Club shall occupy and operate the Facility.

NOW THEREFORE the parties agree as follows:

1. DEFINITIONS

1.1 In this agreement:

"Event of Force Majeure" means acts of God or public enemy, wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, epidemics, quarantines, restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or by

Statutory Authorities including the Regional District (providing that such orders are not issued nor any such labour disputes occasioned as a result of an act or omission of the Club, or any one employed or retained by the Club), freight embargoes or power failures, or any event or circumstance which is beyond the reasonable control of a party, which does not arise from the neglect or default of a party, and which results in material delay, interruption or failure by a party in carrying out its obligations under this agreement, but does not mean or include any delay caused by a party's lack of funds or financial condition;

“Environmental Laws” means all laws relating to protection of the environment and health and safety of the workplace, including all common law and the *Canadian Environmental Protection Act* (Canada), the *Fisheries Act* (Canada), the *Workers Compensation Act* (British Columbia), the *Waste Management Act* (British Columbia) and all rules and regulations made thereunder from time to time;

“Facility” means that structures and lands located at 111 Shuswap Falls Road, commonly referred to as the Mabel Lake Community Hall / Tolley Park.

“Environmental Notice” means any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communications from any person which is related to Environmental Laws;

“Hazardous Substance” means any substance which is regulated under Environmental Laws, including any hazardous product, contaminant, toxic substance, deleterious substance, waste, special waste, dangerous good or reportable substance; and

“Permit” means any authorization, licence, approval or consent issued pursuant to any Environmental Laws;

“Prudent Management Practice” means the practices, including those related to public availability, safety, cost and business conduct, generally followed by responsible and reputable ice rink and recreation facilities in British Columbia;

“Public Use” means the use of the Mabel Lake Community Hall open to and accessible by the public upon payment of applicable fees, for recreational, cultural, and social purposes;

- 1.2 Unless otherwise specified, words in the singular include the plural and vice versa, and a reference to one gender includes the other gender.
- 1.3 Unless otherwise specified, references to time of day or date mean the local time or date in Vernon, British Columbia.
- 1.4 If any payment or calculation is to be made, or any other action is to be taken, on or as of a day which is not a Business Day, the payment or calculation is to be made, or the action is to be taken, on or as of the next day that is a Business Day.

2. Term

- 2.1 This agreement shall be in effect from January 1, 2016 to December 31, 2020.
- 2.2 So long as the Club is not in default of the terms of this agreement, the Regional District may, at the expiration of the Term, on the written request of the Club, deliver to the Regional District no later than six months before the expiration of the Term, grant to the Club one further renewal of this Agreement for a further term of five years from the end of the Term, on the same terms and conditions as set out in this agreement.

3. RIGHTS AND OBLIGATIONS OF THE CLUB

- 3.1 During the term of this agreement, the Club shall have the right to occupy the Facility.
- 3.2 During the term of this agreement, the Club shall:
- (a) have the right to occupy, manage and operate the Facility for the use and enjoyment of the members of the Club and the general public;
 - (b) manage and operate the Facility in a lawful and orderly manner in full compliance with all applicable federal, provincial, municipal and other laws and so that nothing is permitted or omitted to be done in the Facility which creates a nuisance or unlawful disturbance to the owners or occupiers of any neighbouring properties;
 - (c) provide all experienced and qualified personnel necessary to manage operate and maintain the Facility, except as otherwise specifically provided in this agreement;
 - (d) maintain workers compensation coverage on all of its employees who are engaged in the services described in this agreement where required, and shall provide evidence of such coverage to the Regional District;
 - (e) have sole responsibility for the condition, maintenance and repair of the Facility and provide all equipment and supplies necessary to operate and maintain the Facility, except as otherwise specifically provided in this agreement;
 - (f) provide the Regional District with regular reports on the condition of the Facility, and the maintenance and repairs that are completed;
 - (g) keep the Facility in a state of good repair to the same extent and in the same manner as a prudent owner, except only for reasonable wear that does not materially affect the structure of the Facility, so that at all times through the Term and upon termination of this agreement, the Facility remains fully operational and functioning as a recreational, cultural and social facility;

- (h) provide to the Regional District an up-to-date rental and use schedule of the Facility in order to ensure adequate and convenient timing of water quality testing;
- (i) have the right to rent or otherwise let use of the Facility to other recreational and/or not-for-profit user groups provided that facility use agreements, in a form acceptable to the Regional District, are executed and insurance policies are obtained. The Club shall provide to the Regional District a copy of the standard form of facility use agreement required by the Club;
- (j) have the right, on an annual basis, to submit a request for a grant for operating or capital purposes to the Regional District which shall be considered on an annual basis;
- (k) repair any damage to the Facility, at its cost, occurring during its occupancy;
- (l) maintain insurance on the contents within the Facility that is owned by the Club;
- (m) provide Regional District staff with access to the Facility, upon reasonable notice;
- (n) not do or allow to be done any act which may render void or voidable or which may conflict with the requirements of any policy of insurance in respect of the Facility of which the Club is aware;
- (o) not do or suffer or permit to be done any act, activity or thing to encumber the Facility and the property upon which it is located;
- (p) not release, compromise, assign or transfer any claim, right or benefit of the Regional District;
- (q) meet with the Regional District or its representatives a minimum of once per year throughout the Term to review the general operation of the Facility;
- (r) provide a copy of its annual financial statements to the Regional District each year within three (3) months of its fiscal year end;
- (s) not make any renovations or alterations to the Facility without the prior written approval of the Regional District;
- (t) make full and immediate disclosure to the Regional District of all matters coming to the attention of the Club or any of its officers, directors, employees, agents, servants or consultants in relation to the Facility and this agreement, which are material and may be adverse to the interests of the Regional District;
- (u) keep the Facility free of any builder's liens, which relate to the actions of the Club or any party for which the Club is responsible. In the event that

any lien or claim is filed in regard to work done or labour or material supplied in connection with the Facility, the Club shall discharge it within 15 days after request made by the Regional District to the Club. The Club shall indemnify and save harmless the Regional District from and against all costs, damages, expenses, actual lawyers' costs and fees arising from or relating to any such builder's liens filed or registered against the Facility;

- (v) upon termination of its right of occupancy, leave the Facility in good repair, reasonable wear and tear excepted.

3.3 The Club shall pay directly, or reimburse to the Regional District:

- (a) all utility costs e.g. hydro, heating, telephone costs associated with the operation and maintenance of the Facility;
- (b) all other costs related to maintain and operating the facility including but not limited to:
 - garbage collection and removal;
 - septic system cleaning and disposal;
 - ice and snow ploughing;
 - minor repair and maintenance, including vandalism;
 - grounds maintenance e.g. grass mowing, irrigation etc.

3.4 The Club shall indemnify and save harmless the Regional District and their officers, employees, elected officials, servants and agents from and against any and all liabilities, damages, losses, costs, expenses (including legal and litigation expenses) incurred in any actions, claims, suits and other proceedings in connection with or arising from:

- (a) any breach or non-performance of the Club of any obligation contained in this agreement;
- (b) any loss or damage or injury to property or any loss or injury to any person, including death resulting at any time therefrom, occurring in or about the Facility and resulting from the negligence or wilful misconduct of the Club, its employees, members, agents or contractors;
- (c) any other wrongful act or neglect of the Club, its employees, members, agents or contractors in or about the Facility, including loss caused by dishonesty.

3.5 The Club's obligations under Section 3.4 shall survive any expiration or termination of this agreement.

3.6 The Club shall obtain and maintain throughout the term of this agreement comprehensive liability insurance (including employer's liability and contractual liability) containing the following:

- (a) A minimum combined single limit of net less than five million dollars (\$5,000,000) with respect to any one occurrence, with a maximum deductible of ten thousand dollars (\$10,000);

- (b) The Regional District shall be named as an additional insured;
 - (c) The inclusion of more than one insured shall not in any way affect the rights of any insured in respect of any claim, demand, suit or judgment made against any other insured;
 - (d) The insurers' undertaking to notify the Regional District in writing at least 30 days in advance of any cancellation or amendment of a policy; and
 - (e) The Club shall provide the Regional District with copies of all policies or certificates of insurance, as well as copies of each renewal or replacement thereof and each endorsement thereto.
- 3.7 The Club shall not permit the storage, use, treatment, disposal or introduction into the environment of Hazardous Substances in, on or under the Lands and the Facility, except in accordance with Environmental Laws.
- 3.8 The Club shall notify the Regional District of the occurrence of any of the following and provide the Regional District with copies of all relevant documentation in connection therewith:
- (a) a release of a Hazardous Substance in or about the Facility, except in strict compliance with Environmental Laws and applicable Permits;
 - (b) the receipt of the Club of an Environmental Notice; or
 - (c) the receipt of the Club of information which indicates that Hazardous Substances are being used, dissipated, stored, disposed of or introduced into the environment by anyone in the Facility in a manner other than authorized by Environmental Law.

4. RIGHTS AND OBLIGATIONS OF THE REGIONAL DISTRICT

- 4.1 During the term of this agreement, the Regional District shall:
- (a) maintain property insurance on the structures located on the site;
 - (b) indemnify and save harmless the Club and its directors, officers, employees and agents from and against any and all liabilities, damages, losses, costs, expenses, suits, or actions arising from any breach by the Regional District of any of its obligations under this agreement or resulting from the negligence or wilful misconduct of the Regional District, its employees, elected officials or agents;
 - (c) retain the right to reserve the Facility for special events and may do so by notifying the Club of these dates no later than September 30 of each year;
 - (d) at its cost, provide water quality testing in accordance with Interior Health direction, notifying the Club of any resulting requirements; and

- (e) at its cost, provide regular maintenance of the water treatment system, undertaking any necessary repairs or replacements.

5. DAMAGE TO FACILITY

- 5.1 If the Facility is partially damaged or destroyed as a result of fire or other hazard or casualty against which the Regional District is insured, then this agreement shall continue in full force and effect. The Regional District shall take all reasonable steps to obtain payment of the insurance proceeds in order to make repairs.
- 5.2 If the Facility is rendered wholly unusable for public use and the decision of the Regional District is to not repair or rebuild, then this agreement shall terminate.

6. EVENTS OF DEFAULT

- 6.1 The occurrence of any one or more of the following events by or in respect of the Club shall constitute a default under this agreement:
 - (a) If an order is made or a resolution passed for the dissolution of the Club or a petition is filed for the dissolution of the Club, unless the petition is being contested in good faith and is dismissed, stayed, or withdrawn within 60 days.
 - (b) If the Club commits any act of bankruptcy or becomes insolvent or makes an assignment or proposal under the applicable bankruptcy legislation of any jurisdiction or a general assignment in favour of its creditors or a bulk sale of its assets.
 - (c) If a receiver or receiver manager is appointed of any part of the assets of the Club.
 - (d) If the Club is in breach of any term of this agreement and such breach because of its nature would reasonably require more than ten days to cure and the Club has not within five days of being given notice specifying the breach commenced the curing of the breach and continuously proceeded with the curing of the breach.
- 6.2 Without prejudice to any other rights the Regional District may have in respect of this agreement, whether at law or in equity, if any default occurs, the Regional District may terminate this agreement upon 7 days notice in writing to the Club.
- 6.3 Upon termination or expiration of this agreement, except in respect of damages sustained as a result of a breach by the Regional District of this agreement:
 - (a) the Club shall not have or commence any right of action whatsoever, for:
 - (i) any losses sustained by the Club in respect of the Facility; and/or
 - (ii) any consequential damages sustained by the Club

- (b) the Regional District shall not be obligated to compensate the Club in any manner whatsoever.

This section shall survive any termination or expiration of the remainder of this agreement.

7. GOVERNING LAW

- 7.1 This agreement is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia, and the laws of Canada applicable in British Columbia which shall be deemed to be the proper law of this agreement.

8. SEVERABILITY

- 8.1 Each provision of this agreement is severable. If any provision of this agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision shall not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this agreement, or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction;

except that if:

- (c) on the reasonable construction of this agreement as a whole, the applicability of the other provisions presumes the validity and enforceability of the particular provision, the other provisions shall be deemed also to be invalid or unenforceable, and
- (d) as a result of the determination by a court of competent jurisdiction that any part of this agreement is unenforceable or invalid and, as a result of this section, the basic intentions of the parties in this agreement are entirely frustrated, the parties shall use all reasonable efforts to amend, supplement or otherwise vary this agreement to confirm their mutual intention in entering into this agreement.

9. REGIONAL DISTRICT'S LEGISLATIVE POWERS UNIMPAIRED

- 9.1 Nothing contained or implied herein shall prejudice or affect the Regional District's rights, powers, duties or obligations in the exercise of its functions pursuant to all public and private statutes, bylaws, orders and regulations.

10. FIXTURES

- 10.1 Any alterations, additions, and improvements made to or installed upon or in the Facility, shall immediately upon affixation become the property of the Regional District and remain with the Facility as part thereof upon the expiration or earlier termination of this agreement. Exceptions to this clause are fixtures that are not affixed to the Facility in a permanent way.

11. FORCE MAJEURE

- 11.1 Notwithstanding anything to the contrary contained in this agreement, if either party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required under this agreement, by reason of an Event of Force Majeure, that party shall be relieved from the fulfillment of such term, covenant or act during the period of such interruption and the period for the performance of any such term, covenant or act shall be extended for a period equivalent to the period of such delay.

12. ENUREMENT

- 12.1 This agreement enures to the benefit of and binds the parties and their respective successors and assigns.

13. REMEDIES PRESERVED

- 13.1 The rights and remedies under this agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. Any termination of this agreement shall be without prejudice to any rights or remedies available to the parties with respect to a default which has occurred and which resulted in the termination hereof.

14. NO ASSIGNMENT

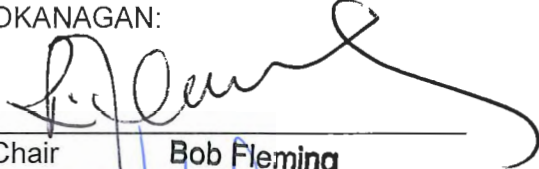
- 14.1 The Club shall not assign any of its right or obligations under this agreement to any other person without the prior written consent of the Regional District.


15. FREEDOM OF INFORMATION

- 15.1 The Regional District is subject to the provisions of the Freedom of Information and Protection of Privacy Act, "the Act". As a result, while Section 21 of the Act does offer some protection for third party business interests, the Regional District cannot guarantee that any information provided to the Regional District can be held in confidence.
- 15.2 The parties agree and consent to the disclosure of this Agreement as a matter of public record and acknowledge that applicable laws may require disclosure of information provided by one party to the other party pursuant to, or in connection with, the Agreement.


IN WITNESS WHEREOF, the Regional District and the Club have executed this agreement on the date first above written.

REGIONAL DISTRICT OF NORTH
OKANAGAN:


Chair **Bob Fleming**
Chair


Corporate Officer **David Sewell**
Chief Administrative Officer

MABEL LAKE COMMUNITY HALL


Authorized Signatory:


Authorized Signatory: