

## Appendix A



### LICENCE OF OCCUPATION

**OUR FILE: 2380-21**

THIS AGREEMENT dated for reference the \_\_\_\_\_ day of September 2021 is

BETWEEN:

**DISTRICT OF SUMMERLAND**  
13211 Henry Avenue, PO Box 159,  
Summerland, BC V0H 1Z0  
(the "District")

AND:

**XXX**  
ADDRESS  
(the "Licensee")

WHEREAS:

- A. The District is the registered owner in fee simple of an Arena Complex consisting of a Banquet Room, Ice Arena, Four Sheet Curling Rink and Concession on that parcel of land located at 8820 Jubilee Road, hereinafter referred to as the "Arena", legally described as:  
  
Lot 2, District Lot 473, Osoyoos Division Yale District, Plan 4965  
  
(the "Arena");
- B. The Licensee wishes to use, occupy and operate that portion of the Arena known as the concession (the "Licence Area") on the terms and conditions of this Agreement;
- C. The District wishes to grant to the Licensee a non-exclusive licence to use and occupy the Licence Area on the terms and conditions of this Agreement;

THIS AGREEMENT is evidence that, in consideration of the licence fee to be paid and the promises exchanged below and other good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge), the District and the Licensee agree as follows:

1. **Licence** – The District hereby grants to the Licensee a non-exclusive licence to enter upon and use the Licence Area, on the terms and conditions set out in this Agreement and the requirements listed in the Schedule A attached.
2. **Term** – The term of this Agreement is one (1) year effective September 7, 2021 and shall terminate on September 7, 2022.
3. **Renewal** – The term may be renewed for an additional period of one (1) year upon mutual agreement. The Licensee must provide written notice ninety (90) days prior to the expiration of the initial term confirming their interest in renewing.
4. **Licence Fee** – The Licence Fee is as follows:
  - (a) The Licensee shall pay to the District a monthly licence fee (the “Licence Fee”) of \$ . which excludes GST and any other applicable taxes for each month the Arena Complex is open to the public, with ice in place.
  - (b) When ice is out, the Licensee will have first option to operate the Concession during special events, and will pay to the District a pro-rated licence fee, as established by the District.
  - (c) The Licence Fee is due the 1<sup>st</sup> of each month.
5. **Equipment Provided and Owned by the District:** The following equipment is the property of the District of Summerland and must not be removed or altered.
  - (a) Coldstream double door upright freezer;
  - (b) Garland Grill, 36” gas unit;
  - (c) Frymaster deep fryer;
  - (d) Habco double door cooler;
  - (e) Skyline 800 popcorn machine;
  - (f) Frigidaire refrigerator, black, RC Commercial Model No. FCGM181RQB;
  - (g) True double door cooler; and
  - (h) Kenmore microwave;

In the event that any of the above noted equipment fails, the District will be responsible for fixing the said piece of equipment as soon as is reasonably possible, and time is of the essence. If the Licensee is unable to operate the concession because of this failure, the rent will be prorated based on the length of time of the outage.

6. **Use of Licence Area** – The Licensee shall only use and occupy the Licence Area for the purpose of operating a food concession for no other purpose whatsoever. The Conditions and Requirements noted in Schedule A must be adhered to.
7. **Licensee Covenants** – The Licensee shall:

- (a) promptly pay when due, the Licence Fee and any other amounts required to be paid by it under this Agreement;
  - (b) not do, suffer, or permit anything in, on, or from the Licence Area that may be or become a nuisance or annoyance to other occupiers or users of the Lands, or to the owners, occupiers, or users of other land or premises adjacent to or near the Licence Area, or to the public, including the accumulation of rubbish or unused personal property of any kind;
  - (c) keep and maintain the Licence Area, and all improvements constructed thereon, in a safe, tidy, and sanitary condition;
  - (d) use the Licence Area only for the purpose set out in section 4 of this Agreement;
  - (e) take all reasonable precautions to ensure the safety of all persons using the Licence Area;
  - (f) not commit or allow any wilful or voluntary waste or destruction of the Licence Area;
  - (g) not permit the accumulation of rubbish of any kind on the Licence Area;
  - (h) not display any sign or notice on or in the Licence Area unless the sign or notice has first been approved by the District;
  - (i) pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Licence Area.
  - (j) carry on and conduct its activities in, on, and from the Licence Area in compliance with any and all laws, statutes, enactments, bylaws, regulations, and orders from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on, or from the Licence Area in contravention thereof.
8. **Security** – The District shall have no responsibility whatsoever for the security of the Licence Area or the Licensee’s property on the Licence Area, the sole responsibility for which rests with the Licensee, and the Licensee hereby releases the District from all claims, actions, damages, liabilities, losses, costs, and expenses whatsoever as may be suffered by the Licensee arising from or related to any lack of security at the Licence Area.
9. **Licensee Improvements** – The Licensee shall not construct any improvements or installations on the Licence Area without the prior written consent of the District.
10. **Minimum Work Standards** – The Licensee shall ensure that any improvements to or work done with respect to the Licence Area, including any improvements or alterations approved by the District, done by or on behalf of the Licensee comply with all applicable laws, statutes, enactments, regulations, bylaws and orders from time to time in force, including the applicable building code and bylaws of the District of Summerland.
11. **Insurance Requirements** – The Licensee shall obtain and maintain during the Term insurance in accordance with the requirements of Schedule “B”. For clarity, the insurance requirements set out in Schedule “B” are minimum requirements and are not to be interpreted in a manner that limits the Licensee’s obligations under this Agreement and the Licensee shall be responsible for obtaining and maintaining such additional insurance as would a

prudent licensee having similar obligations and interests to those of the Licensee under the terms of this Agreement.

12. **Insurance Certificates** – The Licensee shall promptly, upon the District’s request from time to time during the Term, provide the District with certificates of insurance confirming the placement and maintenance of the required insurance.
13. **District May Insure** – If the Licensee fails to insure as required, the District may, after 30 days’ notice to the Licensee, effect the insurance in the name and at the expense of the Licensee and the Licensee shall repay the District all costs reasonably incurred by the District within 21 days of receipt of an invoice. For clarity, the District has no obligation to obtain any insurance required to be maintained by the Licensee under this Agreement.
14. **Licensee Indemnity** – The Licensee shall indemnify and save harmless the District, and its officers, employees, contractors, and agents, from and against all claims, actions, damages, liabilities, costs, and expenses in connection with loss of life, personal injury or damage to property arising from any occurrence on the Licence Area, or occupancy or use of the Licence Area, or caused by or arising from any an act or omission of the Licensee, its officers, employees, agents, customers, contractors, or other invitees. This indemnity shall survive the expiry or earlier termination of this Agreement.
15. **Entry by District** – The District may enter on the Licence Area at any time and inspect the Licence Area to determine if the Licensee is complying with the requirements of this Agreement.
16. **Condition of Licence Area** – The Licensee accepts the Licence Area on an “as is” basis, without any representations, warranties or assurances from the District as to the state or condition of the Licence Area or its suitability for the Licensee’s purposes.
17. **Surrender** – At the expiry or earlier termination of this Agreement, the Licensee shall remove all equipment and vehicles brought onto the Licence Area and shall deliver possession of the Licence Area in good repair as required by this Agreement and in a clean, tidy, safe condition and clear of contamination arising since the commencement of the Term. Any items not removed by the Licensee within thirty (30) days of the expiry or earlier termination of this Agreement shall be absolutely forfeited to and become the property of the District and the District may, at its sole option, retain the items or it may remove and dispose of them. The cost of removal and disposal of any items shall be charged to the Licensee, and shall be paid by the Licensee to the District forthwith.
18. **Ownership of Improvements at Termination** – All improvements and alterations to the Licence Area done by or on behalf of the Licensee during the Term shall, without compensation to the Licensee, become the permanent property of the District as they are constructed, installed or placed in, on or under the Licence Area.
19. **Termination Without Default** – The District may terminate this Agreement without cause on thirty (30) days’ written notice to the Licensee. The District will not be liable to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of termination.
20. **Termination Due to Default** – If and whenever:
  - (a) the Licensee is in default in the payment of the Licence Fee or any sum payable under

this Agreement ninety (90) days after the receipt of written notice of such default from the District;

- (b) the Licensee fails to observe or perform all other covenants, agreements, stipulations, obligations, conditions or other provisions of this Agreement applicable to the Licensee at a time in excess of 90 days (or such longer time stipulated by the District) after the receipt of written notice of such failure from the District;
- (c) the Licensee vacates or abandons the Licence Area for more than ninety (90) consecutive days and notice of such abandonment is given by the District, as evidenced by the removal of the Licensee's equipment;
- (d) any of the goods or chattels of the Licensee shall be at any time seized in execution or attachment by any creditor of the Licensee;
- (e) a receiver or receiver-manager is appointed in respect of any property of the Licensee;
- (f) the Licensee should make any assignment for the benefit of creditors or shall make any bulk sale;
- (g) if the Licensee should become bankrupt or insolvent or take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors, or if the Licensee receives from any of its secured creditors a notice under the *Bankruptcy and Insolvency Act* (Canada) advising the Licensee that the secured creditor intends to realize upon security located on the Licence Area; or
- (h) any order should be made for the winding up of the Licensee or other termination of the corporate existence of the Licensee;

then in any such case, at the option of the District, this Agreement may be immediately terminated by notice to the Licensee, and the Licensee shall cease all use and occupation of the Licence Area and return the Licence Area to the District in the manner required as if this Agreement had expired.

- 21. **Assignment** – The Licensee shall not assign or sublicense its interest in the Licence Area or its rights under this Agreement in whole or in part. The Licensee shall not permit or allow any other person to occupy or use the Licence Area.
- 22. **Notices** – Where any notice, request, direction or other communication (“Notice”) must be given or made by a party under this Agreement, it must be in writing and is effective if delivered in person, sent by registered mail addressed to the party for whom it is intended at the address set forth in this Agreement, by facsimile, or email addressed as follows:

To the District:

District of Summerland  
 13211 Henry Ave, Box 159  
 Summerland, BC V0H 1Z0  
 Attention: Director of Community Services  
 Email: [lmullin@summerland.ca](mailto:lmullin@summerland.ca)  
 Facsimile Number: 250-494-1415

To the Licensee:

Licensee name  
 [insert address]  
 Attention:  
 Email:  
 Facsimile Number:

Any Notice, is deemed to have been given if delivered in person, when delivered; if by registered mail, when the postal receipt is acknowledged by the other party; if by facsimile, when transmitted; and if by email on the day it is sent if that day is a business day, and if that day is not a business day, it is to be considered given on the next business day after the date it is sent. In this section, business day means a day other than a Saturday, Sunday or BC statutory holiday. The address or facsimile number of a party may be changed by notice in the manner set out in this provision.

23. **Enurement** – This Agreement enures to the benefit of and binds the Licensee and the District and their respective successors and, in the case of the District, its assigns.
24. **Licensee’s Representations and Warranties** – The Licensee represents and warrants to the District that the Licensee:
- (a) has the power and capacity to enter into and carry out the obligations under this Agreement; and
  - (b) has completed all necessary resolutions and other preconditions to the validity of this Agreement.
25. **No Joint Venture** – Nothing contained in this Agreement creates a relationship of principal and agent or of joint venture or business enterprise or entity between the parties or gives the Licensee any power or authority to bind the District in any way.
26. **No Restriction** – The covenants herein shall not in any way restrict the right of the District at any time from altering the Licence Area in any way. Nothing in this Agreement affects the right of the District to exercise its powers within its jurisdiction.
27. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject matter. This Agreement may not be modified or amended except by an instrument in writing signed by both parties.
28. **Waiver or Non-Action** – Waiver by the District of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the District to take any action with respect to any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.
29. **Severance** – If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid will not affect the validity of the remainder of the Agreement.
30. **Schedules** – The following are the Schedules to this agreement and form an integral part of

this Agreement:

Schedule "A" – Conditions and Requirements

Schedule "B" – Insurance Requirements

- 31. **Time of Essence** – Time is of the essence in this Agreement.
- 32. **Governing Law** – This Agreement is governed by, and is to be construed in accordance with, the laws in force in the Province of British Columbia.

IN WITNESS WHEREOF the District and the Licensee have executed this Agreement as of the dates written below.

**DISTRICT OF SUMMERLAND** by its authorized signatories:

\_\_\_\_\_  
Signature:

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

Date: \_\_\_\_\_

**LICENSEE** by its authorized signatories:

\_\_\_\_\_  
Signature:

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

Date: \_\_\_\_\_

## Schedule A

**Conditions and Requirements****The Applicant agrees to:**

1. Operate the Concession within the Arena Complex consisting of a Banquet Room, Ice Arena, Four Sheet Curling Rink and Concession Stand at 8820 Jubilee Road, Summerland, for a term of one (1) year, commencing on September 7, 2021 (the "Term"), with the option to renew the Term for a further one (1) year period.
2. Provide Concession service in accordance with the Recreation Department public schedule.
3. Pay to the District a monthly licence fee for the operation of the Concession for each month the Arena Complex is open to the public with ice in place..
4. Pay to the District a prorated monthly licence fee, while operating the Concession during special events when the ice is out
5. Post the concession operating schedule outside the concession for public information.
6. Not assign, sublet or transfer the agreement without written permission of the District.
7. Represent the District in a professional manner at all times and to not use any foul language or engage in any derogatory or defamatory comments regarding the District operations or staff.
8. Not keep any illicit drugs or controlled substances on the premises and to not participate in the consumption of alcohol or illicit drugs on District property.
9. Not carry on or allow carrying on or doing on the premises anything that may be or become a nuisance to the District of Summerland.
10. Obtain and maintain a valid Business License in the District of Summerland for the duration of the term.
11. Obtain and maintain a Food Safe certificate as per the current Health Act Regulations for the duration of the Term.
12. Provide the District with a WorkSafe BC Clearance Letter addressed to the District that indicates that their account is active and in good standing, or proof of exempt status in the form a status determination letter from WorkSafe BC indicating that coverage is not required.
13. Maintain the property in the vicinity of the Concession at all times to an excellent standard of cleanliness and maintenance.
14. Provide service for the Concession as follows:
  - (a) during public skating sessions as scheduled by the Recreation Department;
  - (b) during times when the Arena facility is open to the public, in particular between the date the ice is installed and the date the ice is taken out, or as approved by the



District's Director of Community Services;

- (c) when needed for Curling Rink events as per the published arena ice schedule;
- (d) As needed by request with Minor Hockey officials, Figure Skating officials, Curling Club officials and other Arena Complex user groups regarding their schedules of special events or games;
- (e) to operate the concession and/or use the concession equipment and facility only during times when the Arena or Curling Rink staff are on duty in the Arena Complex, or if approved by the Recreation Manager, otherwise District staff, as appropriate, will be supplied at the expense of the Licensee; and
- (f) when ice is out of the Arena Complex, the Licensee has first option to operate the Concession during special events.

## Schedule B

### Insurance Requirements

The Licensee shall obtain and maintain:

- a) comprehensive general liability insurance providing coverage for death, bodily injury, property loss and damage, and all other losses, arising out of or in connection with the Licensee's use and occupation of the Licence Area in an amount of not less than \$2,000,000.00 per occurrence (\$5,000,000.00 aggregate), or in such greater amount as may be required from time to time by the District;
- b) "all risks" property insurance for replacement cost of all of the Licensee's improvements, personal property and fixtures that are in the nature of trade fixtures; and
- c) any other form or forms of insurance that the District may reasonably require from time to time in such amounts and for such perils against which a prudent licensee acting reasonably would protect itself in similar circumstances.

All policies of insurance required to be taken out by the Licensee shall be with companies satisfactory to the District and shall, unless prior approval is received in writing by the District:

- d) name the District as an additional insured;
- e) include that the District is protected notwithstanding any act, neglect or misrepresentation by the Licensee which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;
- f) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
- g) be primary and non-contributing with respect to any policies carried by the District and that any coverage carried by the District is in excess coverage;
- h) not be cancelled or materially modified without the insurer providing the District with 30 days written notice stating when such cancellation is to be effective or identifying the modification;
- i) not include a deductible greater than \$5,000.00 per occurrence;
- j) include a cross liability clause; and be on other terms acceptable to the District, acting reasonably.