



LICENCE OF OCCUPATION

OUR FILE: xxxx-xx

THIS AGREEMENT, for the Summerland Arena Concession Licence of Occupation, is effective as of [insert date], 2022 ("Effective Date"),

BETWEEN:

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

AND:

[COMPANY NAME]
[company address]
(the "Licensee")

WHEREAS:

- A. The District is the registered owner in fee simple of that parcel of land located at the Summerland Arena, 8820 Jubilee Road East, legally described as:
Parcel Identifier: 002-256-41
Legal Description: Lot 2 DL 473 Plan 4965 except Plans 35935 and KAP90604
(the "Lands");
- B. The Licensee wishes to use and occupy that portion of the Lands known as the concession (the "Licence Area"), shown outlined in red on the sketch plan attached as Schedule "A", 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.
2. **Term** – The term of this Agreement is for one season, which commences on the Effective Date and ends on April 15th, 2023 (“Season”), with an option to renew for up to four (4) additional Seasons. To exercise the option to renew for an additional Season, the Licensee shall submit a written Notice to the District to request the renewal at least 90 days prior to April 1st of each year. The District has the right to accept or reject the request, in its sole discretion. Such renewal shall be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in this Agreement, except the option to renew for subsequent seasons will be reduced accordingly each year. Expiry Date means the last day of the Season.
3. **Licence Fee** – The Licensee shall pay to the District a monthly licence fee of \$xxx (the “Licence Fee”), which amount excludes GST and any other applicable taxes. The Licensee shall on the 1st of each month.
4. **Use of Licence Area** – The Licensee shall only use and occupy the Licence Area for the purpose of operating a food concession and for no other purpose whatsoever.
5. **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) provide the District with a copy of a valid Food Safe certificate as per the current Health Act Regulations;
 - (g) provide the District with a valid business licence to do business in Summerland;
 - (h) not commit or allow any wilful or voluntary waste or destruction of the Licence Area;
 - (i) not permit the accumulation of rubbish of any kind on the Licence Area;
 - (j) not display any sign or notice on or in the Licence Area unless the sign or notice has first been approved by the District;
 - (k) not use or sell products that are perceived by the District to present a safety hazard or

risk, or are otherwise not approved by the District for use or sale at the Licence Area, as may be communicated by notice from the District from time to time;

- (l) promptly discharge any builder's lien which may be filed against the Licence Area relating to any improvements, work or construction which the Licensee undertakes or causes to be undertaken at or on the Licence Area under the *Builders' Lien Act* (British Columbia);
 - (m) pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Licence Area, except utilities, building maintenance and equipment repair, which are paid for by the District;
 - (n) 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.
6. **Security** – The District shall have no liability whatsoever for the security of the Licence Area or the Licensee's property on the Licence Area. 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.
7. **Licensee Improvements** – The Licensee shall not construct any improvements or installations on the Licence Area without the prior written consent of the District.
8. **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.
9. **Occupational Safety & Employment Standards** – The Licensee shall comply with the requirements of the *Employment Standards Act* (British Columbia), the *Workers Compensation Act* (British Columbia), and all other applicable federal and provincial legislation regarding wages and labour regulations, including the Occupational Health and Safety Regulation.
10. **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.
11. **Insurance Certificates** – The Licensee shall, within ten (10) business days of the Commencement Date of this Agreement, 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.
12. **District May Insure** – If the Licensee fails to insure as required, the District may, after ten (10) business 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 twenty-one (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.

13. **Licensee Indemnity** – The Licensee shall indemnify and save harmless the District and its elected and appointed officials, officers, employees, contractors, agents and others from and against any claim, action, damage, liability, cost, and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from this Licence or any occurrence on or around the Licence Area during the term of this Licence, or by use or occupancy of the Licence Area by the Licensee or any default of the Licensee under this Agreement or any wrongful act, omission or negligence of the Licensee or its officers, employees, contractors, agents or others for whom the Licensee is responsible. This indemnity shall survive the expiry or earlier termination of this Agreement.
14. **Inspection 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.
15. **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.
16. **State of Licence Area at Termination** – 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 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.
17. **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.
18. **Termination Without Default** – The District may terminate this Agreement without cause on 10 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.
19. **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 forty-eight (48) hours 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 forty-eight (48) hours (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 forty-eight (48) hours 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.

20. **Catastrophic Events** – If the Licence Area or any part of it is at any time during the **Term** are damaged by fire, lightning, explosion, tempest, flood, earthquake, terrorism, or other catastrophic event, so as to render them unfit for the purpose of the Licensee:
- (a) Any monies payable under this Agreement or a proportionate part of it according to the nature and extent of the damage sustained shall be suspended and abated until the Licence Area has been made fit for the purpose of the Licensee.
 - (b) If the District elects not to undertake restoration, this Agreement shall terminate and, if the District does not advise the Licensee concerning the District's intention within thirty (30) days, the District shall be deemed to have elected not to undertake restoration.
21. **Assignment** – The Licensee shall not assign or sub-licence 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** – Any notice, direction, demand, approval, certificate or waiver which may be or is required to be given under this Agreement shall be in writing and delivered personally, or by courier or registered mail, or sent by email, addressed as follows:
- (a) To the District:
District of Summerland

Municipal Hall
13211 Henry Ave, Box 109
Summerland, BC V0H 1Z0

Attention:

Email:

- (b) To the Licensee:
[insert address]
Attention:
Email:

Any notice delivered personally, by courier, or by registered mail is to be considered given on the day it is received. Any notice sent by email is to be considered given 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.

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” – Sketch Plan

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

Title

Date

[INSERT LICENSEE NAME]

by its authorized signatories:

Signature

Name

Title

Date

DISTRICT OF SUMMERLAND

by its authorized signatories:

Signature

Name

Title

Date

[INSERT LICENSEE NAME]

by its authorized signatories:

Signature

Name

Title

Date

LICENCE OF OCCUPATION - SCHEDULE "A"

Sketch Plan



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 Tenant's use and occupation of the Premises in an amount of not less than \$2,000,000.00 per occurrence and \$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 otherwise approved in writing by the District:

- (a) Name the District as an additional insured;
- (b) 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;
- (c) Be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
- (d) 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;
- (e) 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;
- (f) Not include a deductible greater than \$5,000.00 per occurrence;
- (g) Include a cross liability clause; and
- (h) Be on other terms acceptable to the District, acting reasonably.