

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: November 28, 2022

SUBJECT: **Facility Operating Agreement – The Bay Community Centre**

ORIGIN

May 31, 2022 motion of Halifax Regional Council (Item #16.1): MOVED by Deputy Mayor Lovelace, seconded by Councillor Mason;

THAT Halifax Regional Council direct the Chief Administrative Officer to provide a staff report outlining the operating agreement for The Bay Community Centre by the Head of St. Margaret Bay/Boutillier's Point Recreation Association including any sub leasing within the centre and that a report be brought back to Regional Council with recommendations regarding the governance model moving forward.

MOTION PUT AND PASSED UNANIMOUSLY

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter

Section 61

(3) The property vested in the Municipality, absolutely, or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise.

Section 63

(1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that the Council considers to be carrying on an activity that is beneficial to the Municipality; and

(2) A resolution to sell or lease property referred to in subsection (1) at less than market value shall be passed by at least two thirds majority of the Council present and voting.

Section 75

(1) The Municipality may agree with any person for the provision of a service or a capital facility that the Municipality is authorized to provide.

(2) An agreement made pursuant to subsection (1) may allow for the lease, operation or maintenance of the facility or provision of the service by a person, including the sale or disposition

to that person of property of the Municipality that continues to be required for the purposes of the Municipality.

Section 79A

(1) Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if the expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality.

RECOMMENDATIONS

It is recommended that Halifax Regional Council authorize the Chief Administrative Officer (CAO) to:

1. Execute a Facility Operating Agreement (FOA) with the Head of St Margaret's Bay/Boutilier's Point Recreation Association for the Bay Community Centre facility at 11 Station Road, Head of St. Margaret's Bay substantially in the same form as set out in Attachment 1 of this report;
2. Direct staff to negotiate a Less than Market Value Lease Agreement with The Unicorn Theatre Society for the existing occupied space at 11 Station Road, and return a staff report to Grants Committee for the approval of the key terms and conditions; and
3. Direct staff to negotiate a Less than Market Value Lease Agreement with the Safety Minded ATV Association for the Bay Community Centre facility at 15 Station Road, and return a staff report to Grants Committee for the approval of the key terms and conditions.

BACKGROUND

Halifax Regional Municipality (HRM)'s recreation service delivery is provided through a hybrid model with some facilities operated directly by the Municipality, and the majority operated by volunteer not-for-profit organizations and community partners. Together the system is designed to ensure everyone has access to meaningful recreation experiences.

The Bay Community Centre (BCC), located in the community of Head of St Margaret's Bay, is part of the HRM Parks & Recreation Community Partnership portfolio. The site has two distinct buildings, 11 Station Road (Lower Building) and 15 Station Road (Upper Building). These buildings were a former elementary school, built between 1948 and 1960, and were closed in 1999.

Given the need for recreational and meeting space in the community, Regional Council approved staff's recommendation in 2001 to retain the property and redevelop it as a community centre. HRM entered into a partnership lease with the not-for-profit Head of St Margaret's Bay/Boutilier's Point Recreation Association (HBBPRA). Their mandate was to provide public access to the facilities for recreational, social, and cultural activities.

The Lower Building (11 Station Road) has three, 700 square foot, multi-purpose rooms and a small kitchenette on the top floor, while the former school's 1300 square foot gymnasium and stage occupy the bottom floor. The bottom floor is used regularly by The Unicorn Theatre Society, a volunteer operated youth theatre group that produces events throughout the year and offers drama themed day camps in the summer. The Upper Building (15 Station Road) has a single multi-purpose room used primarily by the Safety Minded ATV Association, a not-for-profit society with over 300 members.

The HBBPRA still manages and operates both facilities under the authority of a Facility Lease Agreement (FLA). However, the terms and conditions for partnerships and leasing within the neighbourhood community centre category of facility have been updated and modernized in a standard FOA.

DISCUSSION

The volunteer Board operated facility model is consistent with Regional Council’s approved Community Facility Master Plan (CFMP), which identifies community-based service delivery as the preferred governance model for neighborhood community centres. Preference for this governance model was reinforced in the Community Facility Master Plan 2 (CFMP2), approved by Regional Council in 2017. This approach allows for enhanced services, at the local level, reflective of each community’s needs.

HRM enters into agreements with community partners to support the delivery of services which align with HRM Parks & Recreation’s mandate. These program offerings would not exist without alternative service delivery through volunteers and community partner organizations.

To ensure the community continues to benefit from these services, updated agreements are required to replace the current FLA with the recreation association. This will allow for more accountability, collaboration, and more effective stewardship of HRM’s facilities.

Facility Operating Agreement - Head of St. Margaret Bay/Boutilier’s Point Recreation Association

The Head of St Margaret’s Bay/Boutilier’s Point Recreation Association (HBBPRA) has facilitated the development of diverse recreational, cultural, and social opportunities including the Unicorn Theatre and the ATV club. They have demonstrated the organizational capacity to operate the Bay Community Centre (BCC) facilities, as well as the community’s outdoor rink that they own.

The HBBPRA is well positioned to continue as HRM’s partner and be engaged in HRM initiatives such as the Rural Recreation Strategy. Under the proposed recommendations, HBBPRA will continue to manage the entire property, however The Unicorn Theatre Society (UTS) and the Safety Minded ATV Association (SMATVA) will have agreements directly with HRM for exclusive use of their space.

The HBBPRA will focus on making the BCC Lower Building available to the public as a multi-purpose space that can be used for any combination of activities. A new agreement, without the responsibility of operating the 15 Station Road facility, will rejuvenate the HBBPRA and allow increased focus on providing more recreation opportunities to the communities it serves.

The proposed FOA for the BCC and the HBBPRA is substantially similar to the FOAs approved by Regional Council in 2021 for the East Dartmouth Community Centre and the North Woodside Community Centre.

All terms and conditions of the FOA (Attachment #1) have been presented to and approved by the HBBPRA Board of Directors. An overview of the key terms is provided in Table 1.

Table 1: Facility Operating Agreement Key Terms and Conditions

Property	The Bay Community Centre 11-15 Station Road, Head of St. Margaret’s Bay, Nova Scotia PID 00612788
Community Partner	The Head of St Margaret’s Bay / Boutilier’s Point Recreation Association
Commencement Date	Date Agreement is executed by CAO
Notice	Either party shall have the option to terminate the agreement upon providing six (6) months written notice to the other party at any time or for any reason.
Term	Ten (10) year term with a one (1) year renewal term

Operating Subsidy	HRM shall pay an annual Operating Subsidy. The amount of the Operating Subsidy will be evaluated annually and shall be included in the Annual Operating Budget approved by Halifax Regional Council.
Key Conditions	<ul style="list-style-type: none"> - All revenues and expenses from the operation of the facility are the responsibility of the society. - All personnel are employed by the society or subsidiaries. The employees shall under no circumstances or at any time be considered employees of HRM. - Any surplus realized in any fiscal year shall be set aside to underwrite the continued operation of the Facility or any Operating Reserve Funds - HRM shall pay HBBPRA a monthly subsidy equal to any revenue, net after taxes, HRM receives from leases within the facility.

Tenants

Under the FOA governance model, not-for-profit partner organizations no longer have legal authority to enter exclusive space subleases on behalf of HRM. The FOA does not convey the required property interest to the not-for-profit organizations like previous governance agreements. Only HRM, as holders of the title to the land, can enter lease agreements for facilities governed by FOAs.

The Unicorn Theatre Society and the Safety Minded ATV Association both operate in exclusive leased space within the BCC. HRM will need to enter into new lease agreements with each party.

Any revenue HRM receives from these leases, net exclusive of taxes, will be paid to the HBBPRA as an additional subsidy. This approach allows HRM oversight of all leases in HRM facilities, but the revenue from leases will continue to offset the operating costs at each facility.

The Unicorn Theatre Society - Less than Market Value Lease

The Unicorn Theatre Society (UTS) rents the BCC auditorium and other rooms from the HBBPRA throughout the year for events, rehearsals, and day camps and this does not change under the new FOA. However, they have exclusive use of a 720 sq. ft room for programming and the storage of supplies and costumes. For this to continue, the UTS will need to lease the space from HRM.

The UTS is a not-for-profit organization operating out of the BCC since 2001. The Theatre is a volunteer operated program that provides school aged youth the opportunity to perform in annual productions and learn about theatre and other performing arts at a weekly club meeting. Drama day camps are offered throughout the summer.

This type of service and program aligns with HRM’s vision of fostering the growth of healthy and vibrant communities. It also advances Regional Council’s priority outcomes of involved and inclusive communities. Therefore, this not-for-profit organization can provide a municipal benefit which would permit Regional Council to consider a Less than Market Value lease.

The UTS has been notified of this new requirement to lease the space directly with HRM and both UTS and the HBBPRA are agreeable to moving in this direction.

Safety Minded ATV Association, 15 Station Road - Less than Market Value Lease

The Safety Minded ATV Association (SMATVA) currently rents the Upper Building, 15 Station Road, from the HBBPRA who manage the building through the current Facility Lease Agreement (FLA) with HRM. However, there is no current written rental contract between the groups and the SMATVA has become increasingly independent over the years.

In lieu of rent for the space, the SMATVA pays the operating costs of the Upper Building directly. This responsibility normally belongs to facility operators. This arrangement has worked for the HBBPRA, but it leaves the accounting of the Upper Building's finances outside of the reporting required within the FLA. Additionally, the SMATVA has been sub-renting the facility to others to generate revenue to pay the operating expenses. They have no legal authority to do this as the HBBPRA is HRM's partner and thereby responsible for activities and rentals and associated liabilities.

The Upper Building has been available to the public and operating safely as HRM maintains the life safety systems and building infrastructure. The SMATVA has representation on the HBBPRA Board and receives all HRM communication and directives around safety matters, such as recent COVID-19 public health protocols.

HRM's control and oversight of who uses and provides services to the building has decreased as the HBBPRA involvement in the Upper Building has declined. The SMATVA is operating as a community partner of HRM with exclusive use of the building without the formal approval to do so.

For the relationship to continue, a new agreement between HRM and SMATVA is required to outline SMATVA's authority and areas of responsibility moving forward.

The SMATVA is a not-for-profit organization with a mission to preserve, expand and promote ATV ridership as a safe and fun family recreational opportunity. In addition to building and maintaining trails throughout HRM, the club offers certified ATV safety training and encourages responsible riding practices including respect for the environment.

This type of service and program aligns with HRM's vision of fostering the growth of healthy and vibrant communities. It also advances Regional Council's priority outcomes of involved and inclusive communities as well as protected and sustainable environments. Therefore, this not-for-profit organization can provide a municipal benefit which would permit Regional Council to consider a Less than Market Value lease.

Under the proposed recommendations, HRM would retain ownership and increase oversight of the building. In addition to standard lease clauses governing permitted use and risk management, special clauses could be included to ensure public access and free use of the facility by HRM as needed. This would be beneficial for certain public events as the Upper Building is fully accessible, and the Lower Building currently is not. This would allow further review of municipal operational requirements in the community.

The two buildings share a driveway, a parking lot, and a well. They are located next to an entry point to the Rails to Trails system and provide public parking for the trail. The option of leasing a portion of the property to SMATVA maintains the HRM owned cluster of facilities and avoids significant property subdivision issues that selling the building would create.

A Less than Market Value lease would further empower the SMATVA to continue their work while allowing HRM to maintain a degree of control over the building for the duration of the lease. HBBPRA would maintain on site property management responsibilities. Both HBBPRA and SMATVA are agreeable to this approach and understand negotiated terms will require Regional Council approval.

FINANCIAL IMPLICATIONS

For the BCC Facility Operating Agreement, the 2022/23 approved operating budget includes an operating subsidy of \$6,800 (C705-8001) for this facility.

The repairs and maintenance expenses related to HRM's responsibilities included in the FOA will be paid from the Facilities Maintenance and Operations account W213.

There is no net financial impact to HRM related to tenant leases. Suspense account C709 will be used to

collect revenues from the tenants and then make corresponding payments to the facility operator. If Less than Market Value Leases for UTS and SMATVA are pursued, full financial implications would be addressed in the Grants committee report.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered rate Low. To reach this conclusion, consideration was given to operational and financial risks for both HRM and the not-for-profit organizations. The updated and modernized terms in the new agreements mitigate risks for both HRM and the community partners.

COMMUNITY ENGAGEMENT

The Board of Directors for the Head of St. Margaret Bay / Boutilier's Point Recreation Association is comprised of members of the community.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

1. Regional Council could direct the CAO to not enter into a Facility Operating Agreement with the HBBPRA and assume operation and management of the Bay Community Centre, 11 Station Road.
2. Regional Council could choose to direct the CAO to negotiate a Less than Market Value lease with the HBBPRA for the Bay Community Centre, 11 Station Road. This would not provide an operating subsidy from HRM, nor would the operation of the facility be required to align with HRM's mandate. It would require a subsequent report to Council.
3. Regional Council could choose to direct the CAO to lease the room in the Bay Community Centre, 11 Station Road, to The Unicorn Theatre Society at market rate.
4. Regional Council could choose to direct the CAO to negotiate a lease for 15 Station Road with the SMATVA at market rate.
5. Regional Council could choose to direct the CAO to not enter into any agreement with the SMATVA and assume operation and management of the 15 Station Road building.
6. Regional Council could choose to direct the CAO to declare 15 Station Road surplus to HRM's operational requirements and direct the property be subdivided and submitted to the Administrative Order 50 – Disposal of Surplus Real Property process, however this alternative would result in considerable expense and resources to accomplish and may carry additional Legal and Risk concerns.

ATTACHMENTS

- Attachment 1: Facility Operating Agreement – Bay Community Centre
Attachment 2 Site Map
-

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Andy Conrad, Service Delivery Coordinator, Parks & Recreation, 902.223.4655

Facility Operating Agreement

Between:

Halifax Regional Municipality

and

**Head of St. Margaret's Bay/Boutilier's Point
Recreation Association**

FOR

the Bay Community Centre

**11 / 15 Station Road
Head of St. Margaret's Bay, Nova Scotia
B3Z 2B9**

Prepared by:

Halifax Regional Municipality
Parks & Recreation
Regional Recreation Services
PO Box 1749
Halifax, Nova Scotia, B3J 3A5

www.halifax.ca

THIS AGREEMENT is made as of the _____ day of _____, 20 _____

BETWEEN:

Halifax Regional Municipality (hereinafter referred to as “HRM”)
OF THE FIRST PART

- and -

Head of St. Margaret’s Bay/Boutilier’s Point Recreation Association
(hereinafter referred to as the “Society”)
OF THE SECOND PART

WHEREAS HRM is the owner of the Bay Community Centre located at 11-15 Station Road (the “Facility”);

AND WHEREAS HRM wishes to encourage and facilitate a community-based delivery of service to the public, while maximizing efficiencies and opportunities for economies of scale;

AND WHEREAS the Society is a community based non-profit organization incorporated under the *Societies Act* of Nova Scotia, whose members and directors receive no financial benefit from their participation;

AND WHEREAS the Society has demonstrated the organizational capacity to operate the Facility, including the delivery of programming;

AND WHEREAS the Society wishes to oversee the operation of the Facility and to promote public use and general access to the Facility;

AND WHEREAS HRM wishes for the Society to oversee the operation of the Facility and to promote public use and general access to the Facility;

AND WHEREAS HRM and the Society agree that all residents of the Halifax Regional Municipality should have similar opportunities, regardless of gender, age, sexual orientation, ability, race, culture, faith or socio-economic status;

AND WHEREAS this Agreement replaces the parties’ previous agreement dated 8th of October 2010 and this Agreement reflects the current working relationship of the parties;

IN CONSIDERATION of the mutual conditions and covenants contained herein and the provision of other valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

1. DEFINITIONS

1.1 When used in this Agreement, the following terms shall have the following meanings:

“**Agreement**” means this agreement and all instruments in writing executed by the Parties that by their terms expressly amend, waive or vary the provisions of this agreement and the Schedules;

“Applicable Laws” means all laws, regulations and governmental policies of any Governmental Authority, including all by-laws, policies, procedures, guidelines and rules of HRM, as they may be amended or replaced from time to time, and which are applicable to the Services and the roles and responsibilities of each party under this Agreement;

“Board” means the Board of Directors of the Society;

“Capital Work” means work done on the Facility as directed by HRM and approved in the HRM capital budget;

“Claims” means any and all claims, liabilities, demands, losses, damages, actions and causes of action of any kind or nature including, without limitation, expenses, costs and legal fees;

“Commencement Date” means the date this Agreement is executed by the Chief Administrative Officer of HRM, which is the date that this Agreement comes into effect;

“Council” means the Regional Council of HRM;

“Expiry Date” means the date ten (10) years after the Commencement Date;

“Facility” means the property owned by HRM known as the Bay Community Centre, 11 and 15 Station Road, PID 00612788;

“Fiscal Year” means the annual (12 month) period ending on March 31st, or such other period as HRM may establish upon notice to the Society;

“Governmental Authority” means any federal, provincial or local government or any governmental, quasi-governmental, judicial, public or statutory administrative agency, authority, body or entity, including any such authority that has jurisdiction in relation to any aspect of the Services or this Agreement;

“Hazardous Substances” means any chemicals, biological substance, pollutant, contaminant, toxic substance, hazardous material or substance, radioactive material, waste, oil or petroleum product as such term or any similar terms are used under any Applicable Law or any other substance which may cause an adverse effect respecting the health of humans or the reasonable enjoyment of life or property, and includes any soil containing such substance in amounts exceeding permissible limits for such substance in such location by any Applicable Law;

“HRM” means the Halifax Regional Municipality;

“HRM Representative” means the HRM Manager of Community Partnerships, or his or her designate, acting as HRM’s representative with the Society;

“HRM Property” means all property, including, but not limited to, real property, equipment and infrastructure, that is owned by HRM and used by the Society to deliver the Services, and includes the Facility and the property set out in Schedule ‘A’;

“Operating Subsidy” means the operating subsidy payable to the Society by HRM for each Fiscal Year, or part thereof, that this Agreement is in effect;

“Operations Contract” means an agreement, contract or purchase order entered into between the Society and a Supplier to furnish services, equipment, supplies or other things required to deliver the Services, and includes sponsorship contracts as set out in Article 7.6 of this Agreement;

“Permits” means all permits, permissions, licenses and approvals required, or as the context requires, granted by Governmental Authorities for the delivery of the Services;

“Renewal Term” has the meaning set out in Article 4.1 of this Agreement;

“Rental Contract” means a contract entered into between the Society and a person for the short-term (e.g. hourly) use of the Facility, or any part thereof;

“Revenue” means all monies, proceeds, funds and revenues of every nature and kind received by the Society in delivering the Services, whether by way of fees paid for services provided in or from the Facility, or any part thereof, or by way of grants, gifts, sponsorships, bequests, donations; or any monies or proceeds derived by the Society under any valid license of the Society to operate any form of lottery scheme; or from any fund raising program or through any third party fee-for-service agreements;

“Schedules” means the schedules attached hereto which form part of this Agreement;

“Services” has the meaning set out in Article 5.1;

“Society” means the Head of St. Margaret’s Bay/Boutillier’s Point Recreation Association, a society incorporated under the Societies Act;

“Societies Act” means the Societies Act, RSNS 1989, c. 435, as may be amended and replaced from time to time;

“Society Programming” means the programs, events, activities and fundraisers that the Society plans and delivers to the community at the Facility, including those set out in Article 8.1 of this Agreement;

“Society Property” means all property owned by the Society, including all property owned by the Society that is used by the Society to deliver the Services. Society Property excludes HRM Property;

“Supplier” means any person, other than the Society and employees of the Society, entering into an Operations Contract to furnish services, equipment, supplies or other things in connection with the Services;

“Term” has the meaning set out in Article 3.1 of this Agreement; and

“Termination Date” means the Expiry Date, or the date on which this Agreement otherwise terminates in accordance with the terms and conditions herein.

2. PURPOSE

2.1 The purpose of this Agreement is to formalize the terms and conditions by which the Society will deliver the Services to the Community.

3. TERM

3.1 Subject to earlier termination of this Agreement in accordance with the terms herein, the term of this Agreement shall commence on the Commencement Date and end on the Expiry Date. The term of this Agreement may be terminated earlier in accordance with Article 22 of this Agreement.

4. RENEWAL TERM

4.1 This Agreement may be renewed by HRM on the same terms for one (1) additional one-year Renewal Term by HRM advising the Society in writing of its intent to exercise the renewal option no later than ninety (90) days prior to the Expiry Date. The Society must notify HRM within thirty (30) days of receipt of the renewal notice whether it wishes to accept the Renewal Term. If the Society declines the Renewal Term, this Agreement will terminate on the Expiry Date.

5. SERVICES

5.1 From and after the Commencement Date, the Society agrees to deliver the Services. Services means:

- a) the provision of all labour and materials required to operate the Facility;
- b) the employment of all personnel and coordination of all volunteers at the Facility;
- c) the furnishing of all equipment, supplies, tools, storage, transportation and other things and services of every kind whatsoever necessary for the proper, safe, effective and cost-efficient operation of the Facility;
- d) the delivery of Society Programming;
- e) all administrative, accounting, record-keeping, and similar responsibilities of every kind whatsoever incidental to the Services; and
- f) any other obligation, responsibility or requirement of the Society under this Agreement.

A reference to "Services" shall mean "any part and all of the Services" unless the context otherwise requires.

5.2 The Society shall ensure that the Services are:

- a) for services, performed in a professional, competent, diligent and skilled manner by knowledgeable, trained and qualified personnel;
- b) for goods and materials, free from defects in design, material and production, and shall fit and serviceable for the purpose intended;
- c) in compliance with all Applicable Laws; and
- d) completed to the full satisfaction of HRM in compliance with the terms and conditions of this Agreement.

6. OPERATING SUBSIDY

6.1 Operating Subsidy. HRM shall pay to the Society an annual Operating Subsidy in consideration of the Services provided by the Society.

6.2 Operating Subsidy Amount. The amount of the Operating Subsidy shall be the amount approved by Council annually as part of HRM's Annual Operating Budget.

6.3 Installments. Subject to Council's approval of HRM's Annual Operating Budget, the Operating Subsidy will be disbursed by HRM to the Society in two payments. The first payment will be 80% of the Operating Subsidy, payable by HRM upon receipt of an invoice from the Society. The second payment will be the remaining 20% of the Operating Subsidy, payable by HRM upon receipt of an invoice from the Society. Invoices shall be provided by the Society to HRM by May 31st and by November 30th of each Fiscal Year. Disbursement of the Operating Subsidy payments is contingent on all required reports in accordance with Section 14 being received and approved by HRM. HRM may adjust the Operating Subsidy payment installment percentages or payment schedule from time to time with written notice to the Society.

6.4 Pro-rated Operating Subsidy. The disbursements of the Operating Subsidy payable by HRM to the Society during the final year of the Term or during the Renewal Term, as applicable, shall be pro-rated to align with the expiration of this Agreement.

7. AUTHORITY TO CONTRACT

7.1 Operations Contracts. The Society may enter into Operations Contracts; provided, however, that the Society shall not be thereby relieved of any of its obligations to HRM as set forth in this Agreement. All Operations Contracts shall be in writing and include terms and conditions consistent with the reasonably prudent operation of a facility of a similar nature to the Facility. If the Operations Contract is for an expenditure, it shall be for an expenditure that is within the limits of the Annual Budget and Business Plan of the Society. The parties hereby agree that the Society is not acting as an agent of HRM when it enters into a Operations Contract.

7.2 Rental Contracts. The Society may enter into Rental Contracts. All Rental Contracts shall be in writing and include terms and conditions consistent with the reasonably prudent operation of a facility of a similar nature to the Facility. Without limiting the generality of the foregoing, all Rental Contracts must include a clause which provides that (i) the Rental Contract shall automatically terminate in the event that the Society is dissolved; and (ii) the Society may terminate the Rental Contract, without notice, in the event that this Agreement is terminated. The parties hereby agree that the Society is not acting as an agent of HRM when it enters into a Rental Contract.

7.3 Limitation of Authority. Unless expressly authorized by prior written direction or approval of HRM, the Society shall not have the authority to do any of the following:

- a) Obtain loans for the Facility or HRM, whether secured or unsecured, or grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Facility or any portion thereof or any interest of the HRM therein, or obtain replacements of any mortgage or mortgages;
- b) Prepay in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Facility or any portion thereof, except to the extent contemplated and approved in writing by HRM;
- c) Cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person;
- d) Cause HRM to enter into any contracts with respect to the Facility;
- e) Release, compromise, assign or transfer any claim, right, or benefit of the HRM, except with the written authorization of HRM;
- f) Allow a default judgement to be entered against the Facility or any assets associated with the Facility;

- g) Modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facility;
- h) Grant easements or other property rights in the Facility;
- i) Purchase, exchange, convey or sell any HRM Property or any part thereof, on behalf of HRM;
- j) Install or modify closed circuit television without consulting with HRM Corporate Security; or
- k) Initiate litigation of any kind against a third party without the prior written consent of HRM.

7.4 Confirmation of Authority. HRM shall execute and provide to the Society any document or other evidence which may be reasonably required by the Society to demonstrate to third parties the authority of the Society as set out in this Agreement.

7.5 Naming Rights Agreements. The Society is not permitted to enter into an agreement, or otherwise provide, naming rights at the Facility. Any proposed naming of the Facility or any part thereof must be approved by HRM in compliance with applicable HRM policies, including Administrative Order 56, the HRM Sale of Naming Rights Administrative Order.

7.6 Sponsorship Agreements. The Society may seek sponsorship for Society Programming and enter into sponsorship agreements for this purpose. No sponsorship opportunity shall be considered by the Society that seeks to promote or enhance the image of an illegal activity (in the determination of HRM), that is designed to promote a specific political or social perspective or agenda (outside of the accepted municipal values or norms, solely as communicated by HRM) or is otherwise determined by HRM to be inappropriate or not suitable for the Facility or its users.

7.7 Other Agreements (Including Leases). With respect to any lease, license or other agreements related to the Facility, HRM and the Society hereby agree:

- a) The Society is not authorized to enter into any lease, license or other agreement related to the Facility, except for Rental Contracts and Operations Contracts in accordance with this Agreement;
- b) Any lease, license or other agreement related to the Facility (excluding Rental Contracts and Operations Contracts) shall be reviewed, approved and executed by HRM, in its sole discretion;
- c) In delivering the Services under this Agreement, the Society shall, when requested by HRM, provide tenant and/or contractor support services to HRM for lease, license or other agreements entered into by HRM and related to the Facility, including, but not limited to, day to day management and administration of lease, license or other agreements entered into by HRM and related to the Facility; and
- d) The Society shall immediately notify the HRM Representative in the event of any issues, concerns or breaches related to any lease, license or other agreements entered into by HRM and related to the Facility.

8. SOCIETY PROGRAMMING

8.1 Society Programming. Society Programming is the responsibility of the Society, including scheduling, fees, quality control and evaluation. The Society may use HRM Property for the purposes of Society Programming. The Society's responsibilities for Society Programming include, without limitation:

- a) development of the Society Programming list and schedule;

- b) production and circulation of promotional materials;
- c) management of registration process and records for Society Programming;
- d) hiring and contracting with instructors/contractors to deliver Society Programming
- e) oversight and management of instructors/contractors who are delivering Society Programming;
- f) providing and being responsible for adequate supplies to operate Society Programming;
- g) oversight, screening and management of any volunteers involved with delivery of Society Programming;
- h) assessment of credentials and compliance with Applicable Laws when recruiting instructors, contractors or volunteers;
- i) ensuring Society Programming is offered safely with proper risk-management and in a safe, inclusive environment;
- j) management of programming-related risks and issues; and
- k) the purchase, maintenance, repair and replacement of any Society Property used or required for Society Programming

8.2 Community Facility Master Plan (CFMP). The Society agrees to work cooperatively with HRM to implement any policies, initiatives, directives or other requirements resulting from the current CFMP version 2, and any future versions of the CFMP, that are applicable to the Facility and/or Services.

8.3 Recreation Software

The Society acknowledges and agrees that Legend Recreation System Software Inc., a common recreation and registration management system that is designed, owned and operated by HRM, or any other software solution supplied by HRM, will be exclusively used by the Society at such time that the system is provided to the Society by HRM. All software, hardware, data and equipment installed or utilized in the facility with connection to HRM networks will be owned, supplied, managed, maintained and repaired by HRM. The implementation costs for the software will be subject to future HRM Budget approval.

9. FACILITY USE BY HRM

9.1 HRM Recreation Programming. In the event that the Society requests HRM recreation programming in the Facility, the parties agree that HRM will not be charged a user fee for the use of the Facility required to deliver the requested HRM recreation programming.

9.2 Emergency Management Operations. The Society hereby acknowledges and agrees that, in the event of an emergency, including a national emergency, a local emergency or a Facility-specific emergency (i.e., flood, fire, or other emergency in the Facility), HRM retains the right, which it may exercise at any time without notice to the Society, to assume operational control of the Facility. HRM shall be responsible for any extraordinary costs and expenses incurred by the facility or the Society during an emergency.

9.3 HRM Operation of Facility. If at any time HRM wishes to resume operating a portion of the Facility that is operated by the Society, the parties agree to enter into good faith negotiations to amend this Agreement accordingly.

10. HRM REPRESENTATIVE

10.1 HRM Representative. HRM shall designate an employee of HRM as the HRM Representative to be HRM's contact with the Society with respect to this Agreement. The

Society hereby agrees that the HRM Representative shall be entitled to attend all meetings of the Board, and to receive meeting minutes of the Board and committee meetings.

10.2 HRM Representative Responsibilities. The HRM Representative shall:

- a) review annual and bi-annual reports, provide recommendations and financial feedback to the Society and follow-up with the Society concerning financial variances;
- b) review the business plans and all other reports submitted by the Society;
- c) review and respond to issues related to the Services and Facility which require the approval of HRM;
- d) consult with the Society before Capital Work is commenced;
- e) consult with the Society before policies specifically impacting the Services are implemented;
- f) meet with the Society, or designate, at minimum at least two (2) times per year, either in person, via conference call or other means of electronic communication to share information and discuss issues related to the Services and this Agreement; and
- g) respond to requests from the Society in a timely manner.

11. RESPONSIBILITY FOR COSTS

11.1 Society. Except where otherwise stated in this Agreement, the Society shall own, be responsible for and agrees to pay all costs associated with the delivery of the Services in accordance with and subject to the terms and conditions of this Agreement, including, but not limited to, the following costs:

- a. staffing (employees and volunteers);
- b. programming costs (in accordance with Article 8);
- c. on site supplies;
- d. utilities;
- e. Permits;
- f. general maintenance of the Facility (snow removal, garbage removal, cleaning, etc.);
- g. Groundskeeping and landscaping;
- h. Society Property required to deliver the Services; and
- i. Insurance (in accordance with Article 24).

11.2 Municipality. The Municipality shall own, be responsible for and agrees to pay all costs associated with:

- a. Capital Work;
- b. Fire safety systems (alarms systems, emergency lighting, extinguishers, etc.);
- c. Lift devices (inspections, servicing, licensing);
- d. Heating and cooling systems (Inspections, servicing, replacements, oil tanks);
- e. Water testing, treatment;
- f. Major facility repairs;
- g. HRM Property; and
- h. Insurance (in accordance with Article 24).

12. FINANCES

12.1 Revenues. Any Revenues derived from the activities of the Society are the property of the Society and shall be used exclusively by the Society to deliver the Services.

12.2 Expenses. Any expenses incurred from the activities of the Society are the property of the Society and shall be paid exclusively by the Society.

12.3 Surplus. HRM and the Society agree that the Services shall be delivered in a prudent and fiscally responsible manner. The Society agrees that any surplus realized in delivering the Services, which shall be defined as the excess of actual Revenues over actual expenses, shall be set aside to subsidize or underwrite the continued delivery of the Services, or to fund operating reserve accounts.

12.4 Deficit. If, in any Fiscal Year, a deficit is realized from the operating budget, the Society shall prepare and submit a written report (the deficit report) at the time it submits its operating budget to the HRM Representative for the Fiscal Year, outlining the magnitude of the deficit, the reasons for the deficit, and the recommendation to rectify the deficit in the next Fiscal Year.

13. GOVERNANCE

13.1 Governance Covenants. The Society covenants and agrees that:

- a) it will conduct itself at all times in accordance with its constitution and by-laws and the requirements of the Societies Act; and
- b) the Society will adopt and adhere to appropriate good governance policies.

13.2 Governance Defaults. To ensure that the delivery of the Services under this Agreement continue to be carried out in the best interests of the public, the parties agree that, if:

- a) the purpose of the Society is amended so that, at any time, it includes the carrying on of a business for profit or gain;
- b) the purpose of the Society is amended so that it is no longer consistent with benefiting the local and municipal community and members of the public through the provision of programming and other recreation services within the Facility; or
- c) the Society adopts bylaws and governance procedures that conflict with the terms of this Agreement or do not permit the Society to carry out its roles and responsibilities under this Agreement,

then it shall be considered a default of the Society under this Agreement and the Dispute Resolution Process set out in Article 23 of this Agreement shall apply.

14. REPORTING AND INSPECTIONS

14.1 Annual Reports. The Society shall provide an annual report to the HRM Representative no later than 45 days after Fiscal Year end, which report shall include the following components:

- a) Financial Reporting
 - i. Endorsed financial statements
 1. Income statement
 2. Balance sheet
 - ii. Bank reconciliation report

- b) Management Reporting
 - i. Discussion and analysis of Fiscal Year-end results highlighting significant variances and, if applicable, a report explaining any deficit realized.
 - ii. Current list of Board and Society staff, including contact information
 - iii. Other reports as HRM may reasonably require

14.2 Annual Budget and Business Plan

14.2.1 The Society shall prepare and furnish to the HRM Representative a draft Facility Annual Budget and Business Plan each Fiscal Year (date is subject to change in response to HRM's budget and business planning process).

14.2.2 The Annual Budget will include anticipated operating Revenues and expenses.

14.2.3 The Business Plan shall include the following components:

- a) Vision and Mission Statements;
- b) Strategic Priorities;
- c) Goals; and
- d) Annual Budget.

This plan is to be submitted as per timelines set out in this Agreement or as otherwise determined by the HRM Representative.

14.3 Bi-Annual Reports. The Society shall provide a Bi-Annual Report to the HRM Representative no later than 45 days following the mid-point of the Fiscal Year, which report shall include the following components:

- a) Financial Reporting
 - i. Income statement compared to Proposed Annual Budget
- b) Management Reporting
 - i. Monthly facility inspection sheets
 - ii. Program and Facility usage reports
 - iii. Other reports as HRM may reasonably require

14.4 Complaint Reporting and Action. The Society shall report to HRM and immediately investigate all written complaints upon receipt and shall take appropriate action it deems reasonably necessary.

14.5 Other Reports. The Society shall, when requested from time to time by HRM, prepare and furnish to HRM, such other reports or statements as HRM may reasonably require including, without limitation, status reports on any material aspects of the Services.

15. PURCHASING POLICY

15.1 Procurement. The Society shall follow the purchasing policy adopted by its Board for the purchase of all goods, services, construction or facilities it requires to deliver the Services. The parties hereby acknowledge and agree that the Society is not an agent of HRM for the purposes of procurement. The Society's purchases are its own and the Society shall not purchase goods, services, construction or facilities on behalf of HRM.

16. FACILITY ALTERATIONS

16.1 HRM shall be solely responsible for any Capital Work required in the Facility.

16.2 Notwithstanding Article 16.1, the Society shall be permitted to carry out minor alterations, enhancements and improvements to the Facility at their sole cost, provided that HRM has granted written approval prior to the work commencing. HRM may, in its sole and absolute discretion, refuse to approve any minor alterations, enhancements or improvements to the Facility proposed by the Society.

16.3 All work undertaken by the Society in accordance with Article 16.2 herein shall conform to Applicable Laws, including applicable building and fire codes. Before commencing the work, the Society shall obtain all necessary Permits required for the approved scope of work. The Society is responsible to ensure all required inspections are completed for the work.

17. HEALTH, SAFETY AND ENVIRONMENT

17.1 Compliance with Occupational Health and Safety Laws and Environmental Laws. With respect to Applicable Laws respecting health and safety of the workplace, the environment and Hazardous Substances or any Applicable Law related thereto:

- a) The Society covenants to operate the Facility (and to cause its employees, sub-tenants, licensees, occupants and invitees to use the Facility), in compliance with all Applicable Laws, related to the protection of the environment, health and safety. The Society warrants and represents that no Hazardous Substances shall be used, generated, released, manufactured, refined, produced, processed, stored, disposed of or allowed anywhere on, under or about the Facility, other than in accordance with Applicable Law. Without limiting the generality of the foregoing, the Society warrants and represents that it shall comply with all Applicable Laws regulating the use, generation, storage, transportation and disposal of Hazardous Substances on, under or about the Facility;
- b) The Society acknowledges that (i) it will be the occupier of and employer at the Facility and will have far greater control over the Facility than HRM on a day-by-day basis, (ii) it has the authority and the obligation under this Agreement to assume the primary responsibility for creating and maintaining a safe and healthy workplace at the Facility, and (iii) as part of the provision of Services, the Society shall undertake all necessary and prudent actions in respect of occupational health and safety at the Facility, including but not limited to the following:
 - (i) its obligations under Article 17.2 of this Agreement;
 - (ii) take every precaution that is reasonable in the circumstances to operate and maintain the Facility and deliver the Services in a manner that ensures the health and safety of persons thereupon;
 - (iii) exercise the precautions and duties of an “occupier of lands or premises used as a workplace” and “employer”, as those terms are used in the Occupational Health and Safety Act and the regulations;
 - (iv) adopt internal policies and programs relative to workplace health and safety that are substantially similar to HRM’s policies and programs, but which may differ to the extent required to adapt the Society’s policies and programs to operate the Facility in accordance with the Occupational Health and Safety Act and the regulations;

- (v) produce such reports from time to time as HRM may reasonably require to audit and verify the Society's efforts in respect of health and safety and the Facility;
 - (vi) comply with the Occupational Health and Safety Act and the regulations; and
 - (vii) immediately disclose to the relevant Governmental Authority and to HRM the occurrence of an event whereby the Society failed to comply with the Occupational Health and Safety Act or the regulations.
- c) All of the Society's obligations set out in this Article 17.1 of this Agreement shall survive the expiration or other termination of this Agreement.

17.2 Hazardous Substances. The Society shall not allow any Hazardous Substances to be brought upon, placed or stored in or on the Facility except in accordance with the requirements of Article 17. If the Society:

- a) encounters Hazardous Substances at the Facility; or
- b) has reasonable grounds to believe that Hazardous Substances are present at the Facility the Society shall:
 - (i) take all reasonable steps including if necessary, cessation of operations in the Facility, to ensure that no individual suffers an injury, sickness or death and that no property is injured or destroyed as a result of exposure to the presence of the Hazardous Substances;
 - (ii) immediately report the circumstances to HRM in writing; and
 - (iii) comply with any provisions of this Agreement.

18. FACILITY INSPECTIONS.

HRM or HRM's Contractor, shall have access to the Facility at all reasonable times by providing not less than twenty-four (24) hour written notice to the Society for the purpose of completing an independent facility inspection report. These inspections will provide valuable information for recapitalization planning, risk management and insurance coverage and compliance issues, and operational planning. HRM may enter the Premises immediately and without prior written notice if, in HRM's sole but reasonable discretion, an emergency event or potential emergency event is occurring.

19. PERMITS

19.1 The Society shall obtain and renew as necessary all Permits which may be required in connection with the delivery of the Services. The Society shall at all times comply with the conditions of such Permits and shall comply with and observe all Applicable Laws in delivering the Services.

20. EMPLOYEES

20.1 Personnel of the Society. All personnel employed by the Society in delivering the Services are selected for employment by, and will be employees of, the Society, and shall under no circumstances or at any time be deemed or implied to be employees of HRM. The Society shall be solely responsible for the hire, dismissal, control, direction, supervision, instruction, and training of its employees. The wages, salaries and benefits of such employees are the responsibility of the Society and shall be paid directly by the Society. The entirety of the foregoing shall be a term of employment for anyone employed by the Society.

20.2 The Society shall continue to be responsible for the development of employment policies, and will ensure appropriate coverage for Workers' Compensation purposes, statutory

payroll deductions and remittance to appropriate taxing authorities.

20.3 The Society shall be responsible for all volunteers engaged to support the Society, and will be responsible for all related liabilities and obligations, including appropriate oversight and screening.

20.4 The Society shall ensure that fidelity bonds, criminal records check, and sex-abuse registry records have been obtained and are in place in respect of all its employees and volunteers where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations.

20.5 The Society will take all measures required to remain in compliance with the *Occupational Health and Safety Act* and ensure the safety of employees, volunteers and contractors.

20.6 Meetings and Access to Personnel. Employee or Board representatives of the Society shall agree to meet with HRM's Representative upon HRM's request, to discuss and review the delivery of the Services, provided the Society is given two (2) weeks' notice except in the event that the requirement for a meeting is time sensitive in which the meeting may be immediate. The Society Board and/or employees shall inform the HRM Representative in a timely manner of all emergencies, the occurrence of all uncontrollable events, and any other significant information as would be expected under customary and prudent business practices.

21. BOOKS AND RECORDS

21.1 Books and Records. The Society shall maintain or cause to be maintained complete and accurate books and records about the Facility and Services in accordance with generally accepted accounting principles. HRM shall have the right at its own expense and upon reasonable notice and at all reasonable times during normal business hours to audit, examine, make copies and take extracts from the books of account and records maintained by the Society pursuant to this Agreement. Such right may be exercised through any agent or employee designated by HRM.

21.2 Upon termination or expiration of this Agreement, all records related to the Facility and Services shall be turned over forthwith to HRM at no cost to ensure the orderly continuance of the operation of the Facility. All other books and records of the Society will thereafter be available to HRM, at all reasonable times, for inspection, audit, examination and copying.

22. TERMINATION

22.1 Termination for Any Reason. This Agreement may be terminated by either party for any reason whatsoever upon six months (6) written notice to the other party.

22.2 Termination for Material Breach. This Agreement may be terminated in writing by either party for a material breach of any of its terms, provided that the party that is in material breach is first given written notice of the breach. The party alleging breach shall give a written notice of the breach to the party in breach, and that party shall remedy the default to the satisfaction the other party within ten (10) business days of receipt of such written notice, or if such default cannot reasonably be remedied within such ten (10) business day period, the party shall promptly begin to remedy the default within the ten (10) business day period and thereafter diligently prosecute to conclusion all acts necessary to remedy the default, then such default shall be deemed to be remedied.

If the Society fails to remedy a default in accordance with this Article 22, HRM shall have the right, at its election, to exercise any or all of the following remedies:

- a) terminate in whole or in part, the rights or obligations of the Society under this Agreement;
- b) take possession of the Facility; and
- c) remedy or cause to be remedied the default and the Society shall reimburse HRM for any costs or expenses associated with HRM's remediation of the default.

22.3 Right to Dispute Breach Notice. In the event that either party delivers written notice of a material breach to the other party pursuant to Article 22.2, the receiving party may within seven (7) days of such notice being delivered to it, deliver a dispute notice to the delivering party and the matter shall be referred for resolution pursuant to the Dispute Resolution Procedures.

22.4 Termination Notice on Failure of Board to Remedy. On the occurrence of a default which HRM in its sole discretion considers may cause irreparable harm to any person or to the Facility then HRM shall have the right to terminate this Agreement and exercise all of the other rights and remedies described in Article 22.2 and if HRM elects to terminate this Agreement, the Board shall have no right to dispute the matter.

22.5 Remedies are Cumulative. This Agreement shall not be construed as limiting HRM's rights or remedies at law or in equity and any such rights or remedies of HRM whether at law or in equity or under this Agreement:

- a) may be exercised individually or together with any one or more of its other rights or remedies and as often or in such order as HRM deems expedient; and
- b) are cumulative and are in addition to and not in substitution for any other rights and remedies.

22.6 Emergencies. Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable opinion of HRM there is a real or apprehended emergency or imminent damage or danger to persons, property or the environment arising out of or in connection with any matter, state, condition or thing relating to this Agreement, as a result of a breach by the Society of this Agreement, HRM may, without notice and without prejudice to other remedies, (but without obligation to do so) rectify any such matter, state, or condition.

22.7 Obligations of the Society on Termination. Where HRM or the Society has terminated this Agreement in accordance with the terms hereof, the Society shall on the effective date of the termination:

- a) stop the performance of all Services hereunder;
- b) terminate all Rental Contracts and Operations Contracts as HRM may specify in writing;
- c) provide to HRM a detailed list of all licensed users and customers of the Facility;
- d) be deemed to have licensed to HRM a royalty and license to use any and all patented and proprietary information, designs or processes contemplated to be used by HRM in the operation, management and maintenance of the Facility, and shall forthwith execute and deliver to HRM a paid-up royalty and license, in form and substance satisfactory to HRM, to use any and all such patented and proprietary information, designs or processes contemplated to be used in the operation of the Facility;
- e) assign and transfer to HRM the Society's right, title and interest in and to all liquor and other licenses and permits, if any, used by the Board in the operation of the Facility;

- f) deliver all applicable records in accordance with section 21;
- g) remove from the Facility all Society Property, debris and any other materials that are designated in writing by HRM to be so removed;
- h) do all such acts, execute and deliver to HRM all such documents (including documents related to volunteer and employee screening and personnel records), conveyances, deeds, assignments, transfers, bills of sale, assurances and certificates and take all actions as may be required by HRM to exercise its rights hereunder;
- i) indemnify HRM with respect to any and all liabilities relating to the Facility and/or Services and arising out of anything done or omitted by the Society contrary to this Agreement, including an indemnification for any outstanding actions, suits or proceedings; and
- j) take any other action towards termination of the Services which HRM acting reasonably shall request in writing.

22.8 Further Assurances. The Society agrees that, upon the reasonable request of HRM, it will do all such acts and execute all such further documents, assurances, certificates and the like as may be necessary or desirable in HRM's opinion, acting reasonably, to effect the purpose of Article 22.7, whether before or after this Agreement is terminated.

22.9 Termination of this Agreement does not release either of the Parties from any obligations that accrued while the Agreement was in force.

23. DISPUTE RESOLUTION

23.1 Commencement of Process. If HRM and the Society are unable to agree on any aspect of the Agreement that is subject to arbitration, either the Society or HRM may give notice of a dispute to the other, which is to contain the particulars of the matter in dispute and the relevant provisions of this Agreement. The other party shall reply in writing within 10 business days after receiving it, setting out in such reply the details of its response and any other relevant provisions of this Agreement.

23.2 Amicable Negotiations. HRM and the Society shall use best efforts to resolve any dispute. If the dispute is not resolved within 15 business days following receipt of the reply, the dispute shall be resolved in accordance with Article 23.3.

23.3 Arbitration Proceedings. All differences between the parties arising out of this Agreement that cannot be resolved through amicable negotiations and are subject to arbitration shall be submitted to arbitration as follows:

- a) If the parties are unable to agree, either HRM or the Society (the initiating party) may appoint an arbitrator by notice in writing to the second party. The second party will have 10 business days after receipt of the notice to appoint its arbitrator, or to agree to have the matter heard by the arbitrator named by the initiating party, written notice of which will be given to the initiating party. Where two arbitrators are chosen, they shall, within 10 business days after the appointment of the second arbitrator, appoint a third arbitrator who shall be the sole determiner of the matter.
- b) The single arbitrator shall provide a decision in writing within ten (10) business days of his or her appointment.
- c) The parties shall each be responsible for their own costs of arbitration and shall be jointly and equally responsible for the cost of the single arbitrator who determines the matter.
- d) The decision of the single arbitrator shall be final and binding. No one shall be appointed

or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either party.

23.4 Governance of Arbitration. The following provisions shall govern the arbitration: each of HRM and the Society shall be treated fairly and shall be given full opportunity to present a case; arbitration hearings shall be held in the Halifax Regional Municipality; all arbitration hearings shall be in private unless the parties otherwise agree; and any party may be represented at any arbitration hearing by legal counsel.

23.5 Matters not Subject to Arbitration. The following matters are not subject to arbitration: policies and standards established by HRM, provided that such policies and standards do not directly contradict the express terms of this Agreement; allocation of HRM budget and resources; compliance with Applicable Laws and corporate policies; and the ownership of the Facility.

23.6 Applicable Law. The Parties agree that any arbitration pursuant to this Agreement shall be governed by the terms of this Article 23 and to the extent not inconsistent therewith, the Commercial Arbitration Act (Nova Scotia).

23.7 Continuation of Work During Dispute. Notwithstanding that a matter or matters have been referred to the Dispute Resolution Procedures set forth in this Article 23, each of the Society and HRM shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay.

24. INSURANCE

24.1 HRM will provide insurance coverages with language, policies and limits as deemed reasonable and prudent by HRM. The Society shall fully cooperate with HRM, complete or assist in the completion of all insurance applications while providing substantiating documentation as may be required.

HRM shall obtain and maintain at their sole expense, during the Term, including any Renewal Term of this Agreement, the following insurance coverages for the Facility.

a) **Property (including Business Interruption)**

HRM will insure all real and personal property owned by HRM or the Society, or for which HRM or the Society is legally responsible. Such insurance coverage will also extend to all improvements made to or installed at the Facility, by or on behalf of the Society, including all contents, equipment, and property of every description of the Facility whether owned by the Society or for which the Society is responsible or contractually responsible, in an amount equal to the full replacement value. This coverage insures for all risks of direct physical loss or damage including, but not limited to, fire plus other hazards including windstorm and lightning.

b) **Automobile**

In the event the Society operates HRM owned vehicles, in accordance with the provincial Direct Compensation Property Damage process, HRM will insure those HRM owned and Society operated vehicles with insurance coverage, language and limits as may be prudent. Upon request, the Society will provide to HRM or their Insurer, any Driver/Operator records as may be required to substantiate operator competence.

c) **Commercial General Liability**

HRM will provide coverage for and against all claims arising from personal injury, death, property damage, contractual liability or incidents (including solicitor fees and costs) occurring in, on or about the Facility, including any liquor-licensed area.

Such insurance will include Tenants Legal Liability coverage and be in such amounts and coverages as may be required and deemed appropriate by HRM, in any event, not less than Two Million Dollars (\$2,000,000) inclusive or, in the event alcohol is served or provided at the Facility, in an amount of not less than Five Million Dollars (\$5,000,000), with liquor liability not excluded.

HRM and the Society shall ensure that such insurance coverage remains in effect. Neither HRM nor the Society, including their employees, volunteers, agents, licensees, or invitees, will cause or create a situation which would affect the validity of the insurance coverages or cause cancellation of same.

d) **Crime Insurance.** HRM will provide insurance coverage for the Facility for crime related losses that are not insured under other insurance policies.

e) **Boiler and Machinery Coverage (accident to an object).** HRM will provide insurance coverage against the sudden and accidental damages of pressure vessels, mechanical and electrical equipment owned and maintained by HRM or the Society.

f) **Directors and Officers.** HRM will provide insurance coverage to insure against those claims related to the wrongful acts or omissions committed or omitted by the Society's directors, officers, and board members, including for acts related to decisions and organizational policies.

24.2 The **Society** shall obtain and maintain at their sole expense during the Term, and any Renewal Term of this Agreement, as a minimum, the following insurances:

a) **Automobile**

In accordance with the provincial Direct Compensation Property Damage Process, the Society will be responsible to provide automobile insurance coverage for those Society owned and operated vehicles or licensed equipment with insurance coverages as appropriate.

b) **Workers' Compensation Insurance.** The Society shall obtain workers' compensation insurance for the Society's employees in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia).

The Society shall also ensure that Workers' Compensation insurance in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia) is provided by all their Suppliers.

24.3 The Society shall be responsible for all risks, liabilities, and exposures, including costs, related to their operation of the Facility and provision of the Services during the Term, and any Renewal Term. To ensure insurance coverages remain appropriate, the Society shall contact HRM in the event there are any material changes to its contents or operations, such as large purchases or other alterations, which may impact insurance coverage or limits.

24.4 Insurance coverages required to be provided shall meet or exceed the requirements set forth in this section, and the policies will carry all standard endorsements. In the event that the Society fails to obtain or allows the required insurance coverage to lapse, then HRM may, at its sole discretion, obtain required insurance coverage with such costs being charged back to the Society.

24.5 The Society shall be responsible for any deductible amounts under any policies purchased with respect to this Agreement, to the extent the Society's act or omission is responsible for the covered loss.

24.6 All insurance policies obtained by HRM shall:

- a) be issued by insurers licensed to carry on business in Nova Scotia; and
- b) contain a clause or endorsement stating that the insurer(s) shall provide HRM with at least 30 days' notice of cancellation or termination.

24.7 All insurance policies obtained by the Society shall:

- a) be issued by insurers licensed to carry on business in Nova Scotia;
- b) contain a clause or endorsement stating that the Insurers shall provide the Society with at least 30 days' notice of cancellation or termination;
- c) contain a cross liability clause and include a waiver of subrogation rights which the Society's insurer may have against HRM and those for whom HRM is at law responsible; and
- d) be non-contributing and apply only as primary and not as excess to any other insurance available to HRM.

24.8 The Society shall notify HRM in writing as soon as possible after:

- a) Notification or receipt of notice of any incident, accident or injury occurring in, on or about the Facility or is as a result of operations of or actions of the Society, including it's employees, volunteers, agents, licensees, or invitees, that could reasonable be expected to result in a claim being made against HRM and/or the Society that involves the Facility;
- b) Notification or receipt of notice of any claim against HRM and/or the Society which involves the Facility, operations or actions of the Society, including it's employees, volunteers, agents, licensees, or invitees.

The Society shall take no action (such as the admission of liability) which would or could reasonably be anticipated to operate to bar HRM from obtaining any protection afforded by any policies of insurance it may hold or which would or could reasonably be anticipated to operate to prejudice the defence in any legal proceedings involving HRM or the Facility, or otherwise prevent HRM from protecting itself against any such claim, demand, or legal proceeding.

The Society shall fully cooperate with HRM in the investigation of and defence of any incident, accident, claim, demand, or legal proceeding.

24.9 HRM shall have the right, but not the obligation, to review the Society's required insurance polices. Such review by or on behalf of HRM shall in no way relieve the Society of its obligations to provide the Insurance coverages required by this Agreement, nor shall it imply that HRM agrees that the Society has fulfilled the obligations imposed under this Agreement.

24.10 The Society does not have the authority to settle claims without having permission from the Insurer, or having consultation with the Manager, Risk & Insurance Services at HRM. The Society shall cooperate with HRM, Insurers, or other parties as may be necessary to assist in the identification, quantification, assessment, and mitigation of risks to the Facility, HRM, Society or the public by implementing recommended strategies to manage risks or potential exposures.

24.11 At the time of signing this Agreement, and as requested by HRM from time to time, Certificates of Insurance evidencing proof of the Society's required insurance coverage as required through this Agreement shall be provided to HRM. In addition, as requested by HRM from time to time, a letter evidencing the Society is in Good Standing with the Workers Compensation Board is to be provided to HRM.

25. INDEMNIFICATION, LIMITATION OF LIABILITY AND CLAIMS

25.1 Indemnification. The Society agrees to indemnify and save harmless HRM, its Mayor, Council members, authorized officials, employees, officers, agents and volunteers from and against any and all Claims for which HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers shall or may become liable or suffer by reason of any breach, violation or non-performance by the Society of any covenant, term or provision hereof or by reason of any death or injury of any person or any damage or destruction of any property resulting from any act, neglect or default on the part of the Society, or any of its volunteers, employees, agents, licensees or invitees whatsoever occurring in, on or around the Facility, including any liquor-licensed areas.

25.2 Limitation of Liability. The Society agrees that neither HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers shall be liable for any injury or damage to persons or property, including damage resulting from steam, gas, fire, electricity, water, rain or snow, or from any other cause whatsoever, other than for such injury or damage which shall result from the wilful action or negligence of HRM. In no event will HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers be liable for any consequential, indirect damages or economic loss suffered by the Society, their employees, volunteers or agents.

25.3 Claims.

- a) The Society shall notify HRM in writing as soon as possible after the Society becomes aware of any Claim or possible Claim against the Society and/or HRM that involves the Services and/or Facility.
- b) The Society shall notify HRM in writing as soon as possible after it becomes aware of any injury occurring in, on or about the Facility, which could reasonably be expected to result in a Claim being made against HRM or the Society.
- c) The Society shall take no steps (such as the admission of liability) that would operate to bar HRM from obtaining any protection afforded by any policies of insurance it may hold or which will operate to prejudice the defense in any legal proceeding involving HRM or the Facility, or otherwise prevent HRM from protecting itself against any such Claim.
- d) The Society shall cooperate fully with HRM in the defense of any Claim.
- e) The handling, denial or settlement of any Claim by the Society or their insurer must be reported to the HRM Manager of Risk and Insurance Services.
- f) If HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers are, without fault on their part, made a party to any litigation commenced by or against the Society, then the Society shall promptly indemnify and

hold free and harmless HRM and shall pay HRM all costs and expenses, including, without limitation, all expenses and legal fees (on a solicitor client basis) that may be incurred or paid by or on behalf of HRM or such other parties in connection with the litigation.

- g) HRM may at its option, and Society's expense, participate in or assume carriage of any litigation or settlement discussions relating to the foregoing or any other matter for which the Society is required to indemnify HRM under this Agreement. Alternatively, Society agrees that HRM may require Society at Society's expense to assume carriage of and responsibility for all or any part of such litigation of discussions, subject to Society at all times keeping HRM up to date in writing as to the status thereof.

25.4 This Article shall survive the expiration or earlier termination of this Agreement.

26. COVENANTS, REPRESENTATIONS AND WARRANTIES

26.1 Without limiting any other terms or conditions contained herein, the Society hereby covenants, represents and warrants:

- a) that the Facility will only be used throughout the Term or Renewal Term for activities and events that are appropriate and desirable for municipal purposes and the Society covenants and agrees that it will only use, and permit the use by others of, the Facility as contemplated by this Agreement or as otherwise permitted in writing by HRM from time to time;
- b) the Society shall operate the Facility in compliance with all Applicable Laws to ensure the safety of all individuals present in the Facility and to preserve the Facility, ensuring its value does not diminish, and take all reasonable steps to safeguard the Facility and any assets associated with the Facility;
- c) the Society is and shall remain during the Term of this Agreement and during any Renewal Term, organized and operated solely for a purpose other than profit, with no compensation to be paid to the directors and officers of the Society; and
- d) employees, contractors, or any other person acting on behalf of the Society shall comply with and meet the requirements of this Agreement at all times.

27. TAXES

27.1 Taxes. The Society agrees to remit when due all taxes, rates and charges that are charged, assessed or levied in respect of the Services provided at, and the operation of, the Facility under this Agreement, including any GST/HST obligations of the Society as stipulated under the Government of Canada's Excise Tax Act. The Society agrees to indemnify and reimburse HRM upon demand for any such taxes, rate or charges which may be assessed to HRM.

28. PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS

28.1 PCI Compliance. The Society shall maintain best practices with respect to Payment Card Industry Data Security Standards and recognizes that HRM has resources to assist and provide guidance with respect to Payment Card Industry Compliance.

29. ADDITIONAL TERMS AND CONDITIONS

29.1 The parties hereby agree to the additional terms and conditions set out in Schedule B.

30. GENERAL TERMS AND CONDITIONS

30.1 Amendment. No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the parties, either individually by counterpart or collectively. Any amendment, variation or waiver shall take effect on the date specified in the amendment, variation or waiver or, if not so specified, on the date on which the last party executes and delivers the amendment, variation or waiver.

30.2 Notice. All notices, demands, requests, approvals or other communication of any kind which the parties may be required or may desire to serve on each other in connection with this Agreement shall be delivered by Electronic Mail or Registered Mail to:

Halifax Regional Municipality

Attention: Manager of Community Partnerships
P.O. Box 1749
Halifax, NS B3J 3A5

Or in person to:

Manager, Community Partnerships
40 Alderney Drive, Main Floor
Dartmouth, NS

Society

Attention: Chairperson
Head of St. Margaret's Bay/Boutilier's Point Recreation Association
11 Station Road
Head of St. Margaret's Bay, NS B3Z 2B9

Or in person to:

Chairperson, Head of St. Margaret's Bay/Boutilier's Point Recreation Association
11 Station Road
Head of St. Margaret's Bay, NS

30.3 Force Majeure. Notwithstanding anything to the contrary in this Agreement, if HRM or the Society is bona fide delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God, and not caused by its default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause exists, and the party so delayed shall and is entitled, without being in breach of this Agreement, to carry out such obligation within the appropriate time period after the cessation of such cause.

30.4 Waiver.

a) Any waiver by any party of all or any part of any provision, or the breach of any

provision of this Agreement shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.

- b) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall extend only to the party to whom such waiver is expressly granted and shall not be construed as a waiver in favour of any other party in respect of such provision or breach and shall not prejudice the rights of any other party from insisting upon performance of such provision.
- c) The failure of any party to give notice to the other party, or to take any other steps in exercising any right in respect of the breach or non-fulfillment of any provision of this Agreement, shall not operate as a release or waiver of that right or as a release of the other party from its obligations and liabilities nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.
- d) The acceptance by any party of payment or performance of any obligation after the breach or non-fulfillment by the other party of any provision of this Agreement shall not constitute a waiver of the provisions of this Agreement.

30.5 Assignment and Enurement. Neither party may assign their rights or obligations under this Agreement without the prior written consent of the other party. This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

30.6 Severability. If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable, unless such invalid provision is fundamental to the efficacy of this Agreement, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by Applicable Laws.

30.7 Governing Law. This Agreement is made in the Province of Nova Scotia and shall be governed by and construed in accordance with the laws in force in the Province of Nova Scotia. The parties submit to the jurisdiction of the Supreme Court of Nova Scotia, subject to any restrictions relating to access to such court under Applicable Laws, with respect to all claims and proceedings arising out of or related to this Agreement.

30.8 Schedule. The following Schedules are attached to and form part of this Agreement:

Schedule "A" – HRM Property

Schedule "B" – Additional Terms and Conditions

30.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties, and understandings, whether written or verbal.

30.10 Further Assurances. Each party shall from time to time promptly execute and deliver all further documents and take all further action reasonably necessary to give effect to the provisions and intent of this Agreement.

30.11 Parties. References in this Agreement to the "Parties" shall mean the parties to this Agreement and a reference to a "Party" shall mean one (1) of the parties to this Agreement.

30.12 Accounting Terms and Principles. Unless otherwise expressly stated, all accounting terms and principles applicable to this Agreement shall be interpreted and applied in accordance with generally accepted accounting principles which are in effect in Canada, including those published in the handbook of the Canadian Institute of Chartered Accountants, or any successor, as at the date on which such calculation is made or is required to be made;

30.13 Legal Relationship. HRM and the Society are independent contracting bodies, not legal partners nor joint employers, nor are they in an agent-principal relationship or a landlord-tenant relationship.

30.14 Time of Essence. For every provision of this Agreement, time is of the essence.

30.15 Headings. Headings and recitals are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

30.16 References. Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, subsection, clause, sub clause or other subdivision is a reference to such Schedule, Article, Section, subsection, clause, sub clause or other subdivision of this Agreement. The terms “hereof”, “hereto”, “herein”, “hereby” and “hereunder”, and similar expressions mean and refer to this Agreement and, unless the context otherwise requires, not to any particular Article.

30.17 Number and Gender. Words importing the singular only shall include the plural and vice versa, words importing any gender shall include other genders and references to persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations. Any capitalized word which is a derivative of any word defined in Article 1 shall have a meaning corresponding to the defined word.

30.18 Statutes and Regulations. Any reference in this Agreement to all or any part of any statute, regulation, by-law or other legislative enactment shall, unless otherwise expressly stated, be a reference to that statute, regulation, by-law or legislative enactment or relevant part thereof as amended, substituted, replaced or re-enacted from time to time.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and year first above written.

SIGNED AND DELIVERED:

HALIFAX REGIONAL MUNICIPALITY

Witness

Per: _____

Witness

Per: _____
I/we have authority to bind the Municipality

**Head of St. Margaret's Bay/Boutilier's Point
Recreation Association**

Witness

Per: _____

Witness

Per: _____

I/we have authority to bind the Society

Schedule “A” – HRM PROPERTY

HRM does not own any property at the facility other than building systems and fixtures.

HRM Property shall also include any property, or improvements to property, purchased, installed or otherwise provided by HRM for the Facility during the Term, or any Renewal Term, of this agreement.

Schedule “B” – ADDITIONAL TERMS AND CONDITIONS

1. Lease revenue –

HRM shall pay HBBPRA a monthly operating subsidy equal to the revenue, net after taxes, HRM receives from leases within the Facility.

ATTACHMENT "2"

SITE MAP

PID 00612788 (outlined in orange)

Building Premises (identified as Bay Community Centre, 11 – 15 Station Road)

