

**CHAMPION PARK MEMBERSHIP AGREEMENT**

**AMONG**

**MUNICIPAL DISTRICT OF FOOTHILLS NO. 31**

**TOWN OF OKOTOKS**

**FRIENDS OF CHAMPION PARK SOCIETY**

**TABLE OF CONTENTS**

|  | Page      |
|--|-----------|
| <b>ARTICLE 1 - INTERPRETATION.....</b>   | <b>1</b>  |
| <b>SECTION 1.01 - DEFINITIONS .....</b>  | <b>1</b>  |
| <b>SECTION 1.02 - DEFINED TERMS.....</b>   | <b>3</b>  |
| <b>SECTION 1.03 - DISCREPANCIES BETWEEN BYLAWS AND MEMBERSHIP AGREEMENT .....</b>        | <b>3</b>  |
| <b>ARTICLE 2 - IMPLEMENTATION AND EFFECT OF AGREEMENT.....</b>                           | <b>3</b>  |
| <b>SECTION 2.01 - BINDING EFFECT OF AGREEMENT .....</b>                                  | <b>3</b>  |
| <b>SECTION 2.02 - ACKNOWLEDGMENT OF EFFECT OF AGREEMENT .....</b>                        | <b>3</b>  |
| <b>ARTICLE 3 - MANAGEMENT AND OPERATION OF THE FACILITIES.....</b>                       | <b>4</b>  |
| <b>SECTION 3.01 - MANAGEMENT AND OPERATION.....</b>                                      | <b>4</b>  |
| <b>SECTION 3.02 – SPECIFIC OBLIGATIONS.....</b>  | <b>4</b>  |
| <b>SECTION 3.03 – INTEGRATION OF FACILITIES.....</b>                                     | <b>4</b>  |
| <b>ARTICLE 4 - OWNERSHIP, PRINCIPLES AND APPROVED USES.....</b>                          | <b>4</b>  |
| <b>SECTION 4.01 – APPROVED USES .....</b>  | <b>4</b>  |
| <b>SECTION 4.02 - OWNERSHIP .....</b>  | <b>5</b>  |
| <b>SECTION 4.03 - GUIDING PRINCIPLES.....</b>  | <b>5</b>  |
| <b>SECTION 4.04 – OPERATIONS .....</b>   | <b>5</b>  |
| <b>SECTION 4.05 – FUTURE DEVELOPMENT, CONSTRUCTION AND OPERATIONS.....</b>               | <b>5</b>  |
| <b>ARTICLE 5 - REPRESENTATIVE OF SOCIETY TO THIRD PARTIES.....</b>                       | <b>6</b>  |
| <b>SECTION 5.01 - APPOINTMENT OF SOCIETY AS AGENT FOR PARTIES.....</b>                   | <b>6</b>  |
| <b>SECTION 5.02 - NATURE OF SOCIETY'S ROLES AND RESPONSIBILITIES.....</b>                | <b>6</b>  |
| <b>ARTICLE 6 - TERMINATION BY DELIVERY OF NOTICE .....</b>                               | <b>7</b>  |
| <b>SECTION 6.01 - DATE WHEN THE AGREEMENT MAY BE UNANIMOUSLY TERMINATED.....</b>         | <b>7</b>  |
| <b>SECTION 6.02 - DISTRIBUTION OF PROPERTY UPON TERMINATION OF AGREEMENT.....</b>        | <b>7</b>  |
| <b>ARTICLE 7 - OBLIGATIONS OF PARTIES .....</b>  | <b>7</b>  |
| <b>SECTION 7.01 - OBLIGATIONS TO FULFILL GOALS.....</b>                                  | <b>7</b>  |
| <b>SECTION 7.02 - PASSAGE OF BUSINESS PLAN .....</b>                                     | <b>7</b>  |
| <b>ARTICLE 8 - ALLOCATION OF INTEREST AND LIABILITY AMONGST PARTIES .....</b>            | <b>7</b>  |
| <b>SECTION 8.01 - ONE PARTY CAN ONLY BIND ANOTHER PARTY IF PREVIOUSLY APPROVED .....</b> | <b>7</b>  |
| <b>SECTION 8.02 - INDEMNITY FOR LIABILITY .....</b>                                      | <b>7</b>  |
| <b>SECTION 8.03 - INDEMNITY .....</b>  | <b>8</b>  |
| <b>SECTION 8.04 - RESPONSIBILITY TO REIMBURSE FOR PAYMENTS .....</b>                     | <b>8</b>  |
| <b>ARTICLE 9 - AUDIT AND BOOKS OF ACCOUNT .....</b>                                      | <b>8</b>  |
| <b>SECTION 9.01 - APPOINTMENT OF ACCOUNTANT .....</b>                                    | <b>8</b>  |
| <b>SECTION 9.02 - REQUIREMENT TO AUDIT ACCOUNTS .....</b>                                | <b>8</b>  |
| <b>SECTION 9.03 - FISCAL YEAR FOR OPERATIONS.....</b>                                    | <b>8</b>  |
| <b>SECTION 9.04 - PRESENTATION OF QUARTERLY STATEMENTS.....</b>                          | <b>8</b>  |
| <b>SECTION 9.05 - MEMBERS' RIGHTS TO INSPECT BOOKS.....</b>                              | <b>8</b>  |
| <b>ARTICLE 10 – TERMINATION OF AGREEMENT AND DISTRIBUTION OF ASSETS.....</b>             | <b>9</b>  |
| <b>SECTION 10.01 – STATEMENT OF PRINCIPLE REGARDING TERMINATION .....</b>                | <b>9</b>  |
| <b>SECTION 10.02 – VALUATION OF FACILITIES .....</b>                                     | <b>9</b>  |
| <b>SECTION 10.03 – DETERMINATION OF DEPARTING MEMBER.....</b>                            | <b>9</b>  |
| <b>SECTION 10.04 – PAYMENT TO DEPARTING MEMBER .....</b>                                 | <b>10</b> |
| <b>SECTION 10.05 – STEPS TAKEN BY SOCIETY .....</b>                                      | <b>10</b> |
| <b>ARTICLE 11 - DISPUTE RESOLUTION .....</b>   | <b>10</b> |
| <b>SECTION 11.01 - DISPUTE RESOLUTION PROCEDURE .....</b>                                | <b>10</b> |

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|  |           |
|--|-----------|
| <b>ARTICLE 12 - GENERAL .....</b>                  | <b>12</b> |
| SECTION 12.01 - NOTICES .....                      | 12        |
| SECTION 12.02 - GOVERNING LAW.....                 | 13        |
| SECTION 12.03 - TIME OF ESSENCE.....               | 13        |
| SECTION 12.04 - PREAMBLE .....                     | 13        |
| SECTION 12.05 - HEADINGS.....                      | 13        |
| SECTION 12.06 - RELATIONSHIP BETWEEN PARTIES ..... | 13        |
| SECTION 12.07 - NO AUTHORITY .....                 | 13        |
| SECTION 12.08 - AGREEMENT ENTIRE RELATIONSHIP..... | 13        |
| SECTION 12.09 - FURTHER ASSURANCES .....           | 13        |
| SECTION 12.10 - AMENDMENTS.....                    | 13        |
| SECTION 12.11 - WAIVER.....                        | 14        |
| SECTION 12.12 - COUNTERPARTS .....                 | 14        |
| SECTION 12.13 - STATUTORY REFERENCE .....          | 14        |
| SECTION 12.14 - UNENFORCEABILITY.....              | 14        |
| SECTION 12.15 - SURVIVAL.....                      | 14        |
| SECTION 12.16 - REMEDIES GENERALLY .....           | 14        |
| SECTION 12.17 - PAYMENT OF MONIES.....             | 14        |
| SECTION 12.18 - SINGULAR, PLURAL AND GENDER .....  | 14        |
| SECTION 12.19 - BINDING EFFECT .....               | 15        |
| SECTION 12.20 - ASSIGNMENT OF AGREEMENT .....      | 15        |
| SECTION 12.21 - REQUESTS FOR CONSENT.....          | 15        |

**THIS AGREEMENT as of the Effective Date**

**AMONG:**

**MUNICIPAL DISTRICT OF FOOTHILLS NO. 31  
("Foothills")**

**OF THE FIRST PART**

- and -

**TOWN OF OKOTOKS  
("Okotoks")**

**OF THE SECOND PART**

- and -

**FRIENDS OF CHAMPION PARK SOCIETY  
(the "Society")**

**OF THE THIRD PART**

**FOOTHILLS-OKOTOKS RECREATION SOCIETY MEMBERSHIP AGREEMENT**

**WHEREAS** the Parties:

- A. Wish to cooperate and collaborate with each other in the ownership, maintenance, preservation, upkeep and public display of Champion Park for the benefit of residents of Foothills, Okotoks and surrounding areas;
- B. Wish to utilize the Friends of Champion Park Society as the corporate entity to hold Champion Park and operated pursuant to their instructions;
- C. Agree that Okotoks and Foothills will have an equal proportionate interest in Champion Park; and
- D. Wish to enter into this Membership Agreement to set forth their respective rights and obligations concerning same.

**NOW THEREFORE THIS MASTER AGREEMENT WITNESSETH** that the Parties agree as follows:

**ARTICLE 1 - INTERPRETATION**

**Section 1.01 - Definitions**

In this Membership Agreement:

- (a) "**Appraised Value**" has the meaning as ascribed thereto in Article 10;
- (b) "**Board**" means the duly constituted board of directors of the Society;
- (c) "**Business Day**" means every day except Saturday, Sunday and a statutory holiday in the Province of Alberta;

- (d) **"Business Plan"** means any detailed plan created to achieve certain objectives and milestones for the operations of the Society over a certain time period to be determined from time to time. Without limiting the foregoing, the Business Plan may describe the future activities for all aspects of the Society and may contain:
- (i) clear objectives for the Society and clear objectives for Champion Park;
  - (ii) list of desired results in implementing the Business Plan;
  - (iii) list of resources of a non-financial nature, required to implement the Business Plan;
  - (iv) timelines to implement the objectives as stated in the Business Plan;
  - (v) a method of monitoring and evaluating the progress of the implementation of any plan;
  - (vi) planning for financial requirements of implementing the Business Plan; and/or
  - (vii) expected revenues and expenses that may be received by implementing the Business Plan;
- (e) **"Champion Park"** means:
- (i) those lands legally described as:
    - Meridian 4, Range 29, Township 21
    - Section 2
    - That Portion of the Southeast Quarter which lies Northeast of
    - Road Plan 9811707
    - Containing 21.9 Hectares (54 Acres) More or Less
    - Excepting Thereout All Mines and Minerals;
  - (ii) the following chattels situated upon the foregoing lands:
    - (1) locomotive;
    - (2) a wickham;
    - (3) display cars;
    - (4) rolling stock;
    - (5) other period and railway equipment;
    - (6) maintenance equipment;
    - (7) artifacts; and
    - (8) any other replacement, substitution or additional items acquired from time to time;
- (f) **"Effective Date"** means the date of incorporation of the Society, or such other date as may be agreed upon in writing by the Parties;
- (g) **"Event of Default"** means, with respect a Party, that:

- (i) if a Party neglects or fails to make any payment within such time limits as set out in this Membership Agreement;
- (ii) if a Party fails to execute and deliver without lawful excuse any deed, contract or other document which may be desirable or necessary to accomplish any purpose of this Membership Agreement within fifteen (15) days of receipt of a request in writing therefore;
- (iii) if a Party shall fail in any other material respect to observe, perform or comply with any agreement, condition or obligation required by this Membership Agreement to be observed, performed or complied with by such Party, and such failure shall continue for a period of thirty (30) days after notice of such failure and a demand for performance, observance or compliance shall have been given by any of the other Parties; provided, however, that if the nature of such failure is such that it cannot be cured by a payment of money and cannot be cured within a period of thirty (30) days, such Party shall have such additional time as may be necessary as long as the curing of such default is commenced promptly and is prosecuted with due diligence to completion;
- (h) "**Members**" mean collectively, Foothills and Okotoks and "**Member**" means any one of them;
- (i) "**Party**" or "**Parties**" means each of the signatories to this Membership Agreement, collectively or individually where the context of this Membership Agreement so requires;
- (j) "**Private Operator**" means that person, corporation, association or otherwise, that is retained by the Society, from time to time, to operate, maintain and/or upgrade Champion Park; and
- (k) "**Society**" means Friends of Champion Park Society.

### **Section 1.02 - Defined Terms**

Words and phrases used in this Membership Agreement and not defined herein have the same meaning assigned to them respectively in the Act.

### **Section 1.03 - Discrepancies Between Bylaws and Membership Agreement**

In the event of a discrepancy between the bylaws of the Society and the Membership Agreement, the Membership Agreement shall apply.

## **ARTICLE 2 - IMPLEMENTATION AND EFFECT OF AGREEMENT**

### **Section 2.01 - Binding Effect of Agreement**

All of the mutual covenants and agreements herein contained became effective and binding upon the Parties as and from the Effective Date and this Membership Agreement shall continue in full force and effect from the Effective Date until termination in accordance with the terms of this Membership Agreement.

### **Section 2.02 - Acknowledgment of Effect of Agreement**

Each and every of the Parties expressly acknowledges and agrees that:

- (a) all of the obligations of each of the Parties contemplated in this Membership Agreement have been performed to the satisfaction of each Party from the Effective Date to and including the date that this Agreement has been fully executed and delivered by all Parties; or
- (b) adequate provision has been put into place that is satisfactory to all of the Parties to facilitate the proper performance of all obligations contemplated in this Membership Agreement from the

Effective Date to and including the date that this Agreement has been fully executed and delivered by all Parties.

### **ARTICLE 3 - MANAGEMENT AND OPERATION OF THE FACILITIES**

#### **Section 3.01 - Management and Operation**

The Society shall be solely responsible for the management, operation and maintenance of Champion Park in accordance with policies and directions adopted or provided by the Board from time to time.

#### **Section 3.02 – Specific Obligations**

Without restricting the generality of Section 3.01, the Society shall:

- (a) at all times ensure that Champion Park are operated and managed in accordance with the guiding principles and the approved uses described in Sections 4.01 and 4.03.
- (b) supply such managerial, supervisory and other assistance as may be necessary to cause Champion Park to be operated, managed, maintained and repaired in accordance with any policies that are passed and directions of the Board;
- (c) cause Champion Park to be used solely for the approved uses described in Section 4.01 and for no other purpose without the approval of all of the Municipalities;
- (d) keep and maintain at Champion Park full, detailed and proper records regarding all usage of Champion Park and financial transactions related thereto which records shall be available for inspection by each Municipality on reasonable notice;
- (e) ensure that Champion Park are at all times operated in accordance with operational and capital budgets approved by the Municipalities as provided for elsewhere in this Agreement;
- (f) use its best efforts to maximize the use of Champion Park by all interested persons pursuant to the provisions hereof;
- (g) obtain and maintain insurance for the full replacement cost of Champion Park showing the Municipalities as co-insureds based upon the ownership interests described herein, together with such other insurance insuring against such risks and perils as may be appropriate for a facility of this nature; and
- (h) the Society shall not undertake any other duties or responsibilities other than the duties and responsibilities set out in this Agreement without the consent of all of the Municipalities.

#### **Section 3.03 – Integration of Facilities**

In managing and operating Champion Park, the Society shall manage and operate Champion Park in a manner which will integrate and co-ordinate the delivery of services by other facilities owned by each of the Municipalities.

### **ARTICLE 4 - OWNERSHIP, PRINCIPLES AND APPROVED USES**

#### **Section 4.01 – Approved Uses**

Each and every of the Parties covenant and agree that Champion Park shall be owned by the Members and operated and managed by the Society to serve the recreational, cultural and social needs of Foothills and Okotoks with respect to the historical operation of railways and rolling stock in Alberta. Without restricting the generality of the foregoing, Champion Park shall be operated and managed by the Society predominately for the following:

- (a) educational uses;
- (b) social events and gatherings;
- (c) cultural and artifact exhibits and shows;
- (d) fundraising events;
- (e) community events and meetings;
- (f) municipal or local government events; and
- (g) commercial uses ancillary or complementary to the uses described above.

#### **Section 4.02 - Ownership**

The Parties acknowledge and agree with each other that Champion Park are owned by the Members equally as tenants in common. Further the cost of the construction and development of Champion Park will be shared equally by each of the Members.

#### **Section 4.03 - Guiding Principles**

The Parties covenant and agree with each other that Champion Park will be operated and maintained based upon the following guiding principles:

- (a) Champion Park will be utilized, operated and maintained at all times to provide leisure, historical and educational opportunities for the general public;
- (b) Champion Park will be maintained, to the extent possible and as reasonable, within the vision of the original donor of Champion Park;
- (c) The Society shall operate Champion Park in a financially prudent manner but in such a manner that is reasonable for the intended use. Subject to the Board's instructions to the contrary, all revenues from the operation of Champion Park shall go into Champion Park for operational and capital costs and future sustainability of the Champion Park;
- (d) The capital and operating costs for Champion Park as contained in approved budgets shall be shared by Foothills and Okotoks equally;
- (e) All patrons of Champion Park, at the discretion of the Members, shall be treated equally irrespective of the location of their residence; and
- (f) The Board shall consist of equal representation from each of the Members as set forth in the Bylaws.

#### **Section 4.04 – Operations**

Notwithstanding anything contained to the contrary herein, the Parties acknowledge and agree that the Society may enter into such agreements with third parties respecting the operation, maintenance and repairs of Champion Park, from time to time.

#### **Section 4.05 – Future Development, Construction and Operations**

- (a) In the event that the Society wishes to:



- (i) Expand or upgrade Champion Park; or
- (ii) Acquire further assets to supplement the services that the Society will provide,

the Parties agree and acknowledge that the common intention is that the Society shall pay for this expansion, to the extent possible.

- (b) If upon reaching a decision that the Society wishes to engage in an expansion as contemplated by Section 4.05(a), but the Society cannot pay for it without a financial contribution from the Members, the Society may request that the Members provide a financial contribution to the Society, as a partial or full contribution. The Parties agree and acknowledge that:
  - (i) it is the intention of the Parties that should any expansion or capital expenditure pertaining to the assets of the Society be incurred in which the Society requests that the Members provide a financial contribution as stated above, the decision to proceed with this expenditure shall be mutually agreed upon by the Parties and the costs shall be equally shared by the Parties;
  - (ii) notwithstanding a request from the Society pursuant to this Section 4.05, no Member shall be obligated to provide this financial contribution;
  - (iii) one Member may, in its sole and absolute discretion, choose to provide such financial contribution to the Society, even if one or more of the other Member(s) choose to not so contribute.

#### **ARTICLE 5 - REPRESENTATIVE OF SOCIETY TO THIRD PARTIES**

##### **Section 5.01 - Appointment of Society as Agent for Parties**

Each and every of the Parties hereby appoints the Society as its nominee and agent for the purposes of acquiring ownership of any assets required by the Society, entering into any agreements in furtherance of the objects of the Society, carrying on any activity or undertaking required by the Society and for acquiring legal rights on behalf of the Members, collectively, in furtherance of the Society.

##### **Section 5.02 - Nature of Society's Roles and Responsibilities**

The Society hereby accepts its appointment as bare trustee for the benefit of the Members and declares that it shall hold and continue to hold all the assets, rights and obligations in relation to the Society in trust for the Members and on behalf of the Members. Without limiting the obligations of the Society set forth in this Membership Agreement, the Society shall:

- (a) perform such activities and enter into such agreements and instruments in connection with the Society as the Board, in accordance with the terms of this Membership Agreement, shall direct from time to time;
- (b) at all times comply with the provisions of this Membership Agreement and follow the lawful instructions provided by the Board;
- (c) act solely on the directions of the Board, or such person or persons as the Board may direct from time to time; and
- (d) not acquire or hold any property, rights or incur any liability, undertake any obligation or perform any activity in relation to the Society except on the direction of the Board.

## **ARTICLE 6 - TERMINATION BY DELIVERY OF NOTICE**

### **Section 6.01 - Date When the Agreement May Be Unanimously Terminated**

This Membership Agreement may be terminated upon such date and upon such other terms agreed upon in writing by all of the Parties. The Parties acknowledge that upon termination of this Agreement, Article 10 shall apply.

### **Section 6.02 - Distribution of Property Upon Termination of Agreement**

- (a) Upon the termination of this Membership Agreement and after the payment of all debts and liabilities reasonably attributable to the Society, any rights or property remaining shall be distributed to each of the Members equally. Each Party will take all actions that are reasonably necessary to ensure that such distribution occurs equally.
- (b) The Parties agree and acknowledge that Section 6.02(a) shall be subject to Article 10 hereof and in the event of a discrepancy between Section 6.02(a) and Article 10, Article 10 shall apply.

## **ARTICLE 7 - OBLIGATIONS OF PARTIES**

### **Section 7.01 - Obligations to Fulfill Goals**

Each of the Parties will undertake their respective efforts, acting reasonably, to facilitate the attainment of the objectives determined for the Society from time to time and to coordinate communications to external audiences amongst the Parties in relation to the Society and to take all such other actions as may be reasonably required, from time to time.

### **Section 7.02 - Passage of Business Plan**

The Private Operator may develop a Business Plan for both the Society and Champion Park, or either of them, as directed from the Board from time to time, which shall be presented to each of the Members for unanimous approval. If the Business Plan is rejected, it shall be modified and presented to the Members for unanimous approval. The Parties agree and acknowledge that the Society may contract out this responsibility to the Private Operator, or such other sub-consultant, as may be approved by the Board, from time to time.

## **ARTICLE 8 - ALLOCATION OF INTEREST AND LIABILITY AMONGST PARTIES**

### **Section 8.01 - One Party Can Only Bind Another Party if Previously Approved**

Except as otherwise provided in this Membership Agreement, no contract, commitment or engagement purportedly made by one Party on behalf of the other Party shall be binding on the other Parties, nor shall the other Parties be liable under any obligation arising therefrom, unless the making of such contract, commitment or engagement is permitted by the terms of this Membership Agreement or has received the prior authorization or subsequent ratification of the other Parties.

### **Section 8.02 - Indemnity for Liability**

Any liability for damages which may be incurred by any Party in connection with the Society or any portion thereof shall be borne by the Society at the time such liability was incurred, provided that if such liability is incurred by such Party either:

- (a) as a result of anything done by it without the prior authorization or subsequent ratification of the other Parties or without authorization otherwise as set forth in this Membership Agreement; or
- (b) as a result of its fraudulent or gross negligence;

then such liability shall be borne solely by that Party.

### **Section 8.03 - Indemnity**

The Society hereby agrees to indemnify, defend, save and hold harmless the Members and their respective councilors, officers, employees, contractors, partners, counsel, auditors, accountants, agents, advisors and other representatives and each of the heirs, executors, successors and assigns of any of the foregoing from and against any and all Damages of any kind to the extent by which such Damages are caused by, arise from, are incurred in connection with or relate in any way to the Services provided or to be provided to by the Member under or pursuant to this Agreement; provided, however, this indemnity shall not apply to Damages caused by the gross negligence or willful misconduct of the Member.

The provisions of this Section are in addition to and shall not prejudice any other rights of the Members to be indemnified at law or in equity. This Section shall survive the termination or expiry of this Agreement for any reason whatsoever.

### **Section 8.04 - Responsibility to Reimburse for Payments**

Except as otherwise provided in this Membership Agreement, if any Party shall at any time incur, make payment of or discharge any debt or other obligation in connection with the Society, then the Society shall make contribution in respect thereof at the time such debt or other obligation was incurred; provided that if such debt or other obligation was incurred by any Party as a result of anything done by it in breach of this Membership Agreement or without the prior authorization or subsequent ratification of the Society, then the Society shall not be required to make such contribution.

## **ARTICLE 9 - AUDIT AND BOOKS OF ACCOUNT**

### **Section 9.01 - Appointment of Accountant**

The Board shall appoint an accountant to maintain or cause to be maintained full books of account and correct entries of all receipts and expenditures involved in the Society, such books of account to be maintained in accordance with the applicable Public Sector Accounting Board standards. Such account shall at all times be open for the inspection of the Parties or any of them. All costs incurred pursuant to this Article shall be a cost of the Society.

### **Section 9.02 - Requirement to Audit Accounts**

Subject to the Act, any person may audit the books and records of the Society and further, this person does not have to be a professional accountant unless the person charges a fee for performing the audit, in which case the Auditor must be a professional accountant.

### **Section 9.03 - Fiscal Year for Operations**

The Parties agree that the statements of operation of the Society shall be prepared as of the 31st day of December in each year, which shall be deemed to be the end of the fiscal period relating to the Society.

### **Section 9.04 - Presentation of Quarterly Statements**

The accountant engaged pursuant to Section 9.01 shall provide a quarterly, unaudited statement of operations of the relationship to the Parties.

### **Section 9.05 - Members' Rights to Inspect Books**

Any Party may inspect the books and records of the Society at any time upon giving reasonable notice and arranging a time satisfactory to the other Parties. Each director shall, at all times, have access to such books and records.

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## **ARTICLE 10 – TERMINATION OF AGREEMENT AND DISTRIBUTION OF ASSETS**

### **Section 10.01 – Statement of Principle Regarding Termination**

The Parties agree that as the intent is that Champion Park are ultimately owned jointly by Foothills and Okotoks, upon the termination of this Agreement or a departure of either as being a member of the Society, the departing Party shall be paid the value of its share of Champion Park.

### **Section 10.02 – Valuation of Facilities**

- (a) For the purposes of this Agreement, the Appraised Value of Champion Park shall be determined in accordance with the provisions of this Article.
- (b) The Members shall first attempt to agree upon the fair market value of Champion Park. The fair market value of Champion Park shall mean the cash price which a sophisticated purchaser would pay on the effective date of the appraisal for Champion Park in excess of any financing then encumbering Champion Park, such valuation to be made on the assumption that Champion Park is subject to this Agreement and to any other agreements including leases, management and service agreements then in effect. A sophisticated purchaser shall be one who would take into account the nature, extent, maturity date and other terms of the liabilities of Champion Park whether fixed or contingent, including the favourable or unfavourable nature of any financing then encumbering Champion Park and the prospects of the income from Champion Park.
- (c) If the Members are unable to mutually agree upon the fair market value of Champion Park or any interest therein, then the Parties shall attempt to agree upon the appointment of one disinterested appraiser who shall be a member of the Appraisal Institute of Canada. If the Members are unable to agree upon the selection of the appraiser within sixty (60) days of the date the appraisal procedures are instituted as provided in this Agreement, then the appraiser shall be selected by an arbitrator appointed pursuant to Article 10 herein. The appraiser so selected shall furnish the Parties with his written appraisal within ninety (90) days of his selection, setting forth his determination of the fair market value of Champion Park as of the date indicated. Such appraisal shall assume that Champion Park shall be the highest and best use of the property, and the appraisal shall not include any value for any intangible assets, such as goodwill. The valuation as determined by the appraiser so selected shall be treated as the fair market value of Champion Park or any interest therein to be sold or purchased and the determination shall be final and binding on the Members.

### **Section 10.03 – Determination of Departing Member**

- (a) Upon the departure of a Member or an otherwise termination of this Agreement, the Parties shall meet and discuss which one of the Members shall own Champion Park. For the purpose of this Section 10.03, the Member that shall own Champion Park shall be the "**Owning Member**" and the other Member who is not the Owning Member shall be the "**Departing Member**".
- (b) If the Members are unable to determine who shall be the Owning Member, the Members shall implement the Dispute Resolution procedure in Article 10 hereof, to resolve who shall be the Owning Member and which one shall be the Departing Member. The Parties agree and acknowledge that despite the fact that a Party has voluntarily agreed to depart the Society as a member, does not automatically render that party to be the Departing Member.
- (c) Upon the Members determining which of Foothills and Okotoks shall be the Owning Member and which shall be the Departing Member, the Parties agree that the Departing Member shall be paid one half (½) of the Appraised Value of Champion Park, in accordance with Section 10.04.

**Section 10.04 – Payment to Departing Member**

The Departing Member shall be paid one half (½) of the Appraised Value of Champion Park by the Owning Member in annual installments of five (5) years or such other instalments as may be agreed to in writing.

**Section 10.05 – Steps Taken by Society**

The Parties agree that they shall cause the Society to take all steps necessary in order to give effect to the statement of intentions in this Article 10.

**ARTICLE 11 - DISPUTE RESOLUTION**

**Section 11.01 - Dispute Resolution Procedure**

Unless specifically described herein to the contrary, the following provisions shall apply to the resolution of conflicts between the Parties as they arise:

- (a) All Parties agree to utilize all reasonable efforts to resolve any dispute promptly and in an amiable manner by negotiations amongst the Parties.
- (b) All Parties shall continue to perform their respective obligations during the resolution of any dispute or disagreement, including during any period of mediation or arbitration, unless and until this Membership Agreement is lawfully terminated or expires according to its terms.
- (c) Any Party may submit a dispute arising from this Membership Agreement for mediation in accordance with the following terms:
  - (i) such mediation will take place in Calgary, Alberta, or as otherwise agreed to by the Parties;
  - (ii) that Party seeking mediation shall request Alberta Municipal Affairs to select a mediator whose qualifications are appropriate to the matter to be mediated;
  - (iii) the mediator shall designate a place for a meeting of the mediator with representatives of the Parties;
  - (iv) during the mediation process contemplated herein, no action will be taken by any Party to commence or continue arbitration proceedings under this Membership Agreement;
  - (v) the cost of the mediator will be equally shared by the Parties;
  - (vi) any mediation that takes place will be strictly confidential;
  - (vii) no proposal or concession made by a third Party in the course of mediation may be used by any Party in any subsequent proceedings; and
  - (viii) the mediator may not be called by any Party as a witness in any subsequent proceedings.
- (d) Should mediation fail to result in a resolution of the dispute between the Parties within fifteen (15) days after the Parties initially attempted to mediate the dispute, any Party may submit the dispute for arbitration as provided in accordance with the following terms and conditions:
  - (i) the determination arising out of the arbitration process shall be final and binding upon the Parties, provided however, that in the event that the dispute has not been resolved through the arbitration process within sixty (60) days of a Party giving notice nominating one arbitrator as set forth herein, any Party at any time thereafter, but prior to a determination

being made by the arbitrator(s) shall have jurisdiction to have recourse to the Courts of Alberta having jurisdiction for the determination of the dispute, and upon the commencement of any action for such purpose, the jurisdiction of the arbitrator(s) in respect of such dispute shall cease;

- (ii) the Party desiring arbitration shall nominate one (1) arbitrator and shall notify the other Parties in writing of the nomination as follows:
    - (1) the notice shall set forth a brief description of the matter submitted for arbitration;
    - (2) each of the other Parties shall, within ten (10) days after receiving such notice advise if they accept the nomination for the arbitrator or if not, that they reject the arbitrator and shall nominate an alternate arbitrator;
    - (3) if the Parties do not agree upon the choice of arbitrator within ten (10) days of the notice as set forth in Section 11.01(d)(i), the Parties or any one of them may apply to the Alberta Court of Queen's Bench to have the arbitrator appointed;
  - (iii) the Parties will act reasonably and in good faith to select arbitrators who are objective and who are suitably qualified by education or professional experience to deal with the matters, which are the subject of the arbitration;
  - (iv) any arbitration conducted pursuant to this Membership Agreement shall take place in the City of Calgary and, subject to the provisions of this Membership Agreement, the decision of the arbitrator in writing shall be binding upon the Parties both in respect of procedure and the conduct of the Parties during the proceedings and final determination of the issues;
  - (v) any written award or decision of the arbitrators shall not repeat or recite any evidence which is proprietary or confidential to any Party;
  - (vi) the Arbitrator has the right to award solicitor-client costs against the unsuccessful Party and to award interest but does not have the right to award punitive, consequential or other exemplary damages;
  - (vii) judgment upon any award (an "Award") rendered in any such arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the Award and an enforcement order, as the laws of such jurisdiction may require or allow;
  - (viii) the Parties acknowledge and agree that, where a dispute involves a claim for injunctive relief, a Party may refer such matter to arbitration in or apply to the appropriate court for relief; and
  - (ix) except as modified herein, the provisions of the *Arbitration Act* (Alberta) as amended from time to time, shall govern the arbitration process.
- (e) Subject to Section 11.01(d)(vi) in the case of an Arbitration, the Parties shall bear their respective costs incurred in connection with the negotiation, mediation and, if applicable, arbitration except that the Parties shall equally share the fees and expenses of the mediator and arbitrator and the cost of the facilities required for mediation and arbitration.

**ARTICLE 12- GENERAL**

**Section 12.01 - Notices**

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing. Notice shall be served by one of the following means:

- (a) personally, by delivering it to the Party on whom it is to be served at the address set out herein, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid and addressed as specified in subsection (c) below; or
- (b) by telecopier, email or by any other like method by which a written or recorded message may be sent, directed to the Party on whom it is to be served at that address set out herein. Notice so served shall be deemed received on the on the next ensuing Business Day following transmission with answer back confirmation thereof; or
- (c) by mailing via first class registered post, postage prepaid, to the Party on whom it is served. Notice so served shall be deemed to be received seventy-two (72) hours after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received;
- (d) Except as herein otherwise provided, notice required to be given pursuant to this Membership Agreement shall be sent to the Parties as follows:

- (i) if to Foothills:

**MUNICIPAL DISTRICT OF FOOTHILLS NO. 31**

PO Box 5605  
High River, AB T1V 1M7  
Attention: Municipal Manager  
Email: [hrc@mdfoothills.com](mailto:hrc@mdfoothills.com)  
Facsimile: 403- 652-7880

- (ii) if to Okotoks:

**TOWN OF OKOTOKS**

P.O. Box 20  
Okotoks, AB T1S 1K1  
Attention: Acting CAO  
Email: [nweigel@okotoks.ca](mailto:nweigel@okotoks.ca)  
Facsimile: 403-938-7387

- (iii) if to the Society:

**FRIENDS OF CHAMPION PARK SOCIETY**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

or to such other address as each Party may from time to time direct in writing.

**Section 12.02 - Governing Law**

This Membership Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the Parties irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.

**Section 12.03 - Time of Essence**

Time shall be of the essence of this Membership Agreement.

**Section 12.04 - Preamble**

The Parties hereby confirm and ratify the matters contained and referred to in the Preamble to this Membership Agreement and agree that same and the various schedule(s) hereto are expressly incorporated into and form part of this Membership Agreement

**Section 12.05 - Headings**

The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this Membership Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Membership Agreement or any provisions hereof.

**Section 12.06 - Relationship between Parties**

Nothing contained herein shall be deemed or construed by the Parties nor by any third Party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the Parties, it being understood and agreed that none of the provisions contained herein nor any act of the Parties shall be deemed to create any relationship between the Parties other than an independent agreement between the Parties at arm's length.

**Section 12.07 - No Authority**

Except as provided in this Membership Agreement or may from time to time be expressly stated in writing by the one Party, the other Party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other Party, nor to bind the other Party in any manner whatsoever.

**Section 12.08 - Agreement Entire Relationship**

This Membership Agreement constitutes the entire agreement between the Parties and the Parties acknowledge and agree that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Membership Agreement save as expressly set out in this Membership Agreement.

**Section 12.09 - Further Assurances**

Each of the Parties do hereby agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Membership Agreement in accordance with their true intent.

**Section 12.10 - Amendments**

This Membership Agreement may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the Parties.



### **Section 12.11 - Waiver**

No consent or waiver, express or implied, by either Party to or of any breach or default by the other Party in the performance by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such Party hereunder. Failure on the part of either Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

### **Section 12.12 - Counterparts**

This Membership Agreement may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterparts shall constitute the one and same instrument and notwithstanding their date of execution shall be deemed to bear date as of the date first above written.

### **Section 12.13 - Statutory Reference**

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

### **Section 12.14 - Unenforceability**

If any term, covenant or condition of this Membership Agreement or the application thereof to any Party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Membership Agreement or application of such term, covenant or condition to a Party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Membership Agreement shall be valid and shall be enforceable to the fullest permitted by law.

### **Section 12.15 - Survival**

The Parties acknowledge and agree that the provisions of this Membership Agreement which, by their context, are meant to survive the termination of this Agreement, shall survive the termination of this Agreement.

### **Section 12.16 - Remedies Generally**

Mention in this Membership Agreement of any particular remedy of a Party in respect of a default by the other Party does not preclude the first Party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Membership Agreement. No remedy shall be exclusive or dependent upon any other remedy, but a Party may from time to time exercise any one of more of such remedies generally or in combination, such remedies being cumulative and not alternative.

### **Section 12.17 - Payment of Monies**

The Parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds and that any tender of monies or documents hereunder may be made upon the solicitors acting for the Party upon whom the tender is desired and it shall be sufficient that a negotiable bank draft is tendered instead of cash.

### **Section 12.18 - Singular, Plural and Gender**

Wherever the singular, plural, masculine, feminine or neuter is used throughout this Membership Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof.

**Section 12.19 - Binding Effect**

This Membership Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of each of the Parties.

**Section 12.20 - Assignment of Agreement**

No Party shall assign its interest in this Membership Agreement, or any part hereof, in any manner whatsoever without having first received written consent from all other Parties, such consent not to be unreasonably withheld, PROVIDED THAT in no event shall any assignment which may have been consented to release or relieve the assignor from its obligations to fully perform all of the terms, covenants and conditions of this Membership Agreement on its part to be performed.

**Section 12.21 - Requests for Consent**

Each Party shall provide any decision with regard to a request for consent in a timely manner.

**IN WITNESS WHEREOF** the Parties have hereunto executed this Membership Agreement under their respective corporate seals and by the hands of their proper officers duly authorized in that regard effective as of the day and year first above written notwithstanding the actual date or dates of execution hereof.

**MUNICIPAL DISTRICT OF FOOTHILLS  
NO. 31**

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

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

**TOWN OF OKOTOKS**

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

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

**FRIENDS OF CHAMPION PARK SOCIETY**

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

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