

COMMUNITY USE AGREEMENT

THIS AGREEMENT dated as of the 21 day of March, 2006

BETWEEN:

CENTRAL ISLAND INDEPENDENT SCHOOL SOCIETY,
having an office located at 6533 Portsmouth Road, Nanaimo,
British Columbia, V9V 1A3

("Aspengrove")

OF THE FIRST PART

AND:

DISTRICT OF LANTZVILLE, having an office located at
7192 Lantzville Road, Lantzville, British Columbia, V0R 2H0

(the "District")

OF THE SECOND PART

WHEREAS:

- A. Aspengrove is the legal and beneficial owner of a leasehold interest in and to the lands and premises located in the District which are legally described as the following:

PID: 003-436-103

That Part of the West ½ of District Lot 26, Wellington District, Lying East and North of the Right of Way of the Esquimalt and Nanaimo Railway Company, Except that Part in Plans 13123, 13799, 26447 and 48922

(the "Land")

- B. Aspengrove proposes to construct on the Land an independent school that will include classroom facilities and an outdoor playing field, and, in future, proposes to construct a gymnasium (each of the classroom facilities, the outdoor playing field and the future gymnasium are herein defined in section 1 of this Agreement and, collectively, are herein referred to as the "Facilities");
- C. As a condition of enactment of the zoning bylaw to allow for the construction of the school, the District requires that Aspengrove enter into this Agreement to allow public use of the Facilities with the intent that the Community Users as herein after defined shall be entitled to enjoy the benefit of the Facilities on the terms herein set out upon payment to Aspengrove of the charges herein provided, which charges are intended to allow Aspengrove, without discouraging

community use, to defray the additional maintenance and repair costs and accelerated depreciation occasioned by the community use of the Facilities, together with the costs of administering such use, and be comparable to the charges to the public for the use of other privately held facilities similar to the Facilities, within the boundaries of School District 68.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein and the sum of One Dollar (\$1.00) and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

1. DEFINITIONS

The parties agree that the following terms shall have the following meaning in this Agreement:

- 1.1 **"Aspengrove"** means Central Island Independent School Society, the Transferor named in Part 1 of this Agreement;
- 1.2 **"Business Day"** means calendar days from Monday to Friday, inclusive, but excluding any day which is a statutory holiday under the laws of the Province of British Columbia or the laws of Canada applicable therein.
- 1.3 **"Classroom Facilities"** means the classrooms located in buildings erected on the Land.
- 1.4 **"Community User"** means any not for profit social service, community or cultural organization, including the District, currently active and based in the District.
- 1.5 **"District"** means the District of Lantzville.
- 1.6 **"Facilities"** means the Field, the Classroom Facilities and the Gymnasium.
- 1.7 **"Field"** means the outdoor playing field described in Paragraph B of the Recitals including any sports equipment affixed to the Land in the nature of goal posts.
- 1.8 **"Gymnasium"** means the gymnasium proposed to be constructed on the Land as part of a future phase of school construction.
- 1.9 **"Non-Community User"** means any person or entity which is not a Community User, excluding Aspengrove.
- 1.10 **"Operating Hours"** means the hours of 7:00 a.m. to 5:00 p.m. on a Business Day.
- 1.11 **"Rental Fee"** means the rental fee Aspengrove may charge from time to time to Community Users for use of the Facilities.

- 1.12 **"Security Deposit"** means that sum of money that Aspengrove may require to be posted by an intended user of the Facilities as a condition of use thereof.
- 1.13 **"Supervision Fee"** means the fee Aspengrove may charge a Community User from time to time for security personnel provided by Aspengrove.

2. FEES

- 2.1 Subject to section 2.2, Aspengrove shall have the right to charge and collect Rental Fees for the use by any Community User of the Facilities.
- 2.2 Prior to setting or amending the Rental Fee, Aspengrove shall consult with the District with respect to the amount thereof, but the final determination of the Rental Fee shall be made by Aspengrove so long as the Rental Fee is comparable to the fees charged by or within School District 68 for facilities similar to the Facilities.
- 2.3 Aspengrove may charge a Community User for provision by Aspengrove of other services such as garbage removal, clean up services, or for security personnel supplied by Aspengrove but such charges shall not exceed Aspengrove's cost for such services plus a 15 percent administration cost.

3. RESERVATIONS

- 3.1 Subject to section 3.3, Aspengrove will accept reservations from Community Users for use of the Facilities no earlier than 90 days in advance but not less than 30 days in advance and on a first come first served basis, provided that:
 - (a) Aspengrove shall:
 - (i) make the Classroom Facilities and, once constructed, the Gymnasium available for reservation by Community Users at least one time per week for a period of up to four consecutive hours provided that such use may be restricted to:
 - (A) between 6:00 p.m. and 10:00 p.m. on a Business Day; and
 - (B) between 10:00 a.m. and 10:00 p.m. on a non-Business Day.
 - (ii) make the Field available for reservation by Community Users at least one time per week and for a period of up to four consecutive hours during any such time, provided that such use may be restricted to non-Business Days and only between 10:00 a.m. and 9:00 p.m. on any such day.
- 3.2 Aspengrove will establish a booking contact to take reservations on Business Days during Operating Hours from Community Users for use of the Facilities.

3.3 Notwithstanding anything herein contained to the contrary and provided always that subject to *force majeure* the Facilities will be available for use by Community Users not less than the minimum periods set out in section 3.1, Aspengrove shall not be required to accept any reservations from Community Users for use of the Facilities:

- (a) that conflict with the following:
 - (i) the Operating Hours;
 - (ii) the use or intended use of the Facilities by Aspengrove; or
 - (iii) confirmed prior reservations made by other Non-Community Users for the use of the Facilities; or
- (b) if Aspengrove, acting reasonably, is of the opinion that the intended use of the Facilities by an intended Community User:
 - (i) may be incompatible with the proposed school use of any portion of the balance of the Land, or
 - (ii) would not be compatible with the nature of the use of the Facilities as a school or which would be detrimental to the reputation or standing of the school in the community or could have an adverse affect on the business or operation of the school.

3.4 Notwithstanding any prior reservations which may have been accepted, Aspengrove shall make the Facilities available to the District in the event of a local disaster or emergency for purposes of rendering assistance to persons affected by such disaster or emergency. The Facilities shall be provided at no cost to the District except that should the use of the Facilities by the District result in any costs or expenses to Aspengrove, then Aspengrove shall be entitled to receive reasonable compensation for such costs or expenses.

4. SECURITY DEPOSIT

4.1 Aspengrove will have the right to receive a Security Deposit from Community Users at the time Aspengrove accepts a reservation from a Community User for use of the Facilities and Aspengrove shall not be required to reserve any of the Facilities unless such Security Deposit has been paid. The amount of the Security Deposit will be comparable to security deposits generally taken by providers of facilities in School District 68 similar to the Facilities.

5. CANCELLATION

5.1 If a Community User cancels or fails to honour a reservation with Aspengrove ("Cancelled Reservation"), Aspengrove will have the right to retain the Security Deposit in its entirety, provided that if Aspengrove is able to:

- (a) substitute a new booking for the Cancelled Reservation. Aspengrove may refund the Security Deposit to the Community User, less a reasonable administrative fee; or
 - (b) reschedule the reservation made by the Community User to a mutually acceptable alternate date ("Rescheduled Date"), Aspengrove may apply the Security Deposit to the Rescheduled Date, less a reasonable administrative fee.
- 5.2 The amount of the Security Deposit charged to a Community User and the amount of any deductions therefrom should there be a Cancelled Reservation will not be greater than security deposits or deductions therefrom as charged to Non-Community Users.
- 5.3 If any other playing field in School District 68 is closed because of poor field conditions resulting from inclement weather, Aspengrove may cancel a Community User's use of the Field, if Aspengrove determines that use by a Community User may further deteriorate the condition of the Field. Notwithstanding the above, Aspengrove, acting reasonably, may cancel any reservation for the Field if, on or about the date of a Community User's scheduled use of the Field, Aspengrove determines that the condition of the Field is poor as a result of inclement weather or overplay and that use by a Community User may further deteriorate the condition of the Field.
- 5.4 If a reservation is cancelled pursuant to section 5.3 above, the Community User shall be entitled to the return of its Security Deposit as its sole remedy.

6. CLEANING AND GARBAGE REMOVAL

- 6.1 Community Users of the Facilities will be responsible for undertaking the removal of garbage and clean up of the Facilities and the Land to the satisfaction of Aspengrove, provided that if the Facilities and the Land are not properly cleaned up following the use thereof by the Community User, Aspengrove may arrange for appropriate garbage removal at the expense of the Community User. Aspengrove may set off any such costs or expenses against the Security Deposit and shall have a claim against the Community User for any expenses or costs in excess of the Security Deposit.

7. DAMAGE

- 7.1 Aspengrove may as a condition of rental of any of the Facilities to a Community User require that such Community User will accept all responsibility for any damage, excluding routine maintenance and repairs occasioned by reasonable wear and tear, caused to the Facilities or the Land or any Aspengrove property by the Community User or its officials, officers, agents, employees, invitees or attendees or those for whom in law they are responsible.

- 7.2 If a Community User or its officials, officers, agents, employees, invitees or attendees or those for whom in law they are responsible causes damage to the Facilities, or the Land or any Aspengrove property during use by a Community User, Aspengrove may set off any such claims against the Security Deposit and shall have a claim against the Community User for any damages or costs in excess of the Security Deposit.

8. ASSISTANCE

- 8.1 If Community Users require assistance or security personnel, Aspengrove may provide, but shall not be obligated to provide, assistance or security personnel to Community Users at such rates as determined by Aspengrove from time to time. Depending on the nature of the event proposed by the Community User or the Facilities required, Aspengrove shall have the right as a condition of allowing the use of the Facilities, to obligate the Community User to retain such assistance from Aspengrove.

9. INSURANCE

- 9.1 As a condition of use of any of the Facilities, Aspengrove may require that Community Users obtain and maintain insurance in amounts as reasonably required by Aspengrove.
- 9.2 Community Users will provide Aspengrove with proof of insurance satisfactory to Aspengrove, acting reasonably, before utilizing the Facilities.

10. INDEMNIFICATION

- 10.1 The District shall and does hereby release, indemnify and save harmless Aspengrove and its officials, directors, officers, employees, agents, contractors and students from and against all liabilities, claims, actions, suits, damages, losses, costs, demands and expenses, whether arising from death, bodily injury, property damage, property loss or any other loss or damage of any kind whatsoever, suffered or incurred by any person which is in any way related to the use or occupation by the District, its officials, officers, agents, employees, contractors or others for whom it is responsible in law and for greater certainty this includes the use or occupation of the Facilities pursuant to section 3.4 and does not include use or occupation by any other Community User other than the District, of the Facilities or the Land for any act, omission, negligence, default or breach by the District, its officials, officers, agents, employees, contractors or others for whom it is vicariously responsible in law, unless caused by the willful misconduct or negligence of Aspengrove or those for whom it is responsible.
- 10.2 The release and indemnity granted in the foregoing section shall survive the expiry or other termination of this Agreement.
- 10.3 The District acknowledges and agrees that Aspengrove will not be liable or responsible in any way to the District or any other person for any liabilities,

claims, actions, suits, damages, losses, costs, demands or expense, whether arising from death, bodily injury, property damage, property loss or any other loss or damage of any kind whatsoever, suffered or incurred by any person which is in any way related to the use or occupation by the District of the Facilities or of the Land unless caused by the willful misconduct or negligence of Aspengrove or those for whom it is responsible in law.

12. GENERAL

12.1 INSPECTION

Aspengrove has the right to enter and inspect the Facilities used by Community Users and Non-Community Users during their use to determine if they are in compliance with the terms and conditions described in this Agreement.

12.2 RULES AND REGULATIONS

Aspengrove may make, amend and rescind reasonable rules and regulations governing and restricting the manner in which the Facilities or the Land or part or parts thereof may be used or enjoyed and take all reasonable action as may be necessary to enforce or prevent any breach of such rules and regulation, provided that such rules and regulations:

- (a) are solely for the purpose of regulating the good operation or cleanliness of the Facilities or the Land; and
- (b) are of general application to users of the Facilities or the Land and to members of the public;

and Aspengrove will provide the District with copies of all new or amended rules and regulations within thirty days of such new or amended rules and regulations coming into effect.

12.3 ENUREMENT

This Agreement shall enure to the benefit of and be binding on the parties hereto and their respective heirs, executors, administrators, other legal representatives, successors and assigns.

12.4 SEVERABILITY

If any provision of this Agreement is found to be illegal or unenforceable, it will be considered separate and severable from this Agreement and the remaining provisions of this Agreement will remain in force and be binding upon the parties as though the illegal or unenforceable provision had never been included.

12.5 NO OTHER WARRANTIES

This Agreement constitutes the full agreement between the parties and there are not other

representations, warranties, covenants or agreements between the parties respecting the subject matter of this Agreement. This Agreement cannot be amended except by an instrument in writing executed by the authorized signatories of both the parties to this Agreement.

12.6 AMENDMENTS

If any time during the continuance of this Agreement the Parties shall deem it necessary or expedient to make any alteration or addition to this Agreement they may do so by means of a written agreement between them which shall be supplemental and form part of this Agreement. The parties acknowledge that this agreement is being entered into before the construction of any of the Facilities and accordingly the parties agree to review the terms of this Agreement from time to time and to reasonably consider amendments hereto to better carry out the intent hereof.

12.7 TIME OF THE ESSENCE

Time is of the essence in this Agreement.

12.8 GOVERNING LAW

This Agreement is governed by and construed in accordance with the laws of the Province of British Columbia.

12.9 INTERPRETATION

In this Agreement:

- (a) wherever a singular or masculine expression is used in this Agreement, that expression is deemed to include the plural, the feminine or the body corporate where required by context;
- (b) where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;

- (f) reference to a "party" or the "parties" is a reference to a party, or the parties to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
- (g) reference to a "day", "month" or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.

12.10 NOTICE

Unless otherwise specified, each notice to a Party must be given in writing and delivered personally or by courier, sent by prepaid registered mail or transmitted by fax to the parties as follows:

If to Aspengrove:

Name: Central Island Independent School Society

Address: 6533 Portsmouth Road
Nanaimo, B.C.
V9V 1A3

Attention: Chairman, Board of Directors

Fax No.: 390-2281

If to the District:

Name: District of Lantzville

Address: 7192 Lantzville Road
Lantzville, B.C.
V0R 2H0

Attention: Chief Administrative Officer

Fax No.: 390-5188

Or to any other address, fax number or person the Parties designate. Any notice, if delivered personally, by registered mail or by courier, will be deemed to have been given when actually received, if transmitted by fax before 3:00 p.m. on a Business Day, will be deemed to have been given on that Business Day, and if transmitted by fax after 3:00 p.m. on a Business Day, will be deemed to have been given on the Business Day, after the date of the transmission.

If there is an interruption in normal mail service due to strike, labour unrest or other cause at or before the time a notice is mailed the notice will be sent by fax or delivered by courier.

12.11 FURTHER ASSURANCES

The Parties agree to execute and deliver any other deeds, documents and assurances and to do any other acts required to carry out the true intent and meaning of this Agreement.

12.12 FORCE MAJEURE

Aspengrove shall be excused from the timely performance and observance of its obligations herein if such performance or observance is or has been delayed by reason of any strike, lockout, slowdown or other labour dispute or industrial disturbance, material or labour shortage not within the control of Aspengrove, fire or explosion, flood, wind, water, earthquake, act of God, breakage or accident to machinery, inability to obtain or shortages of goods, labour, materials or equipment, or any service or utility, governmental restriction or judicial action, or other similar circumstances beyond the reasonable control of Aspengrove and not avoidable by the exercise of reasonable effort or foresight by Aspengrove (but not impecuniosity), and Aspengrove is or has been, in good faith and without default or neglect on its part, prevented or delayed in such performance or observance, the proof of which shall be on Aspengrove.

IN WITNESS WHEREOF Aspengrove and the District have executed this Agreement as of the day and year first above written.

CENTRAL ISLAND INDEPENDENT SCHOOL SOCIETY

Per:



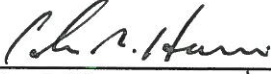
Authorized Signatory




Authorized Signatory

DISTRICT OF LANTZVILLE

Per:



Authorized Signatory - Mayor



Authorized Signatory

Dir. of Corporate Admin.