

WEST ELGIN COMMUNITY CENTRE OPERATING AGREEMENT

THIS AGREEMENT made this 19th day of May 2004.

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN
22413 Hoskins Line
RODNEY, Ontario
N0L 2C0

OF THE FIRST PART

- and -

THE CORPORATION OF THE MUNICIPALITY OF DUTTON/DUNWICH
199 Main Street
DUTTON, Ontario
N0L 1J0

OF THE SECOND PART

- WHEREAS** the Municipality of West Elgin is the owner of the Community Centre situated within the Municipality. This centre has been established to provide opportunities for the various age groups of the population in the surrounding municipalities to participate in various recreational pursuits;
- AND WHEREAS** Section 11(2) of the Municipal Act, S.O. 2001, c.25 as amended, provides that a lower-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction including but not limited to culture, recreation and heritage;
- AND WHEREAS** Section 20 of the Municipal Act, S.O. 2001, c.25 provides that a municipality may enter into an agreement with one or more municipalities to jointly provide, for their joint benefit, any matter which all of the have the power to provide within their own boundaries;
- NOW THEREFORE** this agreement witnesseth that in consideration of the mutual covenants and conditions and subject to the terms of the conditions hereinafter set forth, the parties hereto agree as follows:

DEFINITIONS IN THIS AGREEMENT:

- RECREATION CENTRE** Shall mean the West Elgin Arena located in the Municipality of West Elgin described on Schedule "A" attached hereto, hereinafter called the "Arena".
- BOARD** shall mean the West Elgin Community Centre Board of Management. It's composition and duties described within.
- OPERATING COST** the deficit/profit shall be calculated by taking the operational and maintenance revenues of the "Arena" in any one calendar year, minus all operational and maintenance expenses received in that same year related to the "Arena".
- CAPITAL COST** this shall mean the cost of a tangible asset, which represents a relatively long-term investment that is used for more than one year. (ie. tractor/roof etc.)
- RESIDENT USER** shall be defined as any persons registered with or associated with a major identifiable group (ie. figure skaters/minor hockey, etc.), that benefit from the use of the "ARENA" facilities and are residents of the municipalities executing this agreement. An exception would be a person or persons who rent the "ARENA" for private enjoyment.
- NON-RESIDENT USER** shall be defined as any persons registered with or associated with a major identifiable group (ie. figure skating/minor hockey etc.) that benefit from the "ARENA" and are not residents of the municipalities executing this agreement.

IT IS HEREBY AGREED:

PURPOSE

- 1.1 That this agreement be entered into under the provisions of Section 20 of the Municipal Act, 2001, S.O. 2001, c.25 and the "ARENA" be maintained to be jointly used by the inhabitants of the municipalities which are parties to this agreement.

COMPOSITION

- 2.1 The "ARENA" shall be managed and controlled on behalf of "West Elgin" by a board known as the West Elgin Community Centre Board of Management hereinafter called the "Board".
- 2.2 The "Board" shall be appointed annually by the parties of this agreement. The following groups shall determine their representation by December 15th of each year as follows:
- a) One member from "Dutton/Dunwich Council" and two members from "West Elgin Council", with the Mayor of each municipality appointed as an alternate, and;
 - b) One member at large recommended by the executive of the West Lorne Minor Hockey Association and appointed by the majority of the municipal parties to this agreement, and
 - c) One member at large recommended by the executive of the West Elgin Skating Club and appointed by the majority of the municipal parties to this agreement.
 - d) The term of office for the member as per Section 2.2 (c) and Section 2.2. (d) shall be from June 1st to May 31st of the following year.

ADMINISTRATIVE RESPONSIBILITIES

- 3.1 The "BOARD" shall be responsible for all policies, rulings and regulations relating to the administration pertaining to the operation of the "ARENA" facilities, which are conducted directly by the "BOARD".
- 3.2 It is understood that the councils of the parties of the agreement will not interfere with the day-to-day operation of the "ARENA" providing that the operations are within the approved budgets.
- 3.3 The "BOARD" shall meet monthly and shall appoint a chairperson annually from the members who shall have a vote on each motion before the "BOARD".
- 3.4 Each member of the "BOARD" shall receive compensation for meetings attended with the rate to be established and paid by the "BOARD".
- 3.5 A quorum shall consist of a majority of members as per Section 2.2.
- 3.5.1 Each member or their alternate shall have one vote on each motion before the "BOARD".
- 3.6 The "BOARD" shall assist, encourage and provide advisory services on request to all groups, organizations or persons carrying on recreation activities pertaining to the "ARENA" which will meet the needs and interest of the "RESIDENT USERS" and other "NON-RESIDENT USERS". Such programs shall include the social, cultural and physical aspects of recreation as applied to each age group, both males and females, native people, Franco-Ontarians, persons who are disabled, visible minorities and older adults.

- 3.7 The "BOARD" shall assist, encourage and provide advisory services on request to all groups, organizations or persons carrying on recreation activities pertaining to the "ARENA" in both "RESIDENT USER" and "NON-RESIDENT USER" areas.
- 3.8 The "BOARD" shall at all times keep the inhabitants of "RESIDENT USER" and "NON-RESIDENT USER" areas aware of the recreation opportunities which are available and will continually interpret to the public the total community programs of recreation pertaining to the "ARENA".

FINANCIAL RESPONSIBILITIES

- 4.1 Annually, by March 31st, the "BOARD" shall submit and interpret to the parties of this agreement an annual budget for approval. It shall also submit a financial statement and a comprehensive operating report for the preceding year.
- 4.2 The "BOARD" shall submit and interpret to the parties of this agreement other reports, such as a monthly budget comparison, as requested.
- 4.3 The "BOARD" shall not have its own bank account. All deposits and payments shall be made through the Treasurer of the Municipality of West Elgin. There shall be separate general ledger accounts for revenue and expenditures within the West Elgin General Ledger which is audited by the Municipal Auditor.
- 4.4 Accounts must be approved for payment through the "BOARD" and then forwarded to "WEST ELGIN COUNCIL" for approval without question, provided accounts are within the total budget allocation.
- 4.5 Each party to the agreement shall pay the applicable portion of any operational cost deficit based on the ratio of "RESIDENT USERS" outlined in Schedule "B" hereto. This schedule will be updated bi-annually. The parties to this agreement acknowledge that West Elgin will pay the first 20% of operating and capital costs for the Arena in lieu of payment for operating and capital costs for the Dutton-Dunwich municipal swimming pool and the West Elgin municipal swimming pool in Rodney.
- 4.6 Each party to this agreement shall pay on a monthly basis, one-twelfth (1/12) of the portion of the projected operational cost. In the event, the budget is not set on January 1st, each party to this agreement shall pay on a monthly basis, one-twelfth (1/12) of the previous year's operational cost. If a shortfall exists during the operating year, the Board may approach each member Municipality for an advance of funds.
- 4.7 Adjustments to billing shall be made in the December billing when the December accounts are approved.
- 4.8 The "BOARD" shall endeavour to submit a five-year Capital Cost Expenditures List as per Schedule "C" attached hereto. The Capital Cost Expenditure List must be approved by all parties to this agreement and shall be updated each year.
- 4.8.1 Payment for Capital Cost expenditures shall be as follows:
- a) The "BOARD" may establish a "RESERVE" for capital expenditures and may make contributions each year through fundraising efforts, or other means.
 - b) The capital cost shall be paid by the parties to this agreement based on the ratio of "RESIDENT USERS" as outlined in Schedule "B" attached hereto.

- c) The cost of the capital improvements shall be recovered after the project has been completed to the satisfaction of the "BOARD" and the Parks and Arena Superintendent.
 - d) The "BOARD" reserves the right to retain authority to make amendments to the Capital Cost Expenditure list should an unexpected emergency situation arise.
- 4.9 The "BOARD" shall determine all fees and charges for all users related to the Recreation Centre.
- 4.10 The "BOARD" shall give consideration to making every effort to recover the cost of "NON-RESIDENT USERS" not party to this agreement.
- 4.11 Any surplus/deficit shall be the responsibility of the "BOARD" and shall be included in the next year's operating budget.
- 4.12 It is the responsibility of WEST ELGIN to arrange for the "ARENA" to be insured against all perils for losses and other liabilities pertaining to the operation of the facility. The cost of such insurance shall be included as part of the "OPERATING COST".

PERSONNEL RESPONSIBILITIES

- 5.1 The "BOARD" may recommend to the parties of this agreement the appointment of a properly trained and qualified Parks and Arena Superintendent. This person shall report operations to the chairperson of the "BOARD". In the event of a major decision the Parks & Arena Superintendent shall report to all members of the "BOARD".
- 5.2 The "BOARD" may appoint part-time/seasonal arena employees, provided that they are operating within the approved budget. The "BOARD" shall be responsible for assigning duties and responsibilities of such employees. Where a Parks & Arena Superintendent is employed, such appointments shall be subject to his/her recommendation.
- 5.3 The "BOARD" shall set the rate of pay and wage increase/decrease for the "Arena" part-time employees as long as they are within the approved budget.
- 5.4 All employees of the "Arena" are classed as employees of the Municipality of West Elgin and come under the personnel policies for the Municipality of West Elgin.

DISCLAIMER

- 6.1 In the event that any provision of this agreement shall be found to be contrary to law, such finding shall not in any way affect the provisions of this agreement, which shall, notwithstanding, continue in force and effect. Any waiver by any party or any breach of any term or condition of this agreement shall be limited to the particular breaches of the said term or condition. No waiver or modification of this agreement or provision hereof shall not be valid or enforceable unless it is set forth in writing and signed by all parties hereto.

TERMS

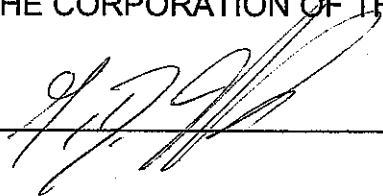
7.1 The term of this agreement shall commence on the date of its signing. This agreement shall be deemed automatically renewed for an additional one (1) year period and for like periods of one (1) year thereafter, until any party shall give to the other parties written notice of intention to terminate by Registered Mail by June 1st of the operating year. This agreement may only be terminated at the end of a calendar year to properly coincide with the financial year of the parties to this agreement. During the period of notice of intention to terminate, the parties will carry out and perform all their obligations hereunder.

7.2 Notice of amendment must be given to all parties of this agreement by Registered Mail no later than October 1st of the operating year. Such notice must contain proposed amendments and justification for such amendments.


DATED THIS 19th DAY OF May, 2004.

IN WITNESS WHEREOF the parties have executed this agreement under their proper seals and by their duly authorized officers.

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN

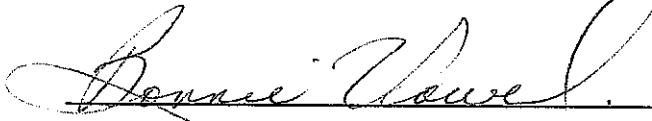


MAYOR



CLERK

THE CORPORATION OF THE MUNICIPALITY OF DUTTON/DUNWICH



MAYOR



CLERK-TREASURER
ADMINISTRATOR

SCHEDULE "A"

LEGAL DESCRIPTION OF LANDS

ARTIFICIAL ICE ARENA

On land lying and being in the Municipality of West Elgin, in the former Village of West Lorne, in the County of Elgin and in the Province of Ontario and being composed of Plan 199, Part Lot 106, 2.10 AC., 639.00 FR 132.00

SCHEDULE "B"

Section 4.5 & 4.8.1 (b)

2002 PERCENTAGE USERS OF THE "ARENA"

WEST ELGIN	57 %
DUTTON/DUNWICH	43 %

DISTRIBUTION OF ANNUAL NET OPERATING AND CAPITAL COSTS FOR 2003 BASED ON 2002 USAGE OF THE "ARENA".

INITIAL 20% OF COSTS ALLOCATED TO WEST ELGIN

WEST ELGIN	20 %
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THE REMAINING 80% OF THE PROPOSED DEFICIT IS DIVIDED AS FOLLOWS BASED ON USAGE OF THE ARENA:

WEST ELGIN	57.00%
DUTTON/DUNWICH	43.00%
	<hr/>
	80.00 %

EXAMPLE:

DEFICIT	\$100,000.00
WEST ELGIN- 20%	\$ 20,000.00
BALANCE REMAINING	<hr/> \$ 80,000.00

PERCENTAGE MULTIPLIED BY ORIGINAL DEFICIT

WEST ELGIN	\$ 45,600.00
DUTTON/DUNWICH	34,400.00
TOTAL	<hr/> \$ 80,000.00

PROOF:

WEST ELGIN- 20%	\$ 20,000.00
REMAINING PORTION	80,000.00
TOTAL	<hr/> \$100,000.00



Cowan

Frank Cowan Company

CERTIFICATE OF INSURANCE

TO: THE CORPORATION OF THE MUNICIPALITY OF DUTTON/DUNWICH,

RE: WITH REPECT TO THEIR OPERATING AGREEMENT WITH THE NAMED INSURED FOR THE WEST ELGIN COMMUNITY CENTRE.

INSURANCE AS DESCRIBED HEREIN HAS BEEN ARRANGED ON BEHALF OF THE INSURED NAMED HEREIN UNDER THE FOLLOWING POLICY(IES); AND AS MORE FULLY DESCRIBED IN SAID POLICY(IES), AND ANY ENDORSEMENTS ATTACHED THERETO.

INSURED: CORPORATION OF THE MUNICIPALITY OF WEST ELGIN

INSURER	TYPE OF POLICY	POLICY N°	TERM		LIMITS OF LIABILITY
			EFFECTIVE DATE	EXPIRY DATE	
SUBSCRIPTION POLICY	COMPREHENSIVE GENERAL LIABILITY	CP98460	JUNE 01, 2004	JANUARY 01, 2005	\$ 15,000,000. Inclusive bodily injury and property damage
	AUTOMOBILE				\$ Inclusive bodily injury and property damage
	OTHER INSURANCE				\$ Inclusive bodily injury and property damage

ADDITIONAL INSURED:

Only with respect to the above and arising out of the Named Insureds operations is the following name added to the policy as an additional Insured. The addition of such Insured shall not increase the Limits of Liability as shown above.

THE CORPORATION OF THE MUNICIPALITY OF DUTTON DUNWICH

ADDITIONAL COVERAGE: Blanket Contractual/ Tenant's Legal Liability/ Cross Liability

This Certificate is only a summary of the insurance provided under the Master Policy(ies) and constitutes a statement of the facts as of the date of issuance and are so represented only to the addressee.

DATE: JUNE 01, 2004

SIGNATURE:

21770CL

MUNICIPALITY OF WEST ELGIN

RESOLUTION # _____

Date: July 14, 2005

Moved by _____

Seconded by _____

RESOLVED that Council of the Corporation of the Municipality of West Elgin appoints Debbie Slaats as the West Elgin Skating Club representative and Alphonse Willie as the West Lorne Minor Hockey representation to the West Elgin Arena Board.

DISPOSITION: _____