



**WHEREAS:**

- A. The Fox Creek Greenview Multiplex and land (hereinafter referred to as the “Facility”) located at 103 2a Avenue, Fox Creek, Alberta are jointly owned on the basis of Greenview 59.37% and the Town 40.63% with the exception of:
  - a) Furniture, fixtures, and equipment (“FF&E”) owned by the Town.
  - b) Community Resource Centre is jointly owned on the following percentage basis: Greenview 60% and the Town 40%.  
(the “ownership”);
  
- B. The Town has executed the Transfer of Land Form and Form 32 Land Titles Act (Section 164) Affidavit Re Value of Land (see Schedule A) in accordance with the proportions defined in Section A of this Agreement.
  
- C. It is the intention of the Parties that the costs of operating the Facility, will be borne by the Parties in accordance with this agreement;
  
- D. It is the intention of the Parties that the costs of approved capital projects for the Facility, will be borne by the Parties in accordance with this agreement;
  
- E. The Facility will be for the equal benefit and use of both the Town and Greenview constituents.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements herein contained, the Parties agree to partner as follows:

**1. DEFINITIONS**

- 1.1. “Business Day” means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed in the Province of Alberta.
  
- 1.2. “Default” has the meaning given to such term in section 13.1.
  
- 1.3. “Defaulting Party” has the meaning given to such term in section 13.1.
  
- 1.4. “Facility” has the meaning given to such term in Preamble A.
  
- 1.5. “Ownership” has the meaning given to such term in Preamble A.
  
- 1.6. “Force Majeure” means any event or circumstance that prevents or delays a Party from performing any of its obligations under the Agreement within the time required for the

performance of such obligation, but only to the extent that (i) the event is not reasonably within the control of the Party (insufficiency of funds not being beyond the reasonable control of a Party) and (ii) despite the exercise of reasonable efforts, the event cannot be prevented, avoided or stopped by that Party, it being acknowledged that events of Force Majeure may include the following: acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, terrorism, sabotage, wars (declared or undeclared), blockades, insurrections, riots, diseases or epidemics, landslides, lightning, fire, earthquakes, storms, subsidence, floods, high waters, washouts, drought, low waters, orders of acts or civil or military authorities, civil disturbances, or any other causes, whether of the kind herein enumerated or otherwise; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the particular Party involved therein and such Party may make settlement thereof in such time and on such terms and conditions as it may deem to be advisable and no delay in making such settlement shall deprive such Party of the benefits of this Agreement with respect to an event of Force Majeure;

- 1.7. “Term” has the meaning given to such term in section 4.1.
- 1.8. “Non-defaulting Party” has the meaning given to such term in section 13.1.
- 1.9. “Notice of Default” has the meaning given to such term in section 14.1.

## **2. INTERPRETATIONS**

- 2.1. In this Agreement, including the Schedules, and in any amendments thereto, except as otherwise expressly provided, or unless the context otherwise requires, the following words and phrases have the following meanings:
  - a) All references in the Agreement to “articles”, “sections” or other designated subdivisions are to the designated subdivisions of the Agreement;
  - b) The words “herein” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular section or other subdivision;
  - c) The headings and subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
  - d) The word “including”, when following any general statements, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters,

- whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- e) Words that have well-known technical or trade meanings and that are not specifically defined in the Agreement are used in the Agreement in accordance with their recognized meanings;
  - f) Any reference to “approval”, “authorization” or “consent” or any other similar word implying an exercise of discretion on the part of any person, including any Party, means the written approval, written authorization or written consent of such person and such exercise of discretion shall be exercised in an objectively reasonable manner;
  - g) Where a word or phrase is specifically defined, other grammatical forms of that word or phrase have corresponding meanings; and
  - h) Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa, and words importing individuals shall include firms and corporations, and vice versa;
  - i) Individuals shall include firms and corporations, and vice versa.

### 3. NOTICE

- 3.1.** Any notice required or permitted to be given under this Agreement shall be in writing and addressed to the appropriate Parth at the address of facsimile number below:

To the Town:  
Box 149  
Fox Creek, AB  
T0H 1P0  
Telephone: 780.622.3896  
Fax: 780.622.4247

To Greenview:  
Box 1079  
Valleyview, AB  
T0H 3N0  
Telephone: 780.524.7600  
Fax: 780.524.4307

Or to such other address or facsimile number of which notice has been given as provided in this Agreement. Any notice that is delivered is to be considered to have been given on

the first Business Day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first Business Day after it is sent, provided that the sender obtains an electronic confirmation of receipt. If a Party changes its address or facsimile number, or both, it shall promptly give notice of its new address or facsimile number, or both, to the other Party.

#### **4. TERM**

4.1. The Parties agree that the term of this Agreement shall be for a period of three (3) years, commencing on January 1, 2025 and ending on December 31, 2027 (the “Term”).

#### **5. TERMINATION**

5.1. This Agreement shall automatically terminate should either party restructure (dissolve or otherwise alter incorporation status, etc.) or in Greenview’s case be subjected to a significant financial restructuring (linear pooling, etc.).

5.2. In the event this Agreement is terminated for any reason, other than Default, the Town and Greenview agree that they shall negotiate future cost sharing and capital expenses for the Facility in good faith.

5.3. In the event of a Default under Article 14 of this Agreement that is not cured by the Defaulting Party in accordance with this Agreement, the Non-Defaulting Party may terminate this Agreement in accordance with section 15.2 and shall be entitled to recover from the Defaulting Party any damages or losses (including legal fees on a solicitor and his own client full indemnity basis) that arise from or are directly related or attributable to such termination.

5.4. If the Facility is damaged or destroyed beyond a point of reasonable repair, either Party may terminate this Agreement by providing twenty (20) Business Days of notice to the other Party.

5.5. This Agreement shall automatically terminate if, in the sole opinion of Greenview, Greenview is subjected to a significant financial restructuring from a change in provincial government policy, regulations or laws.

#### **6. OPERATIONAL AND CAPITAL FUNDING**

6.1. All maintenance, operating costs, including all utilities, any annual operational deficits, will be funded by the Parties on the following basis:

- a) Greenview shall provide funds in the amount of \$1,000,000.00 annually to the Town prior to May 31<sup>st</sup> for the three-year term as specified in Section 4.1.
- b) The Town shall contribute funding for operational expenses in each calendar year in order to balance the Facility annual financial statement.

**6.2.** Approved capital upgrades or replacements will be funded by the Parties on the following basis:

- a) Greenview shall provide funding in the amount equivalent to 60% of the capital project subject to the approval of both municipal parties; and,
- b) The Town shall provide funding in the amount equivalent to 40% of the capital project subject to the approval of both municipal parties.

**6.3.** The Town shall provide Greenview with an annual audited Facility Financial Statement.

**6.4.** Each year by August 15<sup>th</sup> the Town shall submit to Greenview a proposed three year operating and capital budget for the Facility.

**6.5.** Greenview's funding contribution must be publicly recognized and advertised, as per negotiation with Greenview.

**6.6.** The Town and Greenview acknowledge that the Facility is exempt from any and all taxes. If this status should change during the Term, the Parties shall promptly pay when due any and all taxes attributable to the Facility in accordance with the Operational Funding Model.

## **7. OPERATION**

**7.1.** The Town shall be responsible for all management of operations and finance relating to the Facility in accordance with all applicable Federal, Provincial and municipal laws, regulations and ordinances, and in a competent and professional manner using commercially reasonable efforts to ensure the continuity of operation and reflecting industry best practices, and in an effective and efficient manner:

- a) Coordinate, manage and operate recreation and community activities within the Facility;
- b) Coordinate, manage and administer resources committed to the Facility
- c) Implement and administer recreation programs;

- d) Coordinate and support volunteers involved in the delivery of recreation and community services and programs within the Facility;
- e) Review and amend policies related to the operation of the Facility as needed to ensure they reflect fiscal realities and community needs;
- f) Provide support to community recreation programming as resources and opportunities allow;
- g) Manage all programs and services within budgets, plans and policies.
- h) Maintain accurate and detailed records of its operations related to the Facility, both financial and otherwise.

**7.2.** Greenview may conduct Facility operation and structural inspections at an interval determined at the sole discretion of Greenview. The results of the inspection will be disclosed to the Town with an expected remediation timeline for any noted operational and capital deficiencies.

**7.3.** Renovation plans and capital costs shall be approved by both municipal Parties in advance of implementation of capital expenditures.

**7.4.** Where compliance with statutory and regulatory requirements will result in a change in operations, a change in costs, or require future studies, upgrades, or changes, the Parties will engage in good faith negotiations as to the responsibilities of the Town and Greenview as a response to any statutory and regulatory requirements.

## **8. RESERVES**

**8.1.** The Town and Greenview will establish an appropriate fund for the purpose of replacing the Facility at the end of its lifecycle. The establishment of this reserve does not commit either Party to replacement of the Facility or to the respective contribution levels outlined in this Agreement and does not prohibit other methods of financing a replacement Facility (such as borrowing).

## **9. FORCE MAJEURE**

**9.1.** If either Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from whatever performance is affected by the Force Majeure event to the extent so affected, provided that the non-performing party provides written notice to the other Party within seven (7) Business Days detailing the particulars of the Force Majeure and that the non-performing Party will exercise reasonable efforts to remedy its inability to perform.

- 9.2. Upon the termination of the Force Majeure event the Parties respective obligations shall resume in accordance with the terms of this Agreement.
- 9.3. In the event that the Parties are unable in good faith to agree that a Force Majeure has occurred, the Parties shall submit the dispute for dispute resolution in accordance with the terms of this Agreement.

## 10. INSURANCE

- 10.1. The Town shall obtain on behalf of the Parties the following insurance which shall include both the Town and Greenview as insureds under the respective policies:
  - a) Comprehensive general liability insurance for an amount not less than Five Million (\$5,000,000) DOLLARS per occurrence;
  - b) Property Insurance for the full replacement value of the Facility; and
  - c) Such other insurance as the parties may agree from time to time to be appropriate and required in consideration of the nature of the ongoing operations of the Facility.
- 10.2. The Town shall obtain such insurance at its cost and shall be deemed part and parcel of operational expenses.
- 10.3. All insurance policies shall include a provision whereby the insurance provider will notify both Parties thirty (30) days in advance of any material change to, cancellation or termination of the insurance policies.

## 11. INDEMNITY

- 11.1. The Town shall indemnify and save harmless Greenview for any damages, losses (including legal fees on a solicitor and his own client full indemnity basis), injuries or loss of life, resulting from the negligent or wrongful acts or omissions of their respective employees, servants or agents which may occur in the performance, purported performance, or non-performance of their respective obligations under this Agreement, provided that such indemnity shall be limited to an amount in proportion to the degree to which the indemnifying Party, its employees, servants or agents are at fault or otherwise held responsible in law. This indemnification shall survive the termination of this Agreement.

## 12. DEFAULT



**12.1.** A Party shall be deemed to be in default hereunder if any of the following events occur (the “Default”), the Party in default to be referred to as the “Defaulting Party” and the Party not in default to be referred to as the “Non-defaulting Party”:

- a) a Party fails to make a payment as required by any provision of this Agreement, or
- b) a Party fails to perform any other material obligation imposed upon such Party under this Agreement.

### **13. NOTICE OF DEFAULT**

**13.1.** If a Party claims that there has been a Default under this Agreement by the other Party, the Non-defaulting Party shall give to the Defaulting Party a notice providing particulars of the Default (the “Notice of Default”).

**13.2.** The Defaulting Party shall have a period of thirty (30) days after receipt of the Notice of Default to cure the Default. If the Default is a performance Default under section 13.1(b) and the performance Default cannot be reasonably cured within thirty (30) days after receipt of the Notice of Default, the Defaulting Party shall have a reasonable period of time to cure the Default provided that the Defaulting Party promptly commences and diligently continues thereafter to cure the Default. If the Default is a payment Default under section 13.1(a), the Defaulting Party must cure the payment Default within thirty (30) days after receipt of the Notice of Default.

**13.3.** If the Defaulting Party disputes the Default, the Defaulting Party shall, within ten (10) days after receipt of the Notice of Default, (i) give the other Party notice that the Default is in dispute (including providing reasons therefore in reasonable detail) and (ii) shall submit the dispute for dispute resolution in accordance with the terms of Agreement.

### **14. REMEDIES ON DEFAULT**

**14.1.** If a Notice of Default has been given and the Party alleged to be in default does not cure or remedy the Default in the manner contemplated by section 14.2 or where the Party determined by the dispute resolution process under this Agreement to have a requirement to remedy a Default fails to remedy the Default as directed, the Non-defaulting Party shall have the rights and remedies set out in section 15.2.

**14.2.** In the case of an event Default that is not cured by the Defaulting Party in accordance with this Agreement, the Non-defaulting Party shall have the following rights and remedies:

- a) To charge the Defaulting Party interest with respect to any unpaid amount until it is paid, at the rate of 1.5% per annum, calculated daily;
- b) Suspend performance of its obligations under this agreement;
- c) To set-off against the unpaid amount any sums due or accruing to the Defaulting Party by the Non-defaulting Party in accordance with this Agreement;
- d) To perform the obligations of the Defaulting Party which are the subject of the Notice of Default and charge the Defaulting Party the reasonable costs of performing such obligations on behalf of the Defaulting Party; and/or
- e) To terminate this Agreement

**14.3.** A Non-defaulting Party may, at its discretion, exercise the remedies referenced in section 15.2 applicable to it in the alternative, concurrently or cumulatively, except where inconsistent with the express provisions contained in this Agreement and provided that in the case of a payment Default the concurrent or cumulative exercise of remedies shall not result in duplication or a recovery on the part of the Non-defaulting Party based on an amount (excluding interest) in excess of the payment Default. No delay or omission by a waiver of those rights or remedies or of any other right or remedy and no single or partial exercise thereof shall preclude any other or future exercise thereof or the exercise of any other right or remedy.

## **15. DISPUTE RESOLUTION**

**15.1.** Where a dispute arises over interpretation, application, operation or administration of the Agreement, Greenview and the Town will attempt to resolve the issue through a joint meeting of the two Councils. The two Councils may meet as often as necessary to attempt to resolve the dispute or appoint a Committee of Councils to attempt to resolve the dispute. If the above actions fail to resolve the issue, a mediator may be engaged to assist in the dispute resolution.

## **16. GENERAL**

**16.1.** This Agreement is not assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

**16.2.** This Agreement is binding up and shall ensure to the benefit of the Parties and their successors and permitted assigns.

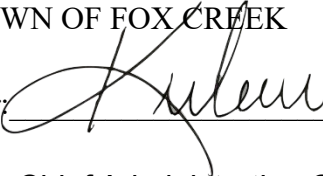
- 16.3.** The Parties acknowledge and agree that this Agreement does not create and shall not be construed as creating any relationship of agency, partnership, or joint venture between the Parties. The Parties enter this Agreement as, and shall remain, independent parties.
- 16.4.** If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then that term, covenant or condition: (i) is deemed to be independent of the remainder of this Agreement and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder to the Agreement or any part thereof; and (ii) continues to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.
- 16.5.** This Agreement sets forth all covenants, promises, representations, agreement, conditions and understanding between the Town and Greenview concerning the matters referenced herein and there are no other covenants, promises, representations, agreements, conditions, or understandings, either oral or written, between them. No alteration or amendment to the Agreement will be binding upon the Town or Greenview unless in writing and signed by the Town and Greenview.
- 16.6.** The expiry or termination of this Agreement shall not relieve any Party of any rights, liabilities or obligations that by their nature survive expiry or termination, including warranties, remedies, indemnities, or that arose prior to the expiry or termination of this Agreement.
- 16.7.** If either Party shall overlook, excuse, condone or permit any default, breach, non-observance, improper compliance or non-compliance by the other of any obligation herein, this shall not operate as a waiver of such obligation in respect of any continuing or subsequent default, breach or non-observance, and no such waiver shall be implied but shall only be effective if expressed in writing.
- 16.8.** This Agreement shall be construed in accordance with and governed by the laws of the Province of Alberta.

**IN WITNESS WHEREOF**, and as evidence of their Agreement to be bound by the terms hereof, the Parties have caused this Agreement to be executed and delivered by their authorized signatories with effect as of the date set out on page one above.

Fox Creek Greenview Multiplex

TOWN

TOWN OF FOX CREEK

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

Per: Chief Administrative Officer, Town of Fox Creek

GREENVIEW

MUNICIPAL DISTRICT OF GREENVIEW NO. 16

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

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