

LEASE AGREEMENT

THIS LEASE dated for reference the _____ day of _____ 2020 is

BETWEEN:

THE CORPORATION OF THE VILLAGE OF CUMBERLAND

Box 340, 2673 Dunsmuir Avenue
Cumberland BC V0R 1S0

(the "Landlord")

AND:

CUMBERLAND AND DISTRICT HISTORICAL SOCIETY

Box 258, 2680 Dunsmuir Avenue
Cumberland BC V0R 1S0

(the "Tenant")

WHEREAS:

- A. The Landlord is the registered owner in fee simple of those lands in the Village of Cumberland, British Columbia, legally described as:

Lot 3, Block H, District Lot 21, Plan VIP522E

(the "Land"),

and the Landlord owns a Building on the Land having the civic address at:

2680 Dunsmuir Avenue

(the "Building");

- B. The Building was constructed in 1981 with funding from the Province of British Columbia and from the Village of Cumberland;
- C. The Tenant is a society incorporated under the *Society Act* on February 24, 1981;
- D. The Tenant has occupied the Premises and operated a community museum in the Building since September 1981.
- E. The Tenant intends to continue its occupation of the Building and that portion of the Land outlined in heavy black on the map attached as Schedule "A" (the "Premises") through a lease and the Landlord wishes to grant a lease of the Premises to the Tenant, on the terms and conditions set out in this Agreement;
- F. In accordance with section 26 of the *Community Charter*, the Landlord has posted and published notice of its intention to lease the Premises to the Tenant;

- G. The Landlord and the Tenant agree to work together in a spirit of harmony and cooperation on any issues that may arise relating to this Lease;

NOW THEREFORE THIS AGREEMENT is evidence that, in consideration of the mutual promises contained in this Agreement the parties covenant and agree as follows:

Premises

1. The Landlord leases the Premises to the Tenant on the terms and conditions of this Lease and for the purposes set out in this Lease.
2. The Landlord acknowledges the contents stored in the Premises are the property of the Tenant to be returned to the Tenant at the termination of this Lease.

Term

3. The term of this Lease is for a period of ten years commencing on the 1st day of December 2020 and ending on the 30th day of November 2030 (the "Term") subject to earlier termination pursuant to the terms of this Lease.

Licence

4. The Landlord hereby grants a licence to the Tenant to use the elevator, foyer and accessible washrooms for its staff and clients as required, located in the adjoining Premises at 2674 Dunsmuir Avenue.
5. This grant of licence requires that the Tenant is responsible for the security of the Premises when use is exercised.

Use

6. The Tenant shall only use the Premises for the purpose of establishing and carrying on a museum and archives, to fulfill the purpose and objectives of the Cumberland and District Historical Society, as described in Schedule "B" to this agreement and for any associated activities and programs of the Tenant.

Rent

7. Rent is for the term of the agreement and is the payment of \$1.00, the receipt and sufficiency of which the Landlord hereby acknowledges.

Tenant's Covenants

8. The Tenant covenants with the Landlord:

- (a) to use the Premises only for the purposes set out in section 4 of this Lease;
- (b) to pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Premises, including all taxes except where exempted by council by bylaw, repair and maintenance costs, other fees, telephone, electrical, and other utility charges and payments for work and materials which are the responsibility of the Tenant;
- (d) to provide building security and monitoring that may be required for use of the Premises for the purpose of this Lease;
- (e) to provide all equipment, furnishings and supplies that may be required to use the Premises for the purposes of this Lease;
- (f) to obtain appropriate permits for any alterations to plumbing or electrical systems in the Premises and receive any required final inspection;
- (f) to fund any repair of damage caused by the Tenants or the Tenant's renters;
- (h) to rent rooms or space for programs or community use only where such rental is in accordance with the terms and conditions of this Lease and to administer such rental, and to impose and retain fees for such rental, but not to otherwise assign or sublet this Lease or the Premises.
- (k) not to do, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the Premises or to any fixtures or appurtenances thereon, including anything that:
 - (i) increases the hazard of fire or significantly increases the risk of liability,or
 - (ii) invalidates any policy of insurance for the Premises;
- (l) to comply promptly at its own expense with the legal requirements of all authorities, including an association of fire insurance underwriters or agents, and all relevant notices issued under them that are served upon the Landlord or the Tenant during the Term;
- (m) at the expiration of this Lease or another date agreed by the parties, to peaceably surrender and give up possession of the Premises;
- (n) not to commit or permit waste on or to the Premises;

- (o) not to cause, maintain or permit anything that may be or become a nuisance or annoyance on the Premises to the owners or occupiers of adjoining lands or to the public, including the accumulation of rubbish or unused personal property of any kind; and
- (p) to promptly discharge any builders lien which may be filed against the title to the Premises relating to any improvements, work or construction which the Tenant undertakes on the Premises and to comply at all times with the *Builder's Lien Act* (British Columbia) in respect of any improvements, work or construction undertaken on the Premises; and
- (q) to provide, at the Tenant's cost, comprehensive general liability insurance in an amount not less than \$5 million per occurrence for the Tenant for activities only in relation to the operation of a museum and archives and associated and permitted activities on the Premises, and name the Landlord as an additional insured to this policy and provide proof of insurance annually to the Landlord;
- (r) to obtain any licences or permits required by law, including but not limited to those for use of liquor and food service,
- (q) to work with the Landlord in a spirit of harmony and cooperation on projects with historical significance to the community as requested by the Landlord and as the Tenant's resources allow.

Rental and Sublet

- 9. The Tenant may enter into agreements with not-for-profit organizations for the sole purpose of sharing office space and facilities at the Premises.
- 10. Any agreement with not-for-profit organizations must indemnify the Landlord from any liabilities.
- 11. The Tenant may only enter into further agreements for use of the Premises with the prior written approval of the Landlord.

Net Lease

- 12. Without limiting any other provisions in this Lease, the Tenant agrees that this Lease is absolutely net to the Landlord, other than set out in this Lease, and the Tenant must promptly pay when due on its own account and without any variation, set-off, or deduction all amounts, charges, costs, duties, expenses, fees, levies, rates, sums and taxes and increases in any way relating to the Premises and that to the extent any such amounts remain unpaid after they come due, such amounts shall be deemed as Rent and may be collected by the Landlord as Rent.

Lease Not In Registerable Form

13. The Tenant acknowledges and agrees that the Landlord is under no obligation to at any time deliver this Lease or any instrument creating this Lease to the Tenant in a form registerable under the *Land Title Act* (British Columbia).

Tenant's Representations and Warranties

14. The Tenant represents and warrants that the Tenant:
- (a) is a not for profit society validly incorporated and in good standing under the laws of British Columbia and does not conduct its activities with a view to obtaining, and does not distribute, profit or financial gain for its members;
 - (b) will not discriminate based any grounds set out in the *Canadian Human Rights Act* in its membership, operation, and administration of any of its programs;
 - (c) has the power and capacity to enter into and carry out the obligations under this Lease; and
 - (d) has completed all necessary resolutions and other preconditions to the validity of this Lease.

Acknowledgment and Agreements of the Tenant

15. The Tenant acknowledges and agrees that:
- (a) the Landlord has given no representations or warranties with respect to the Premises including, without limitation, with respect to the suitability of the Premises for the Tenant's intended use;
 - (b) the Tenant leases the Premises on an as is basis and the Landlord has not made any representations, warranties or agreements as to the environmental condition of the Premises; and
 - (c) it is the sole responsibility of the Tenant to satisfy itself with respect to the environmental conditions of the Premises, including, without limitation, by conducting any reports, tests, investigations, studies, audits and other inquiries as the Tenant, in its sole discretion, considers necessary in order to satisfy itself as to the environmental condition of the Premises.

Routine Repair and Maintenance

16. The Tenant is responsible for and, at the Tenant's cost, must do all routine maintenance and repairs with respect to the Premises necessary for the Tenant's use, occupation and operation of the Premises and as set out in Schedule "C" and upon written notice from the Landlord the Tenant must make such repairs as are required by the Landlord in the notice. At the end of the Term, the Tenant must surrender the Premises to the Landlord in good repair, excepting reasonable wear and tear.
17. Schedule "C" to this agreement identifies the types of repairs and maintenance which are generally the responsibility of the Landlord and the types of repair and maintenance which are generally the responsibility of the Tenant. The intent of this schedule is to recognize that repairs and maintenance that are a benefit to the Tenant within the term of this lease to be the responsibility of the Tenant; and that repairs and maintenance that are to the long term benefit of the Premises are the responsibility of the Landlord. The Landlord is not obliged to provide any repair or maintenance or renovation beyond the standards set out in this section.
18. The Tenant must provide notice to The Landlord, no later than July 30 each year, repairs and maintenance requested or believed necessary for the following two years and quotes for the work, where appropriate. The Landlord is not obliged to provide any repair or maintenance or renovation beyond the standards set out in this section. The Landlord will determine a maintenance plan for each year and advise the Tenant of that plan. The funding of any requested repairs and maintenance that would directly benefit the Tenant under the term of this lease may be negotiated between the Tenant and the Landlord.

Action by Village on the Operator's Default

19. The Tenant must promptly repair and maintain the Premises according to notices received from the Landlord under section 11 and, if the Tenant fails to do so within ninety (90) days after receiving such notice, the Landlord may, but is not obligated to, cause such repairs and maintenance to be undertaken at the Tenant's cost and may cause the Landlord's representatives to enter on the Premises for such purpose. In the event of an emergency, the Landlord may undertake repairs and maintenance without prior notice to the Tenant.

Payment for Village's Action

20. Should the Landlord deem it necessary to undertake any repairs or maintenance of the Premises on the default of the Tenant, then the Tenant will pay to the Landlord the cost of all such repairs or maintenance carried out by the Landlord within five (5) business days of receipt of the Landlord's account.

Tenant not Relying on Landlord

21. Notwithstanding that the Landlord may inspect the Premises and require repairs and maintenance, the Tenant agrees that it is responsible for repair and maintenance of the Premises as specified in this Agreement and it is not relying on the Landlord for determining the need for repair or maintenance of the Premises.

Tenant Alterations

22. The Tenant must not make any improvements, extensions, installations, alterations, additions or renovations to the Building, or alter the existing state of the Premises in any way, without the prior written consent of the Landlord. If the Landlord gives such consent, the Tenant must obtain the Landlord's prior approval of drawings and specifications for such work, must do such work strictly in accordance with the approved drawings and specifications and must comply with any conditions the Landlord imposes with that approval.

Minimum Work Standards

23. The Tenant must ensure that any repairs or work with respect to the Premises done by or on behalf of the Tenant pursuant to this Lease:
- (a) do not affect any structural or foundation elements of the Building;
 - (b) meet or exceed the standards of materials and construction employed in the original construction of the Building; and
 - (c) comply with all applicable laws, statutes, enactments, codes, regulations, bylaws and orders from time to time in force, including the applicable building code and bylaws of the Village of Cumberland, and obtain any required permits.

Quiet Possession

24. The Landlord covenants and agrees with the Tenant to permit the Tenant, so long as the Tenant is not in default of the Tenant's obligations under this Lease, to peaceably possess and enjoy the Premises for the Term, without interference or disturbance from the Landlord or those claiming by, from or under the Landlord except for the Landlord's express rights under this Lease to enter upon the Premises.

Permission to Enter

25. The Landlord or its authorized representative may enter on the Premises
- (a) at all reasonable times for the purpose of inspecting the Premises, after giving the Tenant at least twenty-four (24) hours written notice, and

- (b) without notice at any time for emergency purposes, including for the purpose of accessing the licence areas under this agreement and the adjoining Cultural Centre at 2673 Dunsmuir Avenue.

Indemnity

- 26. The Tenant must indemnify and save harmless the Landlord and its elected and appointed officials, officers, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses whatsoever) in any way directly or indirectly arising from the occupation, activities or actions of the Tenant on or from the Land or in, on or from the Building or anything done or not done or maintained by the Tenant.

Survival of Indemnities

- 27. The obligations of the Tenant under **section 26** survive the expiry or earlier termination of this Lease.

Ownership of Improvements at Termination

- 28. At the expiration of the Term or earlier termination of this Lease, the Tenant may remove any improvements, extensions, installations, alterations, renovations or additions to the Building done by or on behalf of the Tenant. Any improvements, extensions, installations, alterations, renovations or additions not so removed are forfeited to and become the permanent property of the Landlord.

State of Improvements at Termination

- 29. If the Tenant fails to leave the Building in a condition required by this Lease, the Landlord may do so on behalf of the Tenant and the Tenant must, on demand, compensate the Landlord for all costs incurred by the Landlord.

Landlord's Covenants

- 30. The Landlord covenants with the Tenant:
 - (a) to ensure adequate access to the Premises;
 - (b) to provide water, sewer and garbage collection service at no cost to the Tenant;
 - (c) to provide fire and other perils insurance as would be maintained by a present owner for the Premises at the Landlord's cost, but the Landlord will accept no responsibility for the contents of the Premises.

Builder's Lien Act

31. The tenant covenants not to suffer or permit during the Term any builder's lien or other charge or encumbrance to be registered or form a charge against the Land or Building and in the event of such a builder's lien, charge or encumbrance, the Tenant will, at its sole cost, forthwith obtain a discharge thereof by payment or by giving of security or by taking of such proceeding as may be required or permitted under the *Builder's Lien Act* or other law.

Termination Due to Default

32. If and whenever:
- (a) the Term or any of the goods or chattels in the Premises are at any time seized or taken in execution or attachment by any creditor of the Tenant or under bill of sale or chattel mortgage;
 - (b) a writ of execution issues against the goods and chattels of the Tenant;
 - (c) the Tenant makes any assignment for the benefit of creditors or becomes insolvent or bankrupt;
 - (d) proceedings are begun to wind up the Tenant;
 - (e) the Tenant is in default in the payment of Rent or any other amount payable under this Lease and the default continues for thirty (30) days after written notice by the Landlord to the Tenant;
 - (f) the Building, or any part of it, is destroyed or damaged by any cause so that in the opinion of the Landlord the Building is no longer reasonably fit for use by the Tenant for the purposes set out in this Lease for any period of time in excess of thirty (30) days;
 - (g) the Tenant does not fully observe, perform and keep each and every term, covenant, agreement, stipulation, obligation, condition and provision of this Lease to be observed, performed and kept by the Tenant, and persists in such default for thirty (30) days after written notice by the Landlord; or
 - (h) the Tenant vacates or abandons the Premises or uses or permits or suffers the use of the Premises for any purpose other than the purposes permitted by this Lease, and such default persists for five (5) days after written notice by the Landlord,

then the Landlord may, at its option, terminate this Lease and the Term then becomes immediately forfeited and void and the Tenant must immediately cease all use and occupation of the Premises and must vacate and deliver up possession of the Premises and the Landlord may, without notice or any form of legal process, and without any adherence to public law duties or procedural fairness or the principles of natural justice, forthwith re-enter the Premises and repossess and enjoy the same.

Termination by the Landlord

33. The Landlord may terminate this Lease by giving twelve months written notice to the Tenant and the termination shall be effective at the expiration of the twelve month period.

Termination by Tenant

34. The Tenant may terminate this Lease by giving sixty (60) days written notice to the Landlord and the termination shall be effective at the expiration of the sixty (60) day period.

Destruction of Premises

35. If the Premises or any part of them are at any time during the Term is damaged by fire, lightning, tempest, or earthquake, so as to render them unfit for the purpose of the Tenant and the Landlord or Tenant elects not to undertake restoration, repair or replacement, this Lease shall terminate and, for the purpose of this sub-paragraph, if the Tenant does not advise the Landlord concerning the Tenant's intention within thirty (30) days of such damage, the Tenant shall be deemed to have elected not to undertake restoration, repair or replacement.

Hold Over

36. If the Tenant continues to occupy the Premises with the written consent of the Landlord after the expiration of the Term or earlier termination of this Lease, then, without any further written agreement, the Tenant shall be a monthly lessee paying monthly rent in an amount determined by the Landlord and subject to the other provisions in this Lease insofar as the same are applicable to a month to month tenancy. Tenancy from year to year shall not be created by implication of law.

Distress

37. If and whenever the Tenant is in default of the payment of any money, including Rent, whether expressly reserved by this Lease or deemed as Rent, the Landlord may without notice or any form of legal process whatsoever, enter on the Premises and seize, and remove the Tenant's goods, chattels and equipment and seize, and remove any goods,

chattels and equipment at any place to which the Tenant or any other person may have removed them in the same manner as if they had remained and been distrained on the Premises, notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the Landlord's right of distress.

Remedies Cumulative

38. No reference to or exercise of any specific right or remedy by the Landlord prejudices or precludes the Landlord from any other remedy, whether allowed at law or in equity or expressly provided for in this Lease. No such remedy is exclusive or dependent upon any other such remedy, but the Landlord may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the Landlord is entitled to commence and maintain an action against the Tenant to collect any Rent not paid when due, without exercising the option to terminate this Lease.

No Joint Venture

39. Nothing contained in this Lease creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives the Tenant any power or authority to bind the Landlord in any way.

Interpretation

40. In this Lease:
- (a) reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;
 - (b) a particular numbered section or lettered Schedule is a reference to the correspondingly numbered section or lettered Schedule of this Lease;
 - (c) an "enactment" is a reference to an enactment as that term is defined in the *Interpretation Act* (British Columbia) of the day this Lease is made;
 - (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced;
 - (e) section headings are inserted for ease of reference and are not to be used in interpreting this Lease;
 - (f) a party is a reference to a party to this Lease;

- (g) time is of the essence;
- (h) where the word “including” is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word “including”; and
- (i) a reference to a party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, elected and appointed officials, officers, directors, licensees and invitees of such party where the context so requires and allows.

Notices

41. Where any notice, request, direction or other communication (any of which is a “Notice”) must be given or made by a party under the Lease, it must be in writing and is effective if delivered in person, sent by prepaid registered mail addressed to the party for whom it is intended, or sent by fax as follows:

If to the Landlord: Corporate Officer
 Village of Cumberland
 Box 340, 2673 Dunsmuir Avenue
 Cumberland BC V0R 1S0
 info@cumberland.ca

If to the Tenant: Executive Director
 Cumberland and District Historical Society
 Box 258, 2680 Dunsmuir Avenue
 Cumberland BC V0R 1S0
 info@cumberlandmuseum.ca

Any Notice is deemed to have been given if delivered in person, when delivered; if by registered mail, when the postal receipt is acknowledged by the other party; and, if by email, when received. The address or email of a party may be changed by notice in the manner set out in this provision.

No Effect on Laws or Powers

42. Nothing contained or implied herein prejudices or affects the Landlord’s rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Land or the Building, all of which may be fully and effectively exercised in relation to the Land or the Building as if this Lease had not been fully executed and delivered.

Landlord Discretion

43. Wherever in this Lease the approval or consent of the Landlord is required, some act or thing is to be done to the Landlord's satisfaction, the Landlord is entitled to form an opinion, or the Landlord is given the sole discretion:
- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the Landlord or its authorized representative;
 - (b) the approval, consent, opinion or satisfaction is in the discretion of the Landlord, acting reasonably;
 - (c) any discretion of the Landlord is not subject to public law duties and the principles of procedural fairness and the rules of natural justice have no application; and

the sole discretion of the Landlord is deemed to be the sole, absolute and unfettered discretion of the Landlord.

Severance

44. If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid will not affect the validity of the remainder of the Lease.

No Public Law Duty

45. Whenever in this Lease the Landlord is required or entitled at its discretion to consider granting any consent or approval, or is entitled to exercise any option to determine any matter, or to take any action or remedy including, without limiting the generality of the foregoing, the termination of this Lease and the re-entering of the Building, the Landlord may do so in accordance with the contractual provisions of this Lease and no public law duty of procedural fairness or principle of natural justice shall have any application.

Binding on Successors

46. This Lease enures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.

Law of British Columbia

47. This Lease must be construed according to the laws of the Province of British Columbia.

Whole Agreement

48. The provisions in this Lease constitute the whole of the agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of the Lease.

Waiver or Non-Action

49. Waiver by the Landlord of any breach of any term, covenant or condition of this Lease by the Tenant must not be deemed to be a waiver of any subsequent default by the Tenant. Failure by the Landlord to take any action in respect of any breach of any term, covenant or condition of this Lease by the Tenant must not be deemed to be a waiver of such term, covenant or condition.

As evidence of their agreement to be bound by the above terms, the Landlord and the Tenant each have executed this Lease on the respective dates written below:

The Corporate Seal of **THE**)
CORPORATION OF THE VILLAGE)
OF CUMBERLAND was hereunto)
affixed in the presence of its duly)
authorized officers:)

_____)
_____)

Mayor)

_____)
Chief Administrative Officer)

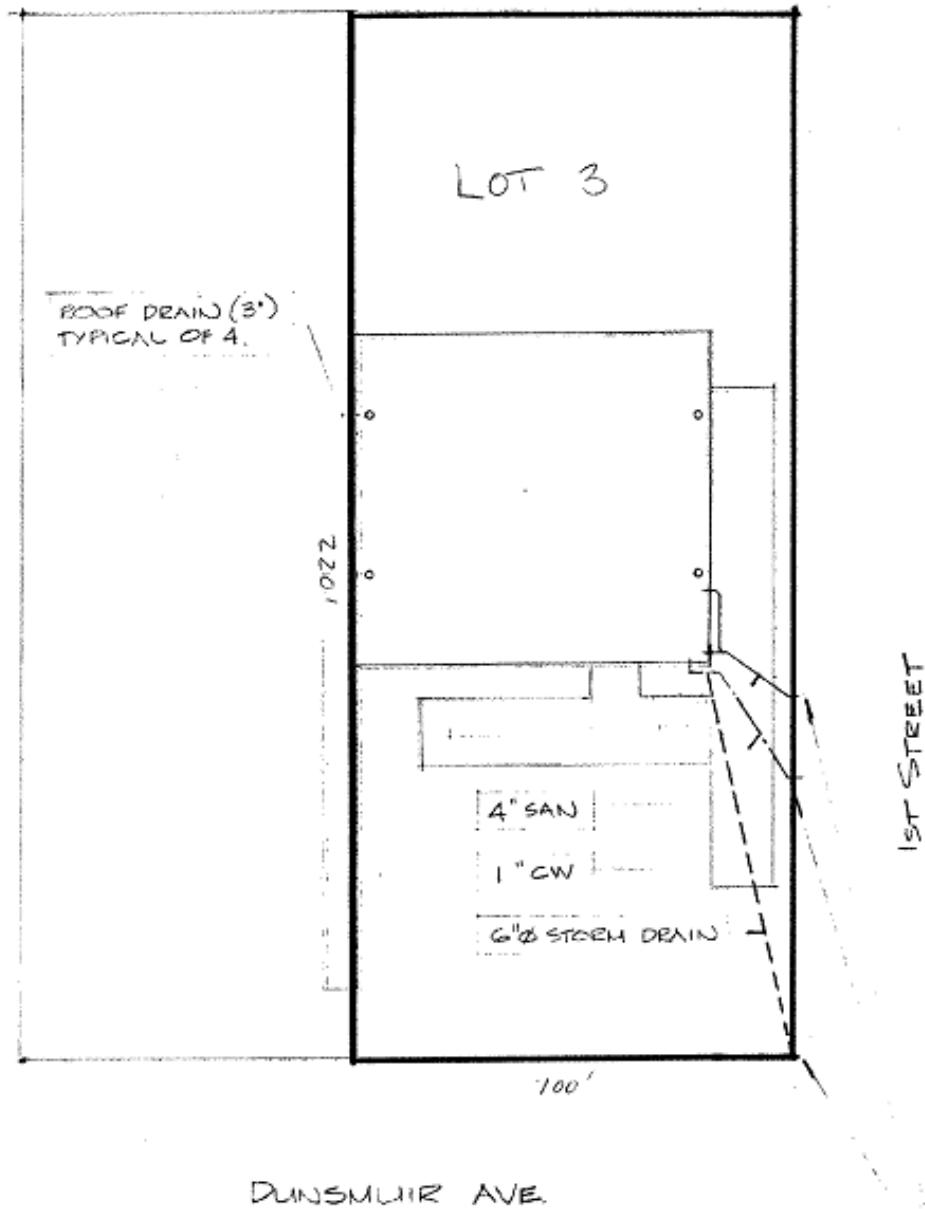
_____)
Date)

Signed by the authorized signatories)
of the **CUMBERLAND AND DISTRICT**)
HISTORICAL SOCIETY)

_____)
Chair)

_____)
Secretary)
)
_____)
Date)

SCHEDULE "A"
Plan of Premises



SCHEDULE "B"**Purpose and Objectives of the Cumberland and District Historical Society**

As set out in the Constitution filed on February 24, 1981, the purposes of the Society are:

- (a) To promote the preservation of the history of the region;
- (b) To promote an awareness of, respect for and understanding of the people and events in the history of the area;
- (c) To encourage the public to become aware of the historical richness of the area;
- (d) To operate a museum in a building or in buildings which the society may from time to time rent, acquire or obtain the use of;
- (e) To hold fund raising social events, however the society will not own, manage or operate a social club;
- (f) For the listed purposes to receive by donation, public subscription, devise, bequest or otherwise, money or property.

SCHEDULE “C”

Summary of Responsibilities

Village of Cumberland	Historical Society
<ul style="list-style-type: none"> • Major Structural Repairs and Other Building Envelop Improvements • Major Plumbing, Mechanical, and Heating Fixture Repair, Maintenance and Replacement, e.g. furnace, hot water tank • Major Electrical Maintenance, Repairs, and Replacement • Signage Benefitting the Village • Repair and Maintenance of Elevator in Common Area of Cultural Centre • Lawn and garden maintenance • Inspection and maintenance of fire alarm and emergency lighting system 	<ul style="list-style-type: none"> • Interior Renovations to Museum, Office Space and Exhibits • Flooring and Floor Care • Cleaning, Janitorial and Custodial Service • Signage Benefitting the Historical Society • Interior Painting • Interior Lighting • Security Services, Alarm System • Snow and ice removal and control • Furnace filter and duct cleaning • Leasehold improvements to the electrical system • Leasehold improvements to the plumbing systems • Security system