

RESOLUTION NO. 2-2016

A RESOLUTION AUTHORIZING AND DIRECTING THE CHAIRPERSON AND THE TREASURER OF THE BOARD OF TRUSTEES TO ENTER INTO AN AGREEMENT WITH NATURALLY SPEAKING, LLC.

WHEREAS, Naturally Speaking, LLC operates "Timbernook" outdoor educational experience camps for children; and

WHEREAS, Naturally Speaking, LLC has indicated a desire to operate a camp making use of the RJRD property during the summer months; and

WHEREAS, the Board of Trustees feels that the proposed use is appropriate and consistent with the RJRD's mission.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Richfield Joint Recreation District, County of Summit, State of Ohio:

SECTION 1. That the Chairperson and Treasurer be, and they hereby are, authorized and directed to enter into a use agreement with Naturally Speaking, LLC substantially in accordance with the agreement attached hereto as Exhibit A.

SECTION 2. This Board finds and determines that all formal actions of this Board concerning and relating to this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 3. This Resolution shall be in full force and effect from and immediately upon its adoption.

02/23/2016

Date Passed


Chairperson, Richfield Joint Recreation District
Board of Trustees

ATTEST:


Administrator, Richfield Joint Recreation
District


Secretary, Richfield Joint Recreation District
Board of Trustees

FACILITY USE AGREEMENT

The Richfield Joint Recreation District ("RJRD"), a duly formed governmental entity in the State of Ohio, having its main facility at P.O. Box 387, 4410 West Streetsboro Road, Ohio 44286, and Naturally Speaking, LLC (Naturally Speaking"), an Ohio limited liability company, having its principal address at 2993 Mathers Way, Twinsburg, Ohio 44087 hereby agree as follows:

SECTION I: BASIC PROVISIONS:

1. **ENGAGEMENT:** RJRD hereby licenses to Naturally Speaking, and Naturally Speaking hereby licenses from RJRD, the use of RJRD's grounds and appropriate facilities located within the RJRD's property located between Oviatt and Broadview Roads within Richfield Township and the Village of Richfield ("Property") for the purpose of conducting and in consideration of making available to the surrounding community a Timbernook enrichment program as such program is generally described on the Timbernook website at www.timbernook.com (the "Program"). Specifically, RJRD shall provide Naturally Speaking access to the following: i) the exterior grounds including field, wooded, and water spaces necessary to conduct the Program; ii) at all times, at least one restroom facility, which may include a facility separate from other buildings (e.g., latrines, portable toilets, etc.); and iii) an activity space within one building that has received a valid occupancy permit, or other roofed shelter, for times of inclement weather (collectively known as the "Premises"), for attendees of the Program. Naturally Speaking's access shall include the following 2016 dates beginning at the following hours:

Schedule Details:

The parties agree that the Premises will be available for the Program's use for at least two weeks during the month of July. A week is considered to be Monday through Friday (a "Week"), and the available hours for the Premises each day generally shall be from 8:00 AM to 6:00 PM.

RJRD may confirm in writing through an authorized representative additional dates and times available for conducting a Program as agreed upon by the parties.

The Premises are to be used by Naturally Speaking only for the sole purpose as stated above and for no other purpose. Naturally Speaking may access and leave the Premises at the beginning and end times set forth above. No other event may be substituted or added by Naturally Speaking without the express prior written consent of RJRD.

SECTION II: SERVICES

1. **SERVICES INCLUDED:** RJRD may list the Program in its normal events calendar and by such methods as it may announce other similar programs and services held on its Premises. Except as otherwise provided in this Agreement, RJRD agrees to make the same general services and access to Premises available to the Program as it generally makes available to all users of the Premises.

2. **ACCESS AND STAFF:** As appropriate, RJRD shall provide a means for an authorized representative of Naturally Speaking to access the Premises as well as contact information for RJRD's staff available onsite or via telephone at all times during the operation of a Program. The parties specifically agree that access shall include the ability for Naturally Speaking and Program participants to enter the Property via the Oviatt Road entrance.

3. **PARKING:** RJRD shall allow reasonable access to parking and/or drop off and pick up of Program attendees as well as parking for employees of Naturally Speaking onsite to run the Program. The parties agree the maximum number of Program attendees at any one time will not exceed twenty (20) and that there will be no more than four parking spaces required for Naturally Speaking's staff. RJRD shall not be responsible, under any circumstances, for fines or judgments, or loss or damage occurring to automobiles on the Premises that are owned by Naturally Speaking's employees or Program attendees.

4. OTHER SERVICES: Naturally Speaking is responsible for costs associated with all Program services provided by Naturally Speaking in the execution of this Engagement.

SECTION III: USE OF PREMISES

1. PREMISES: Naturally Speaking agrees it has examined the Premises and is familiar with the condition thereof. Naturally Speaking shall exercise good care in use of the Premises and any fixtures and equipment therein utilized for the Program. Naturally Speaking shall promptly reimburse RJRD for any damage to the Premises or to fixtures and equipment, beyond normal wear and tear, by reason of any negligence or willful misconduct by Naturally Speaking, or by the officers, agents, employees, or attendees of Naturally Speaking's Program. Upon access to the Premises, Naturally Speaking warrants that Naturally Speaking has accepted the Premises "as-is"; provided, however, that i) any other terms and conditions required by this Agreement shall not be excused by this Section III.1; ii) that Naturally Speaking may utilize non-permanent equipment and structures (e.g., tire swings), utilized and removed at Naturally Speaking's expense; and iii) that Naturally Speaking may utilize the District in the same manner as other users of the District now or in the future.

2. DAMAGE TO PREMISES: No nails, tacks or screws shall be driven or placed in any portion of the Premises and all decorations and equipment shall be put up without defacing the Premises and under the supervision and written approval of RJRD. Naturally Speaking may not make any permanent changes to the Premises. If there is any damage to the Premises as a result of Naturally Speaking's conducting the Program that are not otherwise related to normal wear and tear, the negligence or willful misconduct of RJRD, and/or the activity of other users of the District, Naturally Speaking shall pay such amount as shall be necessary to put the Premises in as good order and condition as the same were at the commencement of any given Program session.

3. PREMISES USE GUIDELINES: Naturally Speaking shall abide by any rules and regulations set forth by RJRD with respect to the use of the specific Premises and/or Property. RJRD reserves the right to amend the rules and regulations and Naturally Speaking shall abide by such amended rules and regulations, to the extent that Naturally Speaking has been provided with notice of such amendments. Naturally Speaking acknowledges that a daily fee of \$35 applies for the use or reservation of a shelter as discussed in Section I(1), and agrees to pay such fee in advance of the commencement of the Program. Naturally Speaking further agrees that the fee is to defray RJRD's costs related to making the shelter available, and not for access to the property. If a lesser fee for use of such structure is established by RJRD prior to the commencement of the Program, such lesser fee shall apply.

SECTION IV: MARKETING AND PROMOTION:

1. ADVERTISING MATTER: Naturally Speaking shall be responsible for any advertising, and the costs thereof, for the Program within the local community, in appropriate forms in order to conduct the Program.

2. POSTING: No literature, posters, cards, banners, circulars, flags or other promotional material or decoration shall be posted inside or outside within the District without the express prior approval of RJRD.

3. RELATIONSHIP OF PARTIES: No act of the parties hereto shall be construed as creating or establishing a partnership, joint venture, or permanent association of any type between RJRD and Naturally Speaking.

4. USE OF COPYRIGHTED OR TRADEMARKED MATERIALS: Naturally Speaking shall assume sole responsibility for and shall execute all steps necessary to the lawful performance of copyrighted works on the Premises and/or the District by Naturally Speaking or its agents, servants, employees, or invitees.

SECTION V: INSURANCE, INDEMNITY:

1. COVERAGE: Commencing not later than June 1, 2016 and during the performance of this Agreement, Naturally Speaking shall maintain and furnish RJRD with evidence of liability insurance

providing bodily injury and property damage coverage in an amount not less than One Million Dollars per occurrence, combined single limit, and Three Million Dollars annual aggregate and shall cause RJRD to be named as an additional insured on the policy: A copy of RJRD's insurance coverage will be provided to Naturally Speaking upon request.

2. INDEMNITY: Naturally Speaking shall indemnify, defend and hold RJRD and its trustees, directors, partners, officers, employees, representatives, agents and affiliates harmless from and against any and all liabilities, suits, damages, taxes and all other withholdings and charges, including reasonable attorneys' fees, arising from Naturally Speaking's negligence and/or willful misconduct under this Agreement.

SECTION VI: SAFETY/SECURITY:

1. HAZARDOUS ACTIVITIES: Naturally Speaking will not do or permit to be done on the Property or in a building, or bring or keep anything therein, which will in any way increase the risk of fire or hazard beyond the usual and accepted use of the Property and/or Premises (e.g., campfires), or the rate of fire insurance or other hazard insurance within the Property or on the Premises or any part thereof or on property kept therein during the term of this Agreement, or which shall conflict with any applicable ordinances, orders, requirements, rules or regulations of RJRD, the Village of Richfield, Richfield Township, Summit County Board of Health or any other governmental department, commission, board, officer or agency having jurisdiction.

2. UNOBSTRUCTED ACCESS: No portion of the sidewalks, entrances, passages, vestibules, halls, elevators or ways of access to or within the Property or the Premises shall be obstructed by Naturally Speaking or used for any purpose other than ingress and egress to and from the Premises.

3. ACCESS TO PREMISES: If provided, keys are the property of RJRD and must be surrendered upon request of RJRD or when Naturally Speaking departs the Premises. RJRD reserves the right to charge Naturally Speaking for any lost or stolen keys, including replacement and consequences of misuse. In its discretion, RJRD may provide Naturally Speaking with access via key pad codes, keys, District contact personnel, or other means in use during the term of this agreement and operation of the Program(s).

SECTION VII: CANCELLATION OF PROGRAM:

1. CANCELLATION: If a Program event must be cancelled by Naturally Speaking after it is publicly announced, Naturally Speaking will immediately notify RJRD in writing regarding the cancellation. Naturally Speaking is responsible for publicizing the cancellation.

2. EXCUSABLE NON-PERFORMANCE: The parties shall be excused from further performance under this Agreement upon the occurrence of one or more of the events listed below:

- A. Damage to or destruction of the Premises, including any physical damage which, in the sole opinion of RJRD, renders use of the Premises unsafe or impractical.
- B. Damage to or destruction of any equipment to be used or needed by Naturally Speaking which, in the sole opinion of RJRD, renders use of the Premises unsafe or impractical.
- C. Any act or regulation of public or governmental authority which, in the sole opinion of RJRD, renders performance under this Agreement impossible or impractical.
- D. Any civil tumult, epidemic, or other cause beyond the control of the parties which, in the sole opinion of RJRD, renders performance under this Agreement impossible or impractical.

3. INCLEMENT WEATHER: Either RJRD or Naturally Speaking shall have the right to determine in good faith if conditions of inclement weather constitute emergency circumstances and warrant suspension and/or cancellation of a Program.

4. FORCE MAJEURE: Either RJRD or Naturally Speaking may terminate or suspend its obligations under this Agreement if such obligations are delayed, prevented or rendered impractical by an event that is beyond the reasonable control of RJRD or Naturally Speaking, including, but not limited to:

fire, flood, riot, earthquake, civil commotion, insurrection, Act of God, labor disputes, strikes, wars, shortage of or inability to obtain materials, supplies or utilities, or any law, ordinance, rule or regulation.

5. INTERRUPTION OR TERMINATION OF PROGRAM: Either RJRD or Naturally Speaking may interrupt any event in the interest of public safety, and likewise cause the termination of such event when, in the judgment of either party, such act is necessary in the interest of public safety.

SECTION VIII: MISCELLANEOUS:

1. LAW: This Agreement contains the entire understanding of RJRD and Naturally Speaking relating to the subject matter hereof and may not be altered, amended, modified or otherwise changed, nor may any of the terms hereof be waived, except by an instrument in writing signed by RJRD and Naturally Speaking. This Agreement shall be governed by and construed under the laws of the State of Ohio.

2. CUMULATIVE REMEDIES: The remedies expressly provided in the Agreement to the parties shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of each party now or hereafter existing at law or in equity.

3. TERMINATION: If (a) Naturally Speaking shall fail to observe or default under any material provision of the Agreement, or (b) the Premises are destroyed, damaged or otherwise rendered unfit for occupancy, or (c) the Program shall be prevented, interrupted or interfered with by public authorities, labor difficulties, or other cause or acts beyond the control of RJRD or Naturally Speaking, then this Agreement may be terminated and RJRD shall have the right, at its sole and absolute discretion, to terminate this Agreement either in its entirety or with respect to the Program affected, without liability of RJRD to Naturally Speaking. If Naturally Speaking needs to cancel any or all Program Weeks, in whole or in part, then it may do so in its sole discretion with proper notice provided to RJRD; provided, however, that if Naturally Speaking cancels all Program Weeks, then either party may terminate this Agreement without liability.

4. REMEDIES: In the event of a conflict or disagreement not resolvable under the terms of this Facility Use Agreement the parties agree to meet in good faith in an attempt to come to a mutually satisfying resolution. If after thirty (30) days the parties are unable to agree to a resolution or are not actively working towards implementing a resolution, then the parties agree to engage in a mediation process as an alternative dispute resolution option prior to availing themselves of other legal remedies.

5. RJRD NOT LIABLE: RJRD shall have no liability to Naturally Speaking for any delay or annoyance caused to Naturally Speaking arising out of the actions of any public authority or labor difficulties, and except for loss or damage due to reckless, malicious or willful misconduct, RJRD shall not be responsible or have any liability for loss or damage to the equipment or personal properties of Naturally Speaking or of any officer agent, employee, or attendee of Naturally Speaking kept or placed in the Premises or used in connection with the Program under this Agreement or entrusted to any person employed at the Premises or by RJRD, whether due to fire, theft or any other cause. RJRD shall not be liable in any way because of RJRD's inability to provide heating or air-conditioning upon the Premises.

6. NO ASSIGNMENT: Naturally Speaking shall make no assignment, sublease or sublicense of this Agreement or of any Naturally Speaking's rights hereunder except with the express prior written consent of RJRD.

7. NOTICES: All notices and statements of communications given pursuant to this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given when sent by hand or by registered or certified United States mail, postage prepaid, addressed to the recipient at its address set forth above. Each party may, by written notice to the other party, specify any other address for the receipt of such notices, statements or communications.

8. ATTENDANCE OF NATURALLY SPEAKING AND RJRD: RJRD, its officers, agents and employees shall have the right to enter any part of the Premises at any and all times. Naturally Speaking may be limited to access to the Premises as directed by RJRD though in such a manner as not to prevent reasonable performance of the Program or contrary to the terms of this Agreement except as may be required for reasons of safety, maintenance, and/or repair.

9. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, whether written, oral or implied, between the parties with respect to the

subject matter of this Agreement.

SECTION IX: EXECUTION OF THIS AGREEMENT:

1. EXECUTION: After Naturally Speaking has signed and delivered this Agreement to RJRD, this Agreement shall not be binding until duly executed by RJRD and an executed copy delivered to Naturally Speaking. For such purpose delivery may be made by deposit in the United States mail, postage prepaid, addressed to Naturally Speaking or by actual hand delivery to Naturally Speaking at its address designated in accordance with this Agreement.

IN WITNESS WHEREOF, the parties have each executed this Agreement on the day and year inserted below.

NATURALLY SPEAKING, LLC

Rebecca M. Baven
(Naturally Speaking Representative)

Rebecca M. Baven
(Print or Type Name and Title)

2/22/16
(Date of Execution)

THE RICHFIELD JOINT RECREATION DISTRICT

Dominic Cugini
(RJRD Representative)

Dominic Cugini
(Print or Type Name) Chairman

02/23/2016
(Date of Execution)

Charles P. Norris
(RJRD Representative)

Charles Pat Norris
(Print or Type Name) Treasurer

02/23/2016
(Date of Execution)