

DOCUMENT APPROVAL			
Document No. 2380-20-201			
Cir.	Department	Date	Init.
	Civic Prop.		
	Finance		
	City Clerk		

THIS AGREEMENT MADE THE _____ DAY OF _____ 19 .

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia
V1Y 1J4

(hereinafter called the "City")

AND

KELOWNA CURLING CLUB
551 Recreation Avenue
Kelowna, British Columbia
V1Y 7V5

(hereinafter called the "Curling Club")

WHEREAS the parties hereto did on the 29th day of November, 1977 enter into a lease of the land therein described for a term of 20 years commencing on the 6th day of November, 1978 (the Lease);

AND WHEREAS the parties hereto amended the lease by agreement dated September 28, 1998 thereby extending the lease by 12 years to 2010 and altering the repayment terms;

AND WHEREAS the parties hereto entered into a new 25 year lease which commenced on the 1st day of January, 1999 which superceded all previous agreements;

AND WHEREAS the parties now wish to create a new lease commencing on the 1st day of August, 2006 which will supersede all previous agreements;

NOW THEREFORE in consideration of the mutual covenants, conditions and agreements herein contained, the City and Curling Club agree as follows:

- 1.01 THE PREMISES. The City hereby leases to the Curling Club the building outlined in Schedule "A" and known as the "Kelowna Curling Rink" (hereinafter called the "Premises").
- 2.01 TERM OF THE LEASE. The term of the lease shall be from the 1st day of August, 2006 to and including the 31st day of December, A.D. 2023.
- 3.01 RENT. The Curling Club shall yield and pay to the City rent for the Premises, the sum of \$1.00 per year during the term of the lease, to be paid on January 1st of each year,

except for the year 2006, for which the rent shall be prorated to cover the months of August to December, to be paid on August 1st.

- 4.00 CURLING CLUB'S COVENANTS. The Curling Club covenants with the City:
- 4.01 RENT. To pay rent.
- 4.02 TAXES. That it will pay promptly as the same becomes due all rates, taxes, property taxes and assessments, of whatsoever description, that may at any time during the existence of this lease be lawfully imposed, or become due and payable upon, or in respect of the business of the Curling Club, the said leased premises and the operations of the Curling Club hereunder, or any part thereof.
- 4.03 BUSINESS LICENCES AND PERMITS. That it will procure and maintain, at the cost and expense of the Curling Club, such licences, permits or approvals from any Federal, Provincial, Municipal or other Government authorities, and such private permits as may be necessary to enable the Curling Club to furnish the services and conduct the operations provided for in this lease.
- 4.04 ALL UTILITIES. That it will pay promptly as the same becomes due all utility rates, charges and assessments, of whatsoever description, that may at any time during the existence of this lease be lawfully imposed, or become due and payable, upon, or in respect of the business of the Curling Club, the said leased premises and the operations of the Curling Club hereunder, or any part thereof.
- 4.05 REPAIR. To repair, maintain and keep the Premises and all trade fixtures and improvements therein in good substantial repair, at its own expense, subject only to damage by fire, lightning, tempest or other casualty against which the Curling Club is insured; and that the City, its agents or employees, may enter and view the state of repair, and that the Curling Club will repair according to notice in writing and that the Curling Club will leave the Premises in good repair, and that all repairs to be made in a first class workmanlike manner and to the approval of the City. Notwithstanding anything hereinbefore contained, the City may in any event make repairs to the Premises without notice if such repairs are, in the City's opinion, necessary for the protection of the Premises and the Curling Club covenants and agrees with the City that if the City exercises any such option to repair, the Curling Club will pay to the City all sums which the City shall have expended in making such repairs and that such sums if not so paid shall be recoverable from the Curling Club as rent in arrears. Provided further that in the event that the City from time to time makes repairs as hereinbefore provided, the Curling Club shall not be deemed to have been relieved from the obligation to repair and leave the Premises in a good state of repair.
- 4.06 NUISANCE AND NEGLIGENCE. Not to do, suffer or permit any act which may in any manner, directly or indirectly, cause injury or damage to the Premises or to any fixtures or appurtenances thereof or which may be or become a nuisance to or interference with any one who occupies or has access to any part of the Premises or which may, render the Premises or any part thereof less desirable or injure the reputation thereof.
- 4.07 ASSIGNMENT. Not to assign or sublet in whole or in part without the City's prior consent in writing, which consent may be withheld without reason. The Curling Club also agrees to reimburse the City for all costs that it may incur to effect any assignment agreement at the Curling Club's request. The minimum amount for such assignment

shall be \$300.00. Notwithstanding anything contained herein, the Curling Club shall not be precluded from granting a license for persons to occupy any part of the premises on a day to day basis for a consideration to be charged by the Curling Club.

- 4.08 ABIDE BY LAWS. To abide by and comply with at its own expense all laws, rules, and regulations of every authority which in any manner relates to or affects the business or profession of the Curling Club or the use of the Premises by the Curling Club and to save harmless the City from all costs, charges or damages to which the City may be put or suffer by reason of any breach by the Curling Club of any such law, rule or regulation.
- 4.09 INSURANCE. Without in any way limiting the obligation or liabilities of the Curling Club, the Curling Club shall, at his own expense, maintain and keep in force during the term of this lease, the insurance coverage listed in this Article. The deductible or reimbursement amounts for any of the insurance policies required under this Article are the responsibility of the Curling Club. The City reserves the sole right to amend the coverage from time to time during the term of this lease to ensure adequate coverage for the risks.

The Curling Club shall at the time the contract is signed, and prior to taking occupancy under this lease, submit to the City, a certificate in exactly the same format and wording as per attached Schedule B, for all insurance policies or certified copies of the insurance policies (if requested) required under this Article and shall also provide to the City from time to time, as may be required, satisfactory proof that such policies are still in full force and effect.

Each insurance policy required under this Article shall contain an endorsement to provide all named insureds with prior notice of changes and cancellations. Such endorsement shall be in the following form:

“It is understood and agreed that thirty (30) days notice of any material alteration, transfer, assignment or cancellation of any of the policies listed below, either in part or in whole, will be given to the holder of this certificate.”

Whenever the word “City” is to appear in the insurance policies, the legal name shall be inserted.

LIABILITY INSURANCE. The Curling Club shall be responsible for a policy of public liability and property damage insurance in an amount of no less than Two Million Dollars (\$2,000,000.00) against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect of damage arising out of the performance of this lease. Participant coverage shall be required. The “deductible or reimbursement” for any insurance policy required under this section shall not exceed FIVE THOUSAND DOLLARS (\$5,000.00) per claim.

The City shall be an additional insured on the policy. The policy shall preclude subrogation claims by the insurer against anyone insured thereunder. In addition, such insurance policy shall include the following ‘Cross Liability’ clause:

“The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action brought against any of the named insured by or on behalf of any other named insured.”

PROPERTY INSURANCE. The Curling Club shall be responsible for a policy to insure all buildings at full replacement value of the portion occupied by the Curling Club against loss from physical damage including fire. The City shall be shown as the "Sole Loss Payee" in the policy. The City hereby undertakes to use any proceeds to repair/replace the loss. Any deficiency of the proceeds to affect the repair/loss shall be the responsibility of the Curling Club. Any surpluses accrue to the City.

AUTOMOTIVE INSURANCE. The Curling Club shall licence and insure for business purposes to a minimum of Two Million Dollars (\$2,000,000.00) public liability and property damage, all automotive equipment used by the Curling Club in the conduct of the business provided for in this lease.

- 4.10 NOT TO VOID INSURANCE. Not to do or permit anything to be done which would render any other policy of insurance on the Premises or any part thereof void or voidable or which would cause an increase in the insurance premiums. In the event that the Curling Club does anything that would cause an increase in the insurance premiums on the Premises, the Curling Club shall pay to the City that amount which represents the increase in the insurance premium by virtue of the Curling Club's use or occupation of the Premises.
- 4.11 RULES AND REGULATIONS. That the Curling Club and its agents and employees and all persons visiting or doing business with the Curling Club shall comply strictly with such reasonable rules and regulations as the City may from time to time adopt, and of which written notice shall have been given to the Curling Club. The rules and regulations as aforesaid shall be deemed to be incorporated into and form part of this lease.
- 4.12 CLEANLINESS. Not to permit the Premises to become untidy, unsightly or hazardous or to permit unreasonable quantities of waste or refuse to accumulate in the Premises or outside the Premises in the parking area or other common areas, and at the end of each business day to leave the Premises in a clean and neat condition, to the satisfaction of the City. The Curling Club shall also keep the premises and approaches thereto free of ice and snow.
- 4.13 USE OF PREMISES. Not to use the Premises for any purpose other than a Curling Club or such other activity as may be properly authorized, in writing, by the City and to operate to the satisfaction of the City and in accordance with any conditions or requirements as may from time to time be detailed by the City.
- 4.14 CONDUCT OF BUSINESS. Recognizing that it is in the best interests of the City and the Curling Club that the Curling Club should have exclusive use of the Premises only for the purpose described in Section 4.13 above, the Curling Club agrees with the City as follows:
- (a) To use only professionally fabricated signs on the Premises which have been approved by the City, as to quality, content and location;
 - (b) To use its best efforts to operate an attractive and efficient curling club this will reflect positively upon the image of the City;

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- 4.15 NO OTHER AGREEMENT. No verbal agreements or conversations with any officer, agent, or employee of the City, either before or after the execution of this lease, shall affect or modify any of the terms or obligations herein contained.
- 4.16 FINANCIAL STATEMENTS. To supply to the City, on an annual basis, an audited financial statement for the previous year, no later than three (3) months following the Society's year end.
- 4.17 MAINTENANCE. To maintain the roof, foundation, bearing structure and outside walls, water drains, and sewers of the building in which the Premises form a part in a good and reasonable state of repair; subject to the provisions of this lease concerning destruction or partial destruction by fire or other casualty.
- 4.18 PROVISION OF EQUIPMENT. To provide and install, at the Curling Club's expense, all required equipment. Prior to the installation of any equipment, the Curling Club shall obtain written consent from the City. The installation of equipment shall comply with all applicable codes and regulations.
- 4.19 ALTERATIONS BY CURLING CLUB. The Curling Club agrees not to make any alterations, additions or improvements in or to the Premises without obtaining the City's prior written consent and all such work shall be done only by contractor's or tradesmen or mechanics approved in writing by the City and at the Curling Club's sole expense and at such time, in such manner as the City may approve.
- 4.20 REMOVAL OF ALTERATIONS BY CURLING CLUB. If any alterations, additions or improvements are made to the Premises by the Curling Club, it shall, on the written request of the City, restore the Premises to their condition at the commencement of the term of this lease not later than FIFTEEN (15) days prior to the termination of this lease or, if the City would prefer that any alterations, additions and improvements remain, the City may require the Curling Club to restore the Premises to such extent as the City may deem expedient although retaining as far as possible the alteration, additions and improvements, without any compensation to the Curling Club.
- 4.21 REMOVAL OF CURLING CLUB'S PROPERTY. All Articles of personal property and all business and trade fixtures, machinery and equipment and furniture owned by the Curling Club or installed by the Curling Club in the Premises at the Curling Club's expense shall remain the property of the Curling Club and may be removed by the Curling Club at any time during the term of this lease, PROVIDED that the Curling Club, at its own expense, shall repair any damage to the Premises or to the building caused by such removal or by the original installation.
- 4.22 CAREFREE NET LEASE. The Curling Club acknowledges and agrees that notwithstanding anything else contained herein, this lease shall be a completely carefree net lease for the City as applicable to the premises and the City shall not be responsible during the term of this lease for any costs, charges, expenses or outlays of any nature whatsoever in respect to the lands, buildings and improvements or the contents thereof.
- 5.00 CITY'S COVENANTS. The City covenants with the Curling Club:
- 5.01 QUIET ENJOYMENT. For quiet enjoyment of the Premises.
- 6.00 PROVIDED ALWAYS AND IT IS HEREBY AGREED AS FOLLOWS:

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- 6.01 PROVISO FOR RE-ENTRY ON DEFAULT. If and whenever the rent is not paid in full when due or in case of breach of, or non-observance or non-performance by the Curling Club of any of the provisions of this lease, and if the default continues for TEN (10) days after written notice thereof to the Curling Club, or if the Premises are vacated or remain unoccupied for TEN (10) days or if the term shall be taken in execution or attachment for any cause whatever, then, in every such case, the City, in addition to any other remedy now or hereafter provided by law may, at its option, cancel this lease and re-enter and take possession of the Premises or any part thereof by force if necessary, without any previous notice of intention to re-enter and may remove all persons and property therefrom and may use such force and assistance in making such removal as the City may deem advisable and such re-entry shall not operate as a waiver or satisfaction in whole or in part of any right, claim, or demand arising out of or connected with any breach or violation by the Curling Club of any covenant or agreement on its part to be performed.
- 6.02 NO WARRANTY OF SERVICES BY CITY. The City does not warrant that any service or facility provided by it in accordance with the provisions of this lease will be free from interruption caused by any cause beyond the City's reasonable care and control. No such interruption shall be deemed to be a disturbance of the Curling Club's enjoyment of the Premises nor render the City liable for injury to or in damages to the Curling Club nor relieve the parties from their obligations under this lease. The City shall without delay take all reasonable steps to remove the cause of any such interruption.
- 6.03 CITY NOT LIABLE FOR INTERFERENCE. The City shall not be liable to the Curling Club for any interference or inconvenience caused by any labour dispute or by damage to the Premises or by repairs, alterations, improvements or construction in or adjacent to the Premises, or by failure or interruption of any supply of any utility.
- 6.04 CITY NOT LIABLE FOR INJURY TO CURLING CLUB. The City shall not be liable for any injury or damage to the Curling Club, his agents, employees, customers or invitees as to any of their property while in the Premises or the building, regardless of the cause of such injury or damage, except such injury or damage which may be caused by the negligence of the City, its agents, servants or employees.
- 6.05 INDEMNIFICATION. The Curling Club agrees to reimburse the City for all expense, damages, loss or fines incurred or suffered by the City by reason of any breach, violation or non-performance by the Curling Club of any covenant or provision of this lease or by reason of damage to the premises, persons or property caused by the Curling Club, its employees or agents or persons visiting or doing business with the Curling Club. The Curling Club further covenants and agrees to save and hold harmless the City, its officers, agents, servants and employees, from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the term of this lease, whether such claim shall be made by an employee of the Curling Club, or by a third person and whether or not it shall be claimed that the alleged damage or injury (including death) was caused through a willful or negligent act or omission of the Curling Club, its officers, servants, agents or employees. Further the Curling Club will indemnify and save harmless the City from and against all and any manner of claims for liens, for wages or materials, or for damage to persons or property caused during the making of or in connection with any repairs, alterations, installations and additions which the Curling Club shall make or cause to be made on the premises. Finally, at its own expense, the

- Curling Club shall defend any and all such actions and pay all legal charges, costs, and other costs arising therefrom.
- 6.06 NO REPRESENTATION. The Curling Club agrees that it has leased the Premises after examining the same and that no representations, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the City unless it be made in writing and signed on behalf of the City.
- 6.07 ABATEMENT OF RENT. If the Premises are damaged by any cause for which the City is responsible by virtue of some act or neglect by the City, his servants or agents, then the rent shall be abated in whole or in part according to the portion of the Premises which is not usable by the Curling Club until such damage is repaired.
- 6.08 DAMAGE OR DESTRUCTION OF PREMISES. Subject to the provisions of Clause 6.09, if the Premises shall be damaged by fire or other casualty against which the City is insured, the damage to the Premises shall be repaired by the City with reasonable diligence at its expense except that repairs to alterations, additions or improvements made by the Curling Club shall be performed by the City at the expense of the Curling Club and the Curling Club shall, at its own expense, make all repairs and replacements of property which belongs to the Curling Club.
- 6.09 PREMISES RENDERED UNTENABLE. If the Premises are rendered untenable by fire or other casualty against which the City is insured and if the City shall decide not to restore the same, the City shall, within NINETY (90) days after such fire or other casualty, give to the Curling Club a notice in writing of such decision and thereupon the term of this lease shall expire forthwith and the Curling Club shall vacate the Premises and surrender the same to the City. Upon the termination of this lease under the provisions of this clause, the Curling Club's liability for rent shall cease as of the day following the fire or other casualty.
- 6.10 RIGHT OF ENTRY. The Curling Club agrees that the City shall have the right to enter the Premises at all reasonable times to examine the same. If and when the City is required to make necessary repairs on behalf of, and at the cost of, the Curling Club as outlined in Section 4.05 above, the City shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs are being made by reason of interruption of the business of the Curling Club. The City will exercise reasonable diligence as to minimize the disturbance or interruption of the Curling Club's operations.
- 6.11 DISTRAINT. If the City levies distress against the goods and chattels of the Curling Club, such force as may be deemed necessary for the purpose and for gaining admission to the Premises may be used without the City being liable to any action in respect thereof or for any loss or damage occasioned thereby and the Curling Club hereby expressly releases the City, its employees and agents from all actions, proceedings, claims or demands whatsoever for or on account or in respect of any such forcible entry or any loss or damage sustained by the Curling Club in connection therewith.
- 6.12 COSTS OF RECOVERY. If the City shall consider it desirable to retain the services of a lawyer or any other person reasonably necessary for the purpose of assisting the City in enforcing any of its rights hereunder in the event of default on the part of the Curling

Club, it shall be entitled to collect from the Curling Club the cost of all such services as if the same were rent.

- 6.13 INTEREST ADDED TO COSTS OF DEFAULT. Without prejudice to any other remedy of the City, any money payable by the Curling Club to the City hereunder, other than the rent referred to in Section 3.01 of this lease, shall be deemed to be rent and shall be subject to "Interest Penalty on Overdue Rent" as outlined in Section 6.15 of this lease from the date due or the date the City shall have paid out the same, and shall be paid as additional rent and shall be collectable as rent and unless otherwise provided in this lease, shall be payable with the next ensuing installment of rent.
- 6.14 INTEREST PENALTY ON OVERDUE RENT. Without waiving any right of action of the City in event of late payment or default of payment or rents due herein, the Curling Club shall pay a penalty of two percent (2%) per month or any portion thereof compounded monthly (26.82% per annum) effective from the day the amount is due. In order to reflect prevailing interest rates, the City may review and adjust the penalty rate from time to time.
- 6.15 NO WAIVER. The failure of the City to insist upon strict performance of any covenant or condition in this lease or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition or option and no waiver shall be inferred from or implied by anything done or omitted by the City save only express waiver in writing. The acceptance of any rent or the performance of any obligation hereunder by a person other than the Curling Club shall not be construed as an admission by the City of any right, title or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the Curling Club.
- 6.16 OVERHOLDING. If the Curling Club shall continue to occupy the Premises after the expiration of the term hereby granted and the City shall accept rent, the new tenancy thereby created shall be deemed to be a monthly tenancy and shall be subject to the covenants and conditions contained in this lease insofar as the same are applicable to a tenancy from month to month save and except that the rental payable shall be as determined by the City.
- 6.17 ENVIRONMENTAL MATTERS.
- (a) Definitions. For the purposes of this Section and Lease, the following terms shall have the following meanings:
- (i) **"Contaminants"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (ii) **"Environment"** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, ground water and surface water);

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- (iii) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Premises now or hereafter in force with respect in any way to the Environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and
- (iv) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.
- (b) Curling Club's Representations and Warranties. The Curling Club represents and warrants to the City, and acknowledges that the City is relying on such representations and warranties in entering into this Lease, that as of the date of this Lease:
- (i) except as disclosed to the City in writing, the Curling Club is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other or proceeding under any Environmental Laws; and
- (ii) except as disclosed to and approved in writing by the City, the Curling Club's business at the Premises does not involve the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with any Contaminants.
- If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Lease by the Curling Club and shall be subject to the provisions of Section 6.01 of this Lease.
- (c) Condition of Premises. The Curling Club acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Premises and is leasing the Premises to the Curling Club under this Lease on an "as is, where is" basis with respect to their environmental condition. Prior to taking possession of the Premises under this Lease, the Curling Club has performed such investigations of the Premises as it considered appropriate and is satisfied as to their environmental condition.
- (d) Use of Contaminants. The Curling Club shall not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with, any Contaminants, without the prior written consent of the City, which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Curling Club shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises, or any adjacent property to become a contaminated site under Environmental Laws.

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- (e) Compliance with Environmental Laws. The Curling Club shall promptly and strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises under or pursuant to this Lease, including without limitation obtaining all required permits or other authorizations.
- (f) Evidence of Compliance. The Curling Club shall promptly provide to the City a copy of any environmental site investigation, assessment, audit or report relating to the Premises conducted by or for the Curling Club at any time before, during or after the Term (or any renewal thereof). The Curling Club shall, at its own cost at the City's request from time to time, obtain from an independent environmental consultant approved by the City an environmental site investigation of the Premises or an environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the City and shall include any additional investigations that the environmental consultant may recommend. The Curling Club shall, at the City's request from time to time, provide the City with a certificate of a senior officer of the Curling Club certifying that the Curling Club is in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Premises, other than as disclosed in writing to the City.
- (g) Confidentiality of Environmental Reports. The Curling Club shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Curling Club's professional advisers and lenders on a need to know basis or with the prior written consent of the City, which consent may be unreasonably withheld.
- (h) Records. The Curling Club shall maintain at the Premises all environmental and operating documents and records, including permits, licences, orders, approvals, certificates, authorizations, registrations and other such records, relating to the operations at the Premises, which may be reviewed by the City at any time during the Term on twenty-four (24) hours' prior written notice, except in the case of an emergency, when no prior notice shall be required.
- (i) Access by City. Without relieving the Curling Club of any of its obligations under this Lease, the Curling Club shall, at such reasonable times as the City requires, permit the City to enter and inspect the Premises and the operations conducted at the Premises, to conduct tests and environmental investigations, to remove samples from the Premises, to examine and make copies of any documents or records relating to the Premises, to interview the Curling Club's employees and to take such steps as the City deems necessary for the safety and preservation of the Premises.
- (j) Authorizations. The Curling Club shall promptly provide to the City on request such written authorizations as the City may require from time to time to make inquiries of any governmental authorities regarding the Curling Club's compliance with Environmental Laws.
- (k) Notices. The Curling Club shall promptly notify the City in writing of:

- (i) any Release of a Contaminant or any other occurrence or condition at the Premises, or any adjacent property which could subject the Curling Club, the City or the Premises to any fines, penalties, orders or proceedings under Environmental Laws;
- (ii) any charge, order, investigation or notice of violation or non-compliance issued against the Curling Club or relating to the operations at the Premises under any Environmental Laws; and
- (iii) any notice, claim, action or other proceeding by any third party against the Curling Club or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.

The Curling Club shall notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Premises in accordance with Environmental Laws and failure by the Curling Club to do so shall authorize, but not obligate, the City to notify the regulatory authorities.

- (l) Removal of Contaminants. Prior to the expiry or earlier termination of this Lease or at any time if requested by the City or required by any governmental authority pursuant to Environmental Laws, the Curling Club shall, promptly at its own cost and in accordance with Environmental Laws, remove from the Premises any and all Contaminants, and remediate any contamination of the Premises, or any adjacent property resulting from Contaminants, in either case brought onto, used at or Released from the Premises by the Curling Club or any person for whom it is in law responsible. [For greater certainty, the foregoing obligations of the Curling Club shall include, without limitation, the treatment of water (including surface and ground water) and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation by the applicable governmental authority, being with respect to soils, the standard applicable to property used for [commercial/industrial] purposes and with respect to water, as determined by the governmental authority given the character and use of water in the area of the Premises. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence.] The Curling Club shall provide to the City full information with respect to any remedial work performed pursuant to this section and shall comply with the City's requirements with respect to such work. The Curling Club shall use a qualified environmental consultant approved by the City to perform the remediation. The Curling Club shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the City, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. The Curling Club agrees that if the City reasonably determines that the City, its property, its reputation or the Premises is placed in any jeopardy by the requirement for any such remedial work, the City may, but shall be under no obligation to, undertake itself such work or any part thereof at the cost of the Curling Club.
- (m) Ownership of Contaminants. Notwithstanding any rule of law to the contrary, any Contaminants or leasehold improvements or goods containing Contaminants

brought onto, used at, or Released from, the Premises by the Curling Club or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Curling Club and shall not become the property of the City, notwithstanding the degree of their affixation to the Premises and notwithstanding the expiry or earlier termination of this Lease. This section supersedes any other provision of this Lease to the contrary.

- (n) Indemnity. The Curling Club shall indemnify and save harmless the City and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including without limitation, the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Premises, and any adjacent property) which may be paid by, incurred by or asserted against the City or its directors, officers, shareholders, employees, agents, successors or assigns, during or after the Term (or any renewal thereof), arising from or in connection with any breach of or non-compliance with the provisions of this Section by the Curling Club or arising from or in connection with:
- (i) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including without limitation any governmental authority, against any one or more of them pursuant to or under Environmental Laws; or
 - (ii) any Release or alleged Release of any contaminants at or from the Premises into the Environment,

related to or as a result of the use and occupation of the Premises by the Curling Club or those for whom it is in law responsible or any act or omission of the Curling Club or any person for whom it is in law responsible.

- (o) Survival of Curling Club's Obligations. The obligations of the Curling Club under this Section (including, without limitation, the Curling Club's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Lease. The obligations of the Curling Club under this Section are in addition to, and shall not limit, the obligations of the Curling Club contained in other provisions of this Lease.
- 6.18 INSOLVENCY In case the Curling Club shall become insolvent or bankrupt or make an assignment for the benefit of creditors, or in the case of non-payment of rent at the times herein provided, or in the case the premises or any part thereof become vacant and unoccupied for a period of sixty (60) days or be used by any other person or persons or for any other purpose than as hereinbefore provided, without the written consent of the City or should any of the other covenants to be performed by the Curling Club not be performed, this lease shall at the option of the City, cease and be void and the term hereby created expire and be at an end, anything herein to the contrary notwithstanding and the then rent and all additional rent shall thereupon immediately become due and payable, and the City may re-enter and take possession of the premises as though the Curling Club or other occupant or occupants of the premises were holding over after the expiration of the said term and term shall be forfeited and void.

6.19 **TERMINATION.** Notwithstanding any other provision contained herein, this lease shall terminate no later December 31st, 2023, and the City shall at the expiration of this term take possession of the premises for the exclusive use of the City for whatever purpose the City deems appropriate or necessary. It is acknowledged and agreed that upon the termination of the lease, the land, buildings and improvements thereon except for the business and trade fixtures and furniture, shall become the property of the City absolutely. Notwithstanding anything else contained herein, the City shall have the right to terminate this lease in any of the following instances:

- (a) In the event the Curling Club fails to pay annual rent by the prescribed due date.
- (b) In the event the Curling Club shall be in breach of the provisions of this Lease and not remedy same after seven (7) days notice in writing from the City to do so.

Upon the termination of this lease, the Curling Club shall leave the Premises tidy and free of all implements or equipment and shall peaceably surrender said Premises to the City.

6.20 **CANCELLATION.** Notwithstanding any other provision herein contained the City may, at any time during the term of this Lease if the City should require the premises for public purposes, terminate the Lease upon giving the Curling Club twelve (12) months notice of its intention so to do and the Curling Club shall, prior to the expiration of such notice, remove from the premises. In the event of such termination the City shall provide an alternative site for the Curling Club for the then unexpired term of this Lease or pay compensation in lieu thereof as may be agreed upon between the City and the Curling Club or upon failure to agree then as determined pursuant to the Municipal Act.

6.21 **NOTICES.** All notices provided hereunder to be given in writing shall be deemed given when delivered to or mailed and addressed to the other party as follows:

If to the City:

Development Manager
City of Kelowna
1435 Water Street
Kelowna, BC
V1Y 1J4



If to the Curling Club:

Board of Directors
Kelowna Curling Club
551 Recreation Avenue
Kelowna, B.C.
V1Y 7V5

6.22 **ENUREMENT.** This lease and everything herein contained shall enure to the benefit of and be binding upon the parties and their heirs, executors, administrators, successors and permitted assigns. Wherever the singular or masculine is used the same shall be construed as meaning the plural or feminine or body corporate or politic as the context may require.

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- 6.23 SEVERABILITY. If any term or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Lease and the application of that term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals in the presence of their officers duly authorized in that behalf, or have hereunto set their hands and seals, as the case may be, on the day and year first above written.

The Corporate Seal of the CITY OF KELOWNA)
was hereunto affixed in the presence of:)
)
)
)
_____)
Mayor)
)
_____)
City Clerk)

The Corporate Seal of the KELOWNA CURLING)
CLUB was hereunto affixed in the presence of its)
officers duly authorized in that behalf:)
)
)
)
_____)
)
_____)
)

SCHEDULE "A"

PREMISES

The Premises are that building known as the "Kelowna Curling Rink" located on lands legally described as Lot A, Plan KAP76448, Section 25, Township 25, O.D.Y.D., and located at 551 Recreation Avenue, Kelowna, B.C., as shown on the drawing also attached hereto.

