
CITY OF KELOWNA
MEMORANDUM

Date: June 7, 2001
File No.: 0880-20
To: City Manager
From: Properties Supervisor
Subject: **Renewal of Lease for Mission Branch Library**

RECOMMENDATION:

THAT City Council approve a lease renewal with Save on Shoes Ltd. (the landlord) for the Mission Branch of the Okanagan Regional Library.

BACKGROUND:

This lease is a renewal of an existing lease with Save on Shoes Ltd. for the Mission Branch of the Okanagan Regional Library located at #5-3818 Gordon Drive.

The existing lease matured at the end of 2000 and Civic Properties has had discussions with the landlord and the Okanagan Regional Library regarding renewal of the lease. The existing lease is for 2515 square feet at a rate of \$12 per square foot. The proposed lease is for a five-year term from December 01, 2000 to November 31, 2005. The first two years is at a rate of \$12 per square foot (\$30,180 p.a. + GST) increasing to \$13 per square foot (\$32,695 p.a. + GST) for the balance of the five year term.

Jim Waugh
Properties Supervisor

JW/cm

cc: Director of Parks & Leisure Services
Civic Properties Manager
Deputy Director of Finance
Executive Director, OK Regional Library

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- (i) all costs and expenses from time to time incurred by or levied on the Landlord in respect of repairing, maintaining, cleaning, heating, lighting, air conditioning and ventilating the Building and the Lands and any fixtures and appurtenances thereof and any improvements thereto, and
 - (ii) all premiums from time to time paid by the Landlord for fire, casualty, liability, loss of rental revenue, plate glass and other insurance in respect of the Building, the Lands and all fixtures and appurtenances thereof and improvements thereto, and
 - (iii) all costs and expenses from time to time incurred by or levied on the Landlord in respect of janitorial services and garbage disposal for the Building and the Lands, and
 - (iv) all Taxes from time to time levied by any Taxing Authority on the Building and the Lands or either of them or on the Landlord in respect of the Building and the Lands or either of them or on the Landlord in respect of rent under this lease, and
 - (v) all Utility Charges from time to time levied on the Building and the Lands or either of them or on the Landlord in respect of the Building and the Lands or either of them, and
 - (vi) all costs of landscaping the Lands and maintaining the exterior of the Building and of cleaning and snow and ice removal in the parking areas on the Lands,
- but not interest on debt, income, capital gains or corporate taxes of the Landlord or costs for which the Landlord is reimbursed by proceeds of insurance;
- (e) "Proportionate Share" means the Tenants share calculated on the basis of the percentage which the floor area of the Leased Premises bears to the Total Rentable Area;
 - (f) "Taxes" means all taxes, rates, duties, licenses, levies, fees and the costs of all works undertaken as local improvements by any Taxing Authority and levied on the owners or occupiers of Lands benefitting or deemed to benefit from such works;
 - (g) "Taxing Authority" means any school, municipal, regional, provincial, federal, parliamentary or other governmental or statutory body, corporation or authority;
 - (h) "Tenant's Taxes" means all taxes levied by any taxing authority on the Landlord or the Tenant in respect of the Leased Premises, in respect of the business or profession of the Tenant or in respect of improvements, fixtures, machinery, chattels or equipment brought onto or installed in the Leased Premises by the Tenant or at the respect of the Tenant, and whether or not such taxes are included by the taxing authority in the taxes included in operating expenses; including general sales tax;
 - (i) "Tenant's Utility Charges" means all utility charges levied separately against the Leased Premises or on the Tenant or the Landlord in respect of the Leased Premises;

- (j) "Total Rentable Area" means the total of the rentable areas of all premises in the Building (including the Leased Premises) leased or set aside or intended by the Landlord to be leased to tenants;
- (k) "Utility Charges" means all charges for electricity heat, light, power, gas, oil, water, sewer or telephone provided to or made available upon the Building and the Lands or either of them;
- (l) "Moveable Trade Fixtures" means all trade fixtures which can be removed without damage to the Leased Premises.

NET LEASE

2. The Tenant acknowledges and agrees that it is intended that the Lease shall be a completely care free net lease for the Landlord, except as expressly hereinafter set out, that the Landlord shall not be responsible during the Term for any costs, taxes, charges, expenses or outlays of any nature whatsoever arising from or relating to the Leased Premises or the contents thereof and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises including all costs, taxes, charges, expenses and outlays of every nature and kind relating to the Building and the Lands (or either of them) and not directly levied on any tenant of the Building and the Tenant covenants with the Landlord accordingly.
3. WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord does demise and lease unto the Tenant that portion of the Building as shown outlined in bold black on the plan attached hereto as Schedule "1" and containing a gross rentable area of twenty-five hundred and fifteen square feet (hereinafter called the "Leased Premises"), and situated on those lands and premises owned by the Landlord in the City of Kelowna, in the Province of British Columbia described as:

Lot B, D.L. 134, O.D.Y.D., Plan 40137

(herein called the "Lands")

TERM

4. To have and to hold the Leased Premises for the period of five years beginning December 1st, 2000 and ending on November 30th, 2005.

4.(a) PARKING

The parking lot is provided for the customers and patrons of the Mission Station tenants. The Tenant shall have the right in the future as needed to request up to 10 stalls to be reserved for their patrons. Such a request shall be granted by the Landlord if such a decision does not negatively impact other tenants in the Mission Station. Such approval shall not be unreasonably withheld. The Landlord shall have the right to assign the reserved stalls and shall mark them appropriately.

RENT

5. Yielding and paying therefor during the Term unto the Landlord as Rent the sums of lawful money of Canada as hereinafter determined and payable in equal monthly sums on the first day of each and every month in each and every year during the Term. If the Term commences on any day other than the first or ends on any day other than the last day of a month, Rent for a fraction of the month at the commencement and at the end of the Term shall be adjusted pro rata.
 - (a) For the years 1 and 2 of the lease the annual rental shall be Thirty Thousand, One Hundred Eighty Dollars (\$30,180.00) plus G.S.T., payable in equal monthly installments of Two Thousand, Five Hundred Fifteen Dollars (\$2,515.00) plus G.S.T., commencing on the first day of December, 2000 and continuing on the first day of each month thereafter up to and including November, 2002. Commencing on the first day of December, 2002 and continuing on the first day of each month thereafter up to and including November, 2005 the annual rental shall be Thirty-Two Thousand, Six Hundred Ninety-Five Dollars (\$32,695.00) plus G.S.T., payable in equal monthly installments of Two Thousand, Seven Hundred Twenty-Four Dollars and Fifty-Eight Cents (\$2,724.58) plus G.S.T.

TENANT'S COVENANTS

6. The Tenant covenants with the Landlord as follows:
 - (a) To pay Rent;
 - (b) To pay within 30 days of being notified the Tenant's Taxes and the Tenant's Utility Charges, and if any time for any reason during the Term of this Lease the Landlord pays any of the foregoing, then a sum equal to the amount so paid shall be included in Direct Costs and paid to the Landlord within 30 days;
 - (c) To pay within 30 days of being notified by the Landlord as additional rent all "Direct Costs";
 - (d) To pay as additional rent its Proportionate Share of the Operating Expenses which shall be paid monthly in accordance with the reasonable forward estimates thereof made by the Landlord and shall be adjusted at least once (or more often at the discretion of the Landlord) in each year during the Term, on the basis of actual Operating Expenses experienced during the period to which the adjustments relate. The Landlord agrees to allow the Tenant to review all receipts and invoices relating to Operating Expenses, once per year during the Term during normal business hours. The certificate of a chartered accountant appointed by the Landlord shall, in the event of dispute, be conclusive and binding on the Landlord and the Tenant as to any amounts payable under this paragraph and the cost of obtaining such certificate shall be included in Direct Costs and be borne by the Tenant;
 - (e) And to repair and at the Tenant's sole cost during the whole of the Term to keep and maintain the Leased Premises and all fixtures, fittings and improvements thereto in good working order and first class condition including periodic painting and decoration and to make all needed maintenance, repairs and replacements thereto with due diligence and dispatch, and the Landlord may enter and view the state of repair, and that the Tenant will repair according to notice but failure of the Landlord to give notice shall not relieve the Tenant from its obligation to repair;

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- (f) If any part of the Leased Premises or any fixtures, fittings or improvements thereon or thereto get out of repair or become stopped up, unusable, damaged or destroyed through negligence carelessness or misuse of the Tenant, its servants, agents, employees, invitees or any one permitted by the Tenant to be in the Leased Premises, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant and included in Direct Costs;
 - (g) Not to sublet or assign in whole or in part without first notifying the Landlord in writing of the intent to sublet or assign, the date such subletting or assigning is to take effect providing financial information about the proposed sub-tenant assignee and obtaining the Landlord's prior written consent, and provided always that for the purpose of this clause, subletting or assignment shall include the sale of the Tenant's business either by way of sale of assets or by the sale of share capital of the Tenant, as the case may be, but shall not include a transfer of a portion of the shares of the Tenant which does not constitute a transfer of the control of the Tenant. In no event shall any assignment or subletting to which the Landlord has consented release or relieve the Tenant or the Indemnifier from its obligations to perform all the terms and conditions of this lease and in any event the Tenant shall be liable for the Landlord's reasonable costs incurred in connection with the Tenant's request for consent;
 - (h) To comply at its own expense with all provisions of law including, without limiting the generality of the foregoing, federal and provincial legislative enactments, building bylaws and any other governmental or municipal regulations which relate to the partitioning, equipment, operation and use of the Leased Premises, and to the making of any repairs, replacements, alterations, additions or improvements of or to the Leased Premises;
 - (i) Not to do or suffer any waste or damage, disfiguration or injury to the Leased Premises, the Building or the fixtures, fittings and improvements thereto and not to permit or suffer any overloading of the floors of the Leased Premises or the Building, and to keep the Leased Premises in a neat and tidy condition;
 - (j) The Tenant shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the Landlord, its officers, employees and agents (the Indemnitees) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this lease agreement excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.

The Tenant shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this lease agreement, excepting only where such claim, demand, action, proceeding or liability is based solely on the negligence of the Indemnitees.

- (k) Not to make to, or erect in the Leased Premises any alterations, additions, decorations or improvements without submitting drawings and specifications to the Landlord and obtaining the Landlord's prior written consent in each instance. Any work performed in the Leased Premises by contractors engaged by the Tenant shall be subject to all conditions which the Landlord may impose and the Tenant covenants to prosecute such work to completion with reasonable diligence; provided nevertheless that the Landlord may at its option require that the Landlord's contractors be engaged for any mechanical or electrical work other than for the installation of leasehold improvements;

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- (l) Not suffer or permit during the Term any mechanic's liens or other liens for work, labour, services or material ordered by the Tenant or for the cost in which the Tenant may be in any way obligated, or any conditional sales agreements or chattel mortgages to attach to the Leased Premises or to the Building or the Lands and that whenever and so often as any such liens or claims therefor or conditional sales agreements or chattel mortgages shall be registered, the Tenant shall immediately discharge the same; and to allow the Landlord to post and keep posted on the Leased Premises any notice which the Landlord may wish to post under the provisions of the Builders Lien Act;
 - (m) To restore immediately, and with glass of the same colour and quality, any interior glass within, forming part of or bounding the Leased Premises that is damaged or broken during the Term;
 - (n) Not to paint, display, inscribe, place or affix any sign, fixture, advertisement, notice, lettering or discretion on the outside of the Building or Leased Premises or on windows of the Building or that are visible from the outside of the Building without the prior written consent of the Landlord, it being understood that the purpose of this clause is to ensure that the Tenant's signs conform with the visual impact and style desired by the Landlord for the exterior of the Building;
 - (o) If either party hereto wishes to register this lease in the Kamloops Land Title Office then the cost of putting this lease in registrable form and registering same shall be borne by the party desiring to register same;
 - (p) At any time and from time to time upon not less than ten (10) days prior notice, to execute and deliver to the Landlord or such other person or corporation that the Landlord directs, a written statement certifying that this Lease is in full force and effect and unmodified (or if modified, specifying the modifications), the amount of the annual rental then being paid hereunder, whether or not any pre-payments have been made hereunder, and if so, details thereof, the dates to which other levies or charges hereunder have been paid, and whether or not there is any existing default on the part of the Landlord of which the Tenant has notice;
 - (q) Not to install or use any equipment which will exceed or overload the capacity of any utility of any utility facilities on the Leased Premises;
 - (r) To notify the Landlord immediately that the Tenant becomes aware of any fire or accident in the Leased Premises or any damage to or malfunctioning of any heating, electrical, plumbing, mechanical or ventilating system in the Building or any damage to the foundations structure, roof, exterior walls or supporting walls of the Building;
 - (s) Not to employ more employees in the Leased Premises than are from time to time authorized or permitted by the relevant governmental acts, statutes, regulations and other authorities having regard to washroom, lunchroom, and other facilities presently available in or to the Leased Premises and having regard also to any other relevant working conditions, provided that if the Tenant wishes to employ more employees in the Leased Premises than are from time to time so authorized or permitted then, subject to the provisions of this Lease, the Tenant may, at his sole expense, install additional washroom, lunchroom or other facilities in the Leased Premises or otherwise alter the working conditions of the Leased Premises to permit such increased number of employees.

LANDLORD'S COVENANTS

7. Subject to the terms and provisions of this Lease, the Landlord covenants with the Tenant as follows:
- (a) That provided the Tenant pays the rent hereby reserved and observes and performs the covenants and agreements herein contained and on the part of the Tenant to be observed and performed, the Tenant shall and may peaceably possess and enjoy the Leased Premises for the Term here granted without interruption of disturbance from the Landlord, or any persons lawfully claiming by, through or under the Landlord;
 - (b) To supply water for normal drinking and sanitary requirements of the Tenant, without in any case being liable for any loss, damage or inconvenience resulting from failure of the water supply to the Building by the legal water authority.

LIMITATION OF LANDLORD'S COVENANTS

8. Unless negligent, the Landlord shall not be liable for any direct, indirect or consequential loss, damage, injury or expense caused the Tenant, its agents, employees, invitees and licensees or its or their property by or arising from:
- (a) fire, explosion, falling plaster, gas, electricity or seeping or leaking water; or
 - (b) the interruption for any reason whatsoever, of any service facility or utility provided by the Landlord;
 - (c) the Landlord observing, performing, exercising or enforcing any covenant, agreement, right or remedy of the Landlord;
 - (d) any other cause beyond the reasonable control of the Landlord.

INSURANCE

9. The Landlord covenants to effect and maintain insurance of the Building and the Lands, but excluding all tenants' fixtures, fittings, machinery, chattels, equipment and improvements, plate and all glass insurance for insurable risks against which and in amounts for which a prudent landlord would protect itself. The Tenant's Proportionate Share of such costs of insurance herein shall be paid by the Tenant as "Direct Costs" in accordance with Clause 6(c) of this Lease.
10. The Tenant shall, without limiting its obligations or liabilities under this lease agreement, procure and maintain, at its own expense and cost, the insurance policies listed in Appendix A-1. The insurance policies shall be maintained continuously from the date of commencement of this lease agreement until the date of termination of the lease agreement or such further period as may be specified in Appendix A.
11. The Tenant covenants not to do or omit or permit to be done or omitted upon the Leased Premises anything whereby any policy of insurance effected by the Landlord or the Tenant pursuant to this Lease may be invalidated, or the coverage thereunder reduced and will immediately upon notice from the Landlord, remedy the condition giving rise to the invalidation or threatened invalidation or reduction in coverage and in default the Landlord may at its option either cancel this Lease or enter the Leased Premises and remedy the condition, and the costs occasioned thereby shall be included in Direct Costs and paid to the Landlord immediately on demand.

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12. If the Tenant does or omits or permits to be done or omitted upon the Leased Premises anything whereby the premiums for any insurance carried by the Landlord with respect to the Building or the Lands are increased, the amount of such increase shall be included in Direct Costs and paid to the Landlord immediately on demand from time to time during the Term.

USE OF LEASED PREMISES

13. The premises shall be exclusively used for the purpose of a Public Library.
- Tenants shall be allowed to carry educational video films only, and no other video films.

OFFENSIVE TRADE, ETC.

14. Notwithstanding the generality of Clause 13, the Tenant covenants not to carry on or permit to be carried on in the Leased Premises any noisy or offensive trade or business or any acts or practices which may injure the Leased Premises or the Building or which may be a nuisance, disturbance or menace to the Landlord, and not to allow odours to escape from the Leased Premises which in the opinion of the Landlord are offensive.

ACCESS TO LEASED PREMISES TO REPAIR, ETC.

15. The Landlord, its agents, employees and contractors, with materials and equipment, shall have the right at all times to enter on the Leased Premises to effect repairs, alterations, improvements or additions to the Leased Premises, the Building and the Lands or any of them or to preserve any of them from injury or damage, and no such entry or work shall constitute an eviction of the Tenant in whole or in part, PROVIDED that if:
- (i) the damage to the Leased Premises was not a result of the actions or the negligence of the Tenant, and
 - (ii) work on the Premises prevents the carrying on of business by the Tenant, and
 - (iii) the repairs prevent the Tenant from carrying on business for greater than five (5) working days;

then the rent shall abate pro rata from that point forward.

LANDLORD MAY SHOW LEASED PREMISES

16. The Landlord or its agents shall have the right at all reasonable times to enter the Leased Premises to examine them and to show them to prospective purchasers, lessees or mortgagees and during the six months prior to the expiration of the Term may place on the Leased Premises the usual notices to let or for sale which notices the Tenant shall permit to remain thereon without molestation.

LANDLORD MAY ENTER FORCIBLY

17. If the Tenant shall not be personally present to open and permit entry to the Leased Premises at any time, when for any reason on entry therein shall be necessary or permissible pursuant to Clause 11, 15 or 16 or any other clause of this Lease, the Landlord, its agents, employees or contractors may enter the Leased Premises by a master key or forcibly without rendering the Landlord or such agents, employees or contractors liable therefor and without in any manner affecting the obligations or covenants of the Tenant herein, and the Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort or for any damage or injury to property or persons in the Leased Premises occasioned by any such entry or by any work done in connection with such entry.

SURRENDER OF LEASED PREMISES

18. At the end or sooner determination of the Term, the Tenant shall surrender and yield up to the Landlord the Leased Premises in the same state of repair as they were at the commencement of the Term, reasonable wear and tear excepted.

REMOVAL OF FIXTURES

19. All alterations, additions, decorations and improvements made by the Tenant to the Leased Premises, other than the Tenant's moveable fixtures, shall immediately become the property of the Landlord without compensation therefor to the Tenant and shall not be removed from the Leased Premises either during or at the end or sooner determination of the Term except that:
- (a) the Tenant may, if not in default, remove its moveable trade fixtures; and
 - (b) the Tenant shall, at the end or sooner determination of the Term, remove only his moveable trade fixtures; and
 - (c) in the case of every such removal, the Tenant shall repair any damage to the Leased Premises caused by the installation and removal of any such moveable trade fixtures, and the cost of all such removal shall be borne by the Tenant.

NO REPRESENTATIONS

20. The Tenant agrees that no representation, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the Landlord unless in writing and signed on behalf of the Landlord.

SUBORDINATION

21. This Lease and all of the rights of the Tenant hereunder are, and shall at all times be, subject and subordinate to any and all mortgages, trust deeds and debentures, now or hereafter in force or registered against the Lands and improvements thereto, and all renewals, extensions and modifications thereof and all advances of money made thereunder. The Tenant covenants to execute in registerable form immediately on request from time to time, any assurances that the Landlord may require to confirm this subordination, and will if requested attorn as Tenant to the holder of any such mortgages, trust deeds and debentures.

DAMAGE OR DESTRUCTION

22. If the Leased Premises are damaged by fire or other casualty, then:
- (a) the rent (but not sums payable hereunder as additional rent) shall be abated in whole or in part in the proportion that the area of the untenable or non-usable portion of the Leased Premises is to the total Leased Premises until such damage is repaired provided that there shall be no abatement for time required to repair or replace the Tenant's trade fixtures or the alterations, additions, decorations and improvements made to the Leased Premises by the Tenant which is in excess of the time required to make other necessary repairs or replacements;
 - (b) subject to the provisions of Clause 23, the damage to the Leased Premises shall be repaired by the Landlord with reasonable diligence but the cost of repairs and replacements of the Tenant's trade fixtures and of the alterations, additions, decorations and improvements made to the Leased Premises by the Tenant shall be borne by the Tenant.

DESTRUCTION OF LEASED PREMISES OR BUILDING

23. If the Leased Premises are so damaged that the Landlord decides not to restore the Leased Premises, the Landlord shall within sixty (60) days after the fire or other casualty give to the Tenant a notice in writing of such decision, and thereupon the Term of this Lease shall end, and the Tenant shall vacate the Leased Premises and surrender them to the Landlord, but if the Leased Premises were untenable during such period the Tenant's liability for rent shall cease as of the day following the fire or other casualty.

DEFAULT OF TENANT

24. If and whenever the rent hereby reserved or any part thereof shall not be paid on the day appointed for payment thereof, whether lawfully demanded or not, or in case of breach or non-observance or non-performance of any of the covenants, agreements, provisos and conditions on the part of the Tenant to be kept, observed or performed, or in case the Leased Premises shall be vacated or remain unoccupied for ten (10) days, or in case the term shall be taken in execution or attachment for any cause whatever, then and in every such case, it shall be lawful for the Landlord without notice thereafter to enter into and upon the Leased Premises or any part thereof in the name of the whole and the same to have again, repossess and enjoy as if its former estate, anything in this Lease contained to the contrary notwithstanding.

BANKRUPTCY, ETC.

25. In case, without the written consent of the Landlord, the Leased Premises or any part thereof shall be used by any other person other than the Tenant or for any other purpose than that for which the same were let or in case the Term or any of the goods and chattels of the Tenant shall be at any time seized in execution or attachment by a creditor of the Tenant or if the Tenant or any Indemnitor shall make any assignment for the benefit of creditors or any bulk sale or become bankrupt or insolvent or take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors, or, if the Tenant or any Indemnitor is a corporation and any order shall be made for the winding up of the Tenant or such Indemnitor, or other termination of the corporate existence of the Tenant or Indemnitor, then in any such case this Lease shall at the option of the Landlord cease and terminate and the Term shall immediately become forfeited and void and the then month's rent and the next ensuing three months rent shall immediately become due and be paid and the Landlord may re-enter and take possession of the Leased Premises as though the Tenant or other occupant or occupants of the Leased Premises was or were holding over after the expiration of the Term without any right whatever, and in such event, Clause 30 shall not apply.

DISTRESS

26. The Landlord shall have the right to distrain for rent in arrears against the goods and chattels of the Tenant and may use such force as may be necessary for that purpose and for gaining admittance to the premises without being liable for any action in respect thereof, of for any loss or damage occasioned thereby and the Tenant hereby expressly releases the Landlord for all actions, proceeding, claims or demand whatsoever for or on account of or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith.

RIGHT OF RE-ENTRY

27. The Tenant covenants and agrees that on the Landlord's becoming entitled to re-enter upon the Leased Premises under any of the provisions of this Lease, the Landlord in addition to all other rights shall have the right to enter the Leased Premises as the agent of the Tenant either by force or otherwise, without being liable for any prosecution therefor and to relet the Leased Premises as the agent of the Tenant, and to receive the rent therefor, and as the agent of the Tenant to take possession of any furniture or other property on the Leased Premises and to sell the same at public or private sale without notice and to apply the proceeds of such sale and any rent derived from reletting the Leased Premises upon account of the rent under this Lease, and the Tenant shall be liable to the Landlord for the deficiency, if any.

RIGHT OF TERMINATION

28. (a) The Tenant covenants and agrees that on the Landlord's becoming entitled to re-enter upon the Leased Premises under any of the provisions of this Lease, the Landlord in addition to all other rights, shall have the right to terminate this Lease and the Term by leaving upon the Leased Premises notices in writing of its intention so to do, and thereupon the rent shall be computed, apportioned and paid in full to the date of such termination and any other payments for which the Tenant is liable under this Lease shall be paid and the Tenant shall immediately deliver up possession of the Leased Premises to the Landlord and the Landlord may re-enter and take possession of the same.

- (b) The Landlord covenants and agrees that, after November 30th, 2002, the Tenant shall have the right to terminate this lease with one year's notice to the Landlord, and thereupon the rent shall be computed apportioned and paid in full to the date of such termination and any other payments for which the Tenant is liable under this lease.

NON-WAIVER

29. No condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times in respect of any covenant, proviso or condition herein contained shall operate as a waiver of the Landlord's rights hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Landlord herein respect of any such continuing or subsequent default, breach or non-observance, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord save only express waiver in writing. All rights and remedies of the Landlord in the Lease contained shall be cumulative and not alternative.
30. If the Tenant shall continue to occupy the Leased Premises, after the expiration of this Lease with or without the consent of the Landlord, and without any further written agreement, the Tenant shall be a monthly Tenant on the terms and conditions herein set out except as to length of tenancy and except that:
- (a) The rent shall be such amount as may be agreed upon between the parties hereto or failing such agreement by arbitration as for the renewal periods as outlined in Clause 35.

RECOVERY OF ADJUSTMENT

31. The Landlord in addition to all other rights or remedies, shall have the same rights and remedies in the event of default by the Tenant in payment of any amount payable by the Tenant pursuant to any clause of this Lease, as the Landlord would have in the case of default in payment of rent.

INTEREST ON RENT IN ARREARS

32. Any installment of rent not paid on the due date shall, without prejudice to any other rights and remedies of the Landlord arising from such breach, bear interest from such due date at the rate of Twenty-four (24%) Percent per annum until paid.

ADDITIONAL RENT

33. Without prejudice to any other rights and remedies of the Landlord, any money payable by the Tenant to the Landlord hereunder in addition to the rent referred to in Clause 5 of this Lease shall be deemed to be rent and, with interest at the rate of Twenty-Four (24%) Percent per annum thereon from the date the Landlord shall have demanded payment of the same from the Tenant, whichever is the earlier, 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 monthly installment of rent.

LANDLORD MAY CURE TENANT'S DEFAULT

34. If the Tenant shall fail to perform or cause to be performed each and every of the covenants, agreements and obligations of the Tenant hereunder, the Landlord shall have the right (but shall not be obligated) to perform or cause to be performed the same and all payments, expenses, costs and levies incurred or paid by the Landlord in respect thereof shall be included in Direct Costs paid to the Landlord immediately on demand.

RENEWAL

35. If the Tenant duly and regularly pays the rent hereby reserved and observed and performs all the covenants and agreements herein contained on the part of the Tenant to be paid, observed and performed, the Landlord, upon written request by the Tenant to be paid, observed and performed, the Landlord, upon written request by the Tenant delivered not less than six (6) months before the expiration of the Term shall grant to the Tenant a right of renewal of this Lease for further period of FIVE (5) years upon the same terms, covenants and conditions as are herein contained except as to rent. The rent for such renewal term shall be determined by agreement, and failing agreement, by a submission to a Board of Arbitration consisting of one person to be appointed by the Landlord and Tenant, and failing agreement the single arbitrator is to be appointed in accordance with the provisions of the Commercial Arbitration Act of British Columbia then in force; provided that any change in rent shall not decrease the annual rental from that payable for the immediately preceding year.

NOTICE AND PAYMENTS

36. Any and all payments to be made by the Tenant to the Landlord as provided in this Lease shall be payable at the address of the Landlord hereinbefore set out or at such other address as the Landlord may from time to time notify the Tenant. Any notice required or contemplated by any clause of this Lease shall be given in writing enclosed in a sealed envelope addressed, in the case of notice to the Landlord to it at its address hereinbefore set out, and in the case of notice to the Tenant or Indemnifier to it at the Leased Premises and mailed in British Columbia registered and postage prepaid. The time of giving and receipt of such notice shall be conclusively deemed to be the second business day after the day of such mailing. Such notice shall also be sufficiently given if and when the same shall be delivered, in the case of notice to the Tenant, to him personally or to an executive officer of the Tenant if the Tenant is a corporation. Such notice, if delivered, shall be conclusively deemed to have been given and received at the time of such delivery. If in this Lease, two or more persons are named as Tenant or Indemnifier, such notice shall also be sufficiently given if and when the same shall be delivered personally or mailed as aforesaid to any one of such persons. Provided that any party may, by notice to the other, from time to time designate another address in Canada to which notices, mailed more than five (5) days thereafter, shall be addressed.

HEADINGS

37. The headings to the clause of this Lease are for convenience only and shall not constitute part of this Lease.

DEFINITIONS APPLY

38. The definitions of any words used in this Lease shall apply to such words when used elsewhere in the clause in which they were defined and when used in any other clause or place in this Lease whenever the context is consistent.

TIME OF THE ESSENCE

39. Time shall be of the essence of this Lease and every part hereof.

GOVERNING LAW

40. This Lease shall be construed and governed by the laws of the Province of British Columbia.

SUCCESSORS

41. All rights and liabilities herein given to or imposed upon, the respective parties hereto shall extend to and bind the several respective permitted heirs, executors, administrators, successors and assigns of the said parties; and if either the Tenant or the Indemnitor is two or more individuals or corporations all covenants and agreements of these individuals or corporations shall be joint and several. No rights, however, shall enure to the benefit of any assignee of the Tenant unless the assignment to such assignee has been approved by the Landlord in writing as provided herein.

EXTENDED MEANINGS

42. Words importing the singular, masculine or neuter shall be construed as meaning the plural, feminine or body corporate or politic and vice versa wherever the context in this Lease or the Landlord so requires and if the Tenant or Indemnifier comprises more than one person or corporation or one or more persons and one or more corporations all covenants and agreements by such person and/or corporation or corporations shall be deemed joint and several. The word "Tenant" shall be deemed to include the word "Lessee" and the word "Landlord" shall be deemed to include the word "Lessor".

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, as of the day and year above written.

SAVE ON SHOES LTD. by its authorized signatories:

Authorized Signatory

Authorized Signatory

CITY OF KELOWNA by its authorized signatories:

Authorized Signatory

Authorized Signatory

APPENDIX A - INSURANCE REQUIREMENTS

1. Tenant To Provide

The Tenant shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2 of this appendix, with limits no less than those shown in the respective items, unless in connection with this lease agreement the Landlord advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from the date of commencement of this lease agreement until termination or such longer period as may be specified by the Landlord.

2. Insurance

As a minimum, the Tenant shall, without limiting its obligations or liabilities under any other contract with the Landlord, procure and maintain, at its own expense and cost, the following insurance policies:

2.1 Comprehensive General Liability Insurance

- (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
- (ii) providing for all sums which the Tenant shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this lease agreement or any operations carried on in connection with this lease agreement;
- (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, Tenant's Legal Liability and Non-Owned Automobile Liability;
- (iv) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured.

3. The Landlord Named As Additional Insured

The policy required by section 2.1 of this appendix above shall provide that the Landlord is named as an Additional Insured thereunder and that said policy is primary without any right of contribution from any insurance otherwise maintained by the Landlord.

4. Certificates of Insurance

The Tenant agrees to submit a Certificate of Insurance (Appendix A-1) to the Landlord prior to the commencement date of this lease agreement. The Certificate shall provide that 30 days' written notice shall be given to the Landlord, prior to any material changes or cancellations of any such policy or policies.

5. Other Insurance

After reviewing the Tenant's Certificate of Insurance, the Landlord may require other insurance or alterations to any applicable insurance policies in force during the period of this lease agreement and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the Landlord and result in increased insurance premium, such increased premium shall be at the Tenant's expense.

6. Additional Insurance

The Tenant may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the Landlord.

7. Insurance Companies

All insurance, which the Tenant is required to obtain with respect to this lease agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the province or territory where the lease is located.

8. Failure to Provide

If the Tenant fails to do all or anything which is required of it with regard to insurance, the Landlord may do all that is necessary to effect and maintain such insurance, and any monies expended by the Landlord shall be repayable by and recovered from the Tenant.

9. Non-payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Tenant shall not be held to waive or release the Tenant from any of the provisions of Appendix A or this lease agreement, with respect to the liability of the Tenant otherwise. Any insurance deductible maintained by the Tenant under any of the insurance policies is solely for its account and any such amount incurred by the Landlord will be recovered from the Tenant as stated in section 8 of this appendix.



APPENDIX A-1
CERTIFICATE OF INSURANCE

This Certificate is issued to: **SAVE ON SHOES LTD.**
459 Bernard Avenue
Kelowna, BC V1Y 6N8

Insured

Name:
Address:

Broker

Name:
Address:

Location and nature of operation or contract to which this Certificate applies:

Lease agreement for #5 - 3818 Gordon Avenue, Kelowna and use of the leased premises as the Mission Public Library.

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Commercial General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Contingent Employer's Liability; • Broad Form Property Damage; • Tenant's Legal Liability; • Non-Owned Automobile Liability 				Bodily Injury and Property Damage \$ 2,000,000 Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ _____ Inclusive
Section 3 Umbrella/Excess Liability				\$ _____ Excess of Section 1 \$ _____ Excess of Section 2

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. **Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.**
2. **The City of Kelowna is named as an Additional Insured.**
3. **30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.**
4. **All Risks Property Insurance shall be endorsed waiving all rights of subrogation against the City of Kelowna.**

Date _____

Print Name

Authorized Signatory