

# CITY OF KELOWNA

## BYLAW NO. 8725

### Okanagan Mission Community Hall Association Lease Authorization

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WHEREAS pursuant to the powers granted to the City by the *Local Government Act* and other legislation and after due consideration for the substantial benefits which Council considers will accrue to the City;

AND WHEREAS the Council has provided a counter petition opportunity in relation to the proposed lease agreement;

NOW THEREFORE the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. The Municipal Council of the City of Kelowna is hereby authorized to enter into a Lease Agreement with the Okanagan Mission Community Hall Association, attached to and forming part of this bylaw as Schedule "1".
2. The Mayor and City Clerk of the City Kelowna are hereby authorized to execute the Lease Agreement on behalf of the City of Kelowna.
3. This bylaw shall come into full force and take effect and be binding on all persons as and from the date of adoption.
4. This bylaw shall be cited for all purposes as "Okanagan Mission Community Hall Association Lease Authorization Bylaw No. 8725."

Read a first, second and third time by the Municipal Council this 10<sup>th</sup> day of September, 2001.

Adopted by the Municipal Council of the City of Kelowna this

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Mayor

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City Clerk

Bylaw No. 8725 – Schedule 1

Document No. 2380-20-1021			
Cir.	Department	Date	Init.
	Leisure Ser.		
	Risk Manager		
	City Clerk		

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 2001.

BETWEEN:

**CITY OF KELOWNA**  
1435 Water Street  
Kelowna, BC V1Y 1J4

(the "City")

OF THE FIRST PART,

AND:

**OKANAGAN MISSION COMMUNITY HALL ASSOCIATION**  
4409 Lakeshore Road  
Kelowna BC V1W 1W7

(the "Tenant")

OF THE SECOND PART,

WHEREAS the City is the owner of the property described as Lot A District Lot 358 ODYD Plan 21520 located at 619 Dehart Road, Kelowna, BC ;

AND WHEREAS the City is the owner of property described as Lot A District Lot 358 ODYD Plan 25195 located at 639 Dehart Road, Kelowna, BC;

AND WHEREAS the City is the owner of property described as Part of Lot 1 District Lot 358 ODYD Plan KAP53605 located at 626 Sherwood Road, Kelowna, BC;

AND WHEREAS the Tenant is the owner of property described as Lot A District Lot 358 ODYD Plan KAP51801 located at 4409 Lakeshore Road, Kelowna BC;

AND WHEREAS the Tenant wishes to improve the tennis facilities on their property by constructing a fixed structure over the three existing tennis courts and to construct an additional three outdoor tennis courts on City-owned land which outdoor tennis courts will be open to the general public;

AND WHEREAS the Tenant has been an integral part of the delivery of quality recreation services in the City of Kelowna, and the Tenant wishes to expand and improve their services;

AND WHEREAS part of the transaction involves the City transferring part of Lot A District Lot 358 ODYD Plan 25195 to the Tenant in return for a portion of Lot A District Lot 358 ODYD Plan KAP51801;

AND WHEREAS the City has agreed to guarantee a loan of not more than Three Hundred Fifty Thousand Dollars (\$350,000.00) ("the loan") in order to assist with the expansion and improvement of the tennis facilities;

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

- 1.01 THE PREMISES. The City hereby leases to the Tenant, the land described in Schedule "A" (hereinafter called the "Premises") for the purpose of constructing three outdoor tennis courts.
- 2.01 TERM OF THE LEASE. To have and to hold the Premises for Fifteen (15) years from the 1<sup>st</sup> day of October, 2001 to and including the 30<sup>th</sup> day of September 2016. (Recognizing that the start date may vary depending upon availability of the land but in no case shall the term extend beyond fifteen years).
- 3.01 RENT. The amount of One Dollar (\$1.00) per annum for each year of the lease, the sum of which is hereby acknowledged.
- 4.00 TENANT'S COVENANTS. The Tenant 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 including applicable GST, property taxes and assessments, of whatsoever description, that may at any time during the existence of this agreement be lawfully imposed, or become due and payable upon, or in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof. The City acknowledges that the Tenant may be eligible for exemption from certain property taxes levied by the City upon application by the Tenant through the City's tax exemption process and as approved by the Municipal Council of the City of Kelowna.
  - 4.03 BUSINESS LICENSES AND PERMITS. That it will procure and maintain, at the cost and expense of the Tenant, such licenses, permits or approvals from any Federal, Provincial, Municipal or other Government authorities, and such private permits as may be necessary to enable the Tenant to furnish the services and conduct the operations provided for in this agreement.
  - 4.04 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 agreement be lawfully imposed, or become due and payable, upon, or in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof. Utilities will include but are now limited to water, sewer, power, gas, telephone, and cable television.
  - 4.05 REPAIR MAINTENANCE AND REPLACEMENT. To repair, save and except only damage by fire, lightning, tempest or other casualty; to permit the City, its agents or employees, to enter and view the state of repair, to repair according to notice in writing from the City and to leave the premises in good repair, all repairs to be made in a first class workmanlike manner and to the approval of the City.
  - 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. The Tenant shall not assign or sub-lease in whole or in part without the City's prior consent in writing, which consent may be withheld without reason. Recognizing that the Tenant will be permitted to rent out facilities and/or concessions within the premises on a temporary basis without permission from the City, in order to generate revenue and to make the facilities more accessible to the community. The Tenant also agrees to reimburse the City for all costs that it may incur to effect any assignment or sub-lease agreement at the Tenant's request. The minimum amount for such assignment shall be \$500.00.
- 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 Tenant or the use of the Premises by the Tenant 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 Tenant of any such law, rule or regulation.
- 4.09 INSURANCE. The Tenant shall, without limiting its obligations or liabilities under this Agreement, procure and maintain, at its own expense and cost, the insurance policies listed in Schedule "B" attached hereto and made a part of this Agreement. The insurance policies shall be maintained continuously from the date of commencement of this Agreement until the date of termination or such further period as may be specified in Schedule "B".
- 4.10 RULES AND REGULATIONS. That the Tenant and its agents and employees and all persons visiting or doing business with the Tenant 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 Tenant. The rules and regulations as aforesaid shall be deemed to be incorporated into and form part of this agreement.
- 4.11 CLEANLINESS. Not to permit the Premises to become untidy, unsightly or hazardous or to permit unreasonable quantities of waste or refuse to accumulate on the Premises or outside the Premises in the parking area or other common areas, and at the end of each day to leave the Premises in a clean and neat condition, to the satisfaction of the City. This includes sweeping, snow clearing and collection of garbage.
- 4.12 USE OF PREMISES. Not to use the Premises for any purpose other than tennis courts 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. Recognizing that the general public shall have full access to the tennis courts at all times for a nominal hourly fee.
- 4.13 PROVISION OF EQUIPMENT. To provide, at the Tenant's expense, all equipment required and to install the same to the specifications and with the approval of the City.
- 4.14 CONDUCT OF BUSINESS. Recognizing that it is in the best interests of both the City and the Tenant that the Tenant should have exclusive use of the Premises only for the purpose described in Section 4.12 above, the Tenant 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 attractive and efficient tennis courts which will reflect positively upon the image of the City;

- (c) Not to establish or erect any structure on the premises except three outdoor tennis courts.
- 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 agreement, shall affect or modify any of the terms or obligations herein contained.
- 4.16 ANNUAL REPORTS To provide the City with copies of their annual financial statements prepared in accordance with generally accepted accounting principles within ninety days of their fiscal year end.
- 5.00 CITY'S COVENANTS. The City covenants with the Tenant:
- 5.01 QUIET ENJOYMENT. For quiet enjoyment of the Premises.
- 6.00 PROVIDED ALWAYS AND IT IS HEREBY AGREED AS FOLLOWS:
- 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 Tenant of any of the provisions of this agreement, and if the default continues for THIRTY (30) days after written notice thereof to the Tenant, or if the Premises are vacated or remain unoccupied for THIRTY (30) 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 agreement 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 Tenant of any covenant or agreement on its part to be performed.
- 6.02 ALTERATIONS BY TENANT. The Tenant 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 Tenant's sole expense and at such time, and in such manner as the City may approve.
- 6.03 REMOVAL OF ALTERATIONS BY TENANT. If any alterations, additions or improvements are made to the Premises by the Tenant, it shall, on the written request of the City, restore the Premises to their condition at the commencement of the term of this agreement not later than FIFTEEN (15) days prior to the termination of this agreement or, if the City would prefer that any alterations, additions and improvements remain, the City may require the Tenant 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 Tenant.
- 6.04 REMOVAL OF TENANT'S PROPERTY. All articles of personal property and all business and trade fixtures, machinery and equipment and furniture owned by the Tenant or installed by the Tenant in the Premises at the Tenant's expense shall remain the property of the Tenant and may be removed by the Tenant at any time during the term of this agreement, PROVIDED that the Tenant, at its own expense, shall repair any damage to the Premises caused by such removal or by the original installation.
- 6.05 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 agreement 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 Tenant's enjoyment of the Premises nor render the City liable for injury to or in damages to the Tenant nor relieve the parties from their obligations under this agreement. The City shall without delay take all reasonable steps to remove the cause of any such interruption.

- 6.06 CITY NOT LIABLE FOR INTERFERENCE. The City shall not be liable to the Tenant for any interference or inconvenience cause 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.
- 6.07 HOLD HARMLESS AND INDEMNIFICATION. The Tenant shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, 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 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 Agreement, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnitees.
- 6.08 NO REPRESENTATION. The Tenant 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.
- 6.09 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, its 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 Tenant until such damage is repaired.
- 6.10 RIGHT OF ENTRY TO MAKE REPAIRS. The Tenant agrees that the City shall have the right to enter the Premises at all reasonable times to examine the same and make such repairs, alterations, improvements or additions as the City may deem necessary or desirable or as the City may be required to make by law or in order to repair and maintain the Premises. 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, alterations, improvements or additions are being made by reason of interruption of the business of the Tenant. The City will exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operations.
- 6.11 DISTRAINT. If the City levies distress against the goods and chattels of the Tenant, 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 Tenant 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 Tenant in connection therewith.
- 6.12 COSTS OF RECOVERY OF RENT. 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 Tenant, it shall be entitled to collect from the Tenant the cost of all such services as if the same were rent.

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- 6.13 **INTEREST ADDED TO COSTS OF DEFAULT.** Without prejudice to any other remedy of the City, any money payable by the Tenant to the City hereunder, other than the rent referred to in Clause 3 of this agreement, shall be deemed to be rent and shall be subject to "Interest Penalty on Overdue Rent" as outlined in Clause 6.14 of this agreement 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 agreement, 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 Tenant 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 agreement 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 Tenant 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 Tenant.
- 6.16 **OVERHOLDING.** If the Tenant continues 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 agreement 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 Agreement, 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);
  - (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

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- (iv) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.
- (b) Tenant's Representations and Warranties. The Tenant represents and warrants to the City, and acknowledges that the City is relying on such representations and warranties in entering into this Agreement, that as of the date of this Agreement:
- (i) except as disclosed to the City in writing, the Tenant 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 Tenant'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 Agreement by the Tenant and shall be subject to the provisions of Section 6.01 of this Agreement.

- (c) Condition of Premises. The Tenant 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 Tenant under this Agreement on an "as is, where is" basis with respect to their environmental condition. Prior to taking possession of the Premises under this Agreement, the Tenant has performed such investigations of the Premises as it considered appropriate and is satisfied as to their environmental condition.
- (d) Use of Contaminants. The Tenant 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 Tenant 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.
- (e) Compliance with Environmental Laws. The Tenant 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 Agreement, including without limitation obtaining all required permits or other authorizations.
- (f) Evidence of Compliance. The Tenant 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 Tenant at any time before, during or after the Term (or any renewal thereof). The Tenant 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 Tenant shall, at the City's request from time to time, provide the City with a certificate of a senior officer of the Tenant certifying that the Tenant 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 Tenant 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 Tenant'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 Tenant 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 Tenant of any of its obligations under this Agreement, the Tenant 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 Tenant's employees and to take such steps as the City deems necessary for the safety and preservation of the Premises.
- (j) Authorizations. The Tenant 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 Tenant's compliance with Environmental Laws.
- (k) Notices. The Tenant 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 Tenant, 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 Tenant 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 Tenant or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.

The Tenant 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 Tenant 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 Agreement or at any time if requested by the City or required by any governmental authority pursuant to Environmental Laws, the Tenant 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 Tenant or any person for whom it is in law responsible. [For greater certainty, the foregoing obligations of the Tenant 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 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 Tenant 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 Tenant shall use a qualified environmental consultant approved by the City to perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the BC 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 Tenant 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 Tenant.

- (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 Tenant or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Tenant 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 Agreement. This section supersedes any other provision of this Agreement to the contrary.
- (n) Indemnity. The Tenant 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 Tenant 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 Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any person for whom it is in law responsible.

- (o) Survival of Tenant's Obligations. The obligations of the Tenant under this Section (including, without limitation, the Tenant's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement. The obligations of the Tenant under this Section are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Agreement.

#### 6.18 TERMINATION

The City shall have the right to terminate this agreement in any of the following instances:

- (a) In the event the Tenant shall be in breach of any of the provisions of this agreement and not remedy same after thirty (30) days notice in writing from the City to do so.

The Tenant shall have the right to terminate this agreement by giving the City one year's notice in writing.

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

- 6.19 RENEWAL Recognizing the parties' desire for improved tennis facilities in Kelowna, the parties may mutually agree to a further term. One year prior to the termination of the fifteen (15) year term, the City and the Tenant may agree to discuss provisions for a new lease agreement.

- 6.20 AMENDMENTS The City and the Tenant agree that the terms and conditions of this agreement may be amended at any time by mutual agreement.

- 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:

**CITY OF KELOWNA**

1435 Water Street  
Kelowna, BC  
V1Y 1J4

If to the Tenant:

**OKANAGAN MISSION COMMUNITY HALL ASSOCIATION**

4409 Lakeshore Road  
Kelowna BC V1W 1W7

- 6.22 ENUREMENT. This agreement 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.

- 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.

6.24 **EXCLUSIVE SPONSORSHIP AGREEMENT:** The Tenant acknowledges that the City may enter into an exclusive sponsorship, advertising, and supply arrangement (the "Exclusive Arrangement"), with manufacturers and/or suppliers of various categories of products and/or services for the exclusive advertising, supply and sale and sale of such products and/or services throughout the City. The Tenant agrees that should the City give notice (the "Notice"), to the Tenant that it has concluded or is about to conclude an Exclusive Arrangement with a manufacturer and/or supplier (the "Supplier"), in respect of a category of products and/or services (the "Exclusive Products/Services Category"), then upon ninety (90) days from the date of such notice, the Tenant shall no longer be permitted to utilize, purchase, sell or advertise ( or permit the utilization, purchase, sale, or advertising of), on or from the Premises, products or services within the Exclusive Products/Services Category other than those of the Exclusive Supplier.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their signatures on the day and year first above written.

**CITY OF KELOWNA** by its authorized signatories:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**OKANAGAN MISSION COMMUNITY HALL ASSOCIATION** by its authorized signatories:

\_\_\_\_\_  
Authorized Signatory  
Print Name \_\_\_\_\_

\_\_\_\_\_  
Authorized Signatory  
Print Name \_\_\_\_\_

**SCHEDULE "A"**

**PREMISES**

The premises is the land located on part of Lot A District Lot 358 ODYD Plan 21520 part of Lot A District Lot 358 ODYD Plan 25195; part of Lot 1 District Lot 358 ODYD Plan KAP53605 and part Lot A District Lot 358 ODYD Plan KAP51801 all located in Kelowna, BC as shown in bold black on the drawing below and the drawing attached as Figure 1.

(hereinafter called the "Premises").

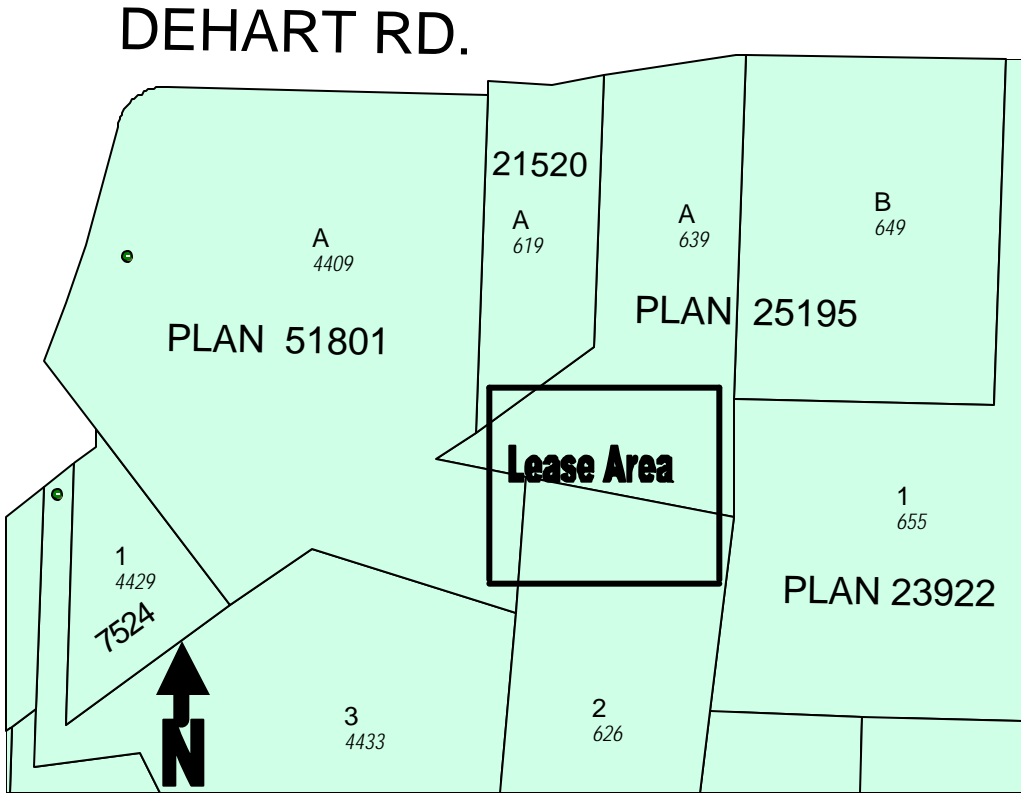
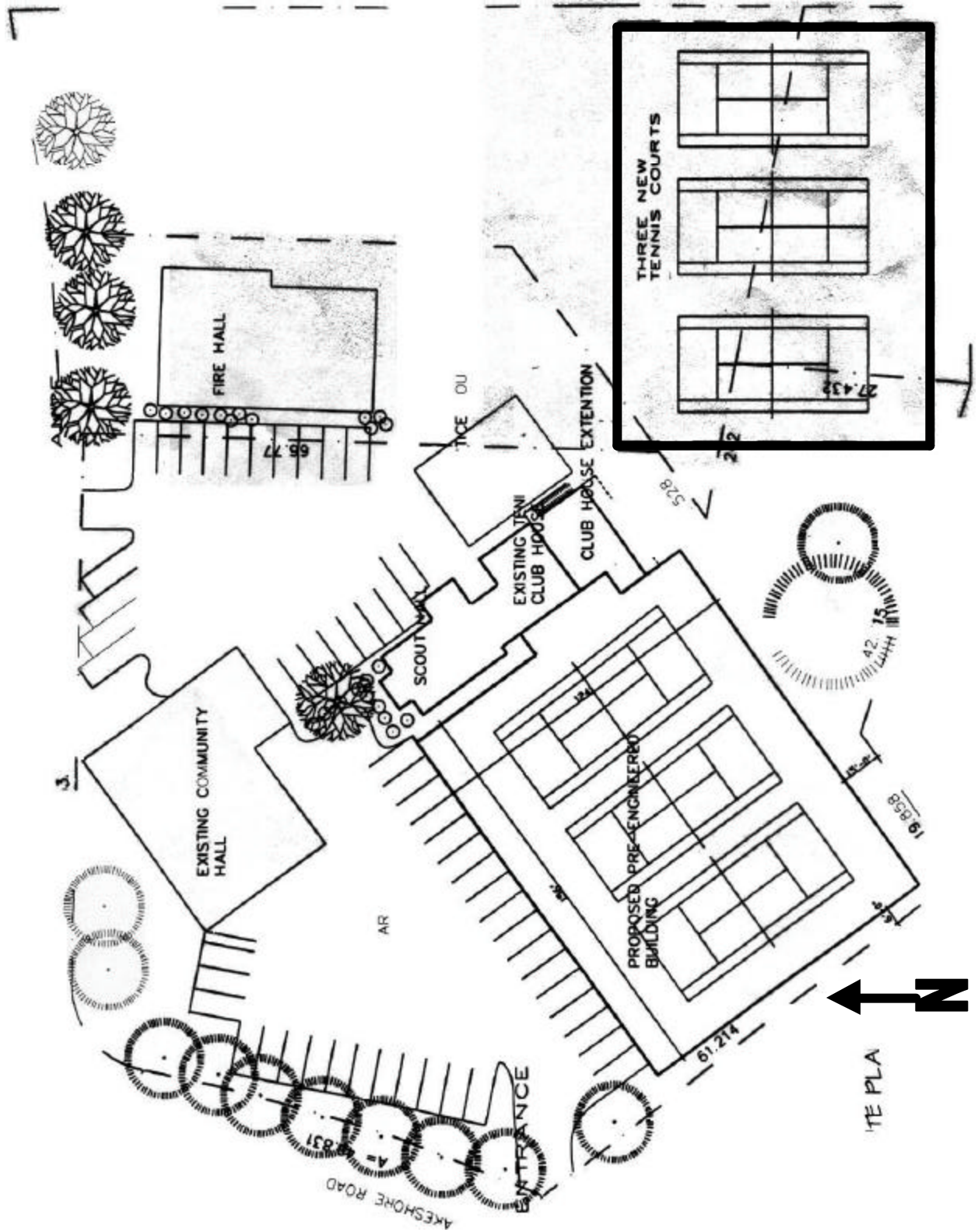


Figure 1



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## **Schedule “B” – 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 Schedule, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of this Agreement, the City 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 commencement of the Term of the Agreement until the termination of this agreement or such longer period as may be specified by the City.

### **2. Insurance**

As a minimum, the Tenant shall, without limiting its obligations or liabilities under any other contract with the City, 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 Agreement or any operations carried on in connection with this 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.

2.2 All Risks Property Insurance for loss of or damage to the tennis facilities and equipment, owned, leased or for which Tenant may otherwise be responsible and used or to be used for the tennis facilities. This insurance shall be for an amount not less than the replacement cost value of the tennis facilities and equipment. In the event of loss or damage, Tenant shall if so requested by the City, forthwith replace such lost or damaged tennis facilities and equipment. Such All Risks Property Insurance shall be endorsed to waive all rights of subrogation against the City.

### **3. The City Named As Additional Insured**

The policies required by section 2.1 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City. The City shall also be named as a Loss Payee under the policy required by Section 2.2.

### **4. Certificates of Insurance**

The Tenant agrees to submit a Certificate of Insurance, in the form of Schedule B-1, attached hereto and made a part hereof, to the Risk Manager of the City prior to the commencement of the Term of the Lease. Such Certificate shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.

5. **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 City.

6. **Insurance Companies**

All insurance, which the Tenant is required to obtain with respect to this Agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

7. **Failure to Provide**

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

8. **Nonpayment 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 the Insurance Requirements or this 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 their account and any such amount incurred by the City will be recovered from the Tenant as stated in section 7 of this Schedule "B".





**SCHEDULE B-1  
CERTIFICATE OF INSURANCE**

**This Certificate is issued to:**                    **The City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1 J4**

**Insured**

Name: <b>Okanagan Mission Hall Association</b>
Address: 4409 Lakeshore Road, Kelowna, BC V1X 2M9

**Broker**

Name:
Address:

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

Leasing of a property located at 619 Dehart Road to be used as outdoor tennis courts.

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
<b>Section 1</b> Commercial General Liability including: <ul style="list-style-type: none"> <li>• Products/Completed Operations;</li> <li>• Blanket Contractual;</li> <li>• Contractor's Protective;</li> <li>• Personal Injury;</li> <li>• Contingent Employer's Liability;</li> <li>• Broad Form Property Damage;</li> <li>• Tenant's Legal Liability</li> <li>• Non-Owned Automobile;</li> <li>• Cross Liability Clause.</li> </ul>				Bodily Injury and Property Damage  \$ <b>2,000,000.00</b> Inclusive \$ _____ Aggregate \$ _____ Deductible
<b>Section 2</b> All Risks Property Insurance ( Replacement Cost Value Basis )				\$ _____ Limit

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 on the insurance policy in Section 1.**
3. **30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.**
4. **The All Risks Property Insurance shall be endorsed waiving all rights of subrogation against the City of Kelowna.**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date