

NON-MARKET MUNICIPAL FACILITY LEASE

BETWEEN:

CITY OF KELOWNA

a municipal corporation having offices at
1435 Water Street, Kelowna, BC V1Y 1J4

(the "City")

OF THE FIRST PART

AND:

KELOWNA OUTRIGGER RACING CANOE CLUB ASSOCIATION (S-0049788)

dba Kelowna Paddle Center,
3020 Abbott Street, Kelowna, BC V1Y 1G9

(the "Society")

OF THE SECOND PART

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THIS LEASE, dated the _____, _____, is made and entered into by the City and the Society named herein who, in consideration of the covenants herein contained, agree as follows:

1. BASIC TERMS, SCHEDULES, AND DEFINITIONS

1.1 Basic Terms:

- | | |
|-------------------------------------|---|
| (a) City: | CITY OF KELOWNA |
| Address of City: | City Hall, 1435 Water Street
Kelowna, B.C. V1Y 1J4
Fax: 250-862-3349
Email:
propertymanagement@kelowna.ca |
| (b) Society: | KELOWNA OUTRIGGER RACING CANOE
CLUB ASSOCIATION (S-0049788) |
| Address of Society: | 3020 Abbott Street, Kelowna, BC V1Y 1G9 |
| (c) Premises: | The home and garage located at
3020/3030/3040/3050 Abbott Street

Lot A, B, C, & D Plan EPP96732 District Lot
14 Land District 41
(see Schedule A) |
| (d) License Areas as on Schedule A: | Interim License Area and Shared Park
License (see Schedule A) |
| (e) Term: | 5 years |
| Commencement Date: | May 1, 2021 |
| (f) Option to Renew | None |
| (g) Rent / Tax: | \$1.00, plus GST |
| (h) Security/Performance Deposit: | N/A |
| (i) Property Taxes: | Society to pay unless approved under -
Permissive Tax Exemption Bylaw |
| (j) Utilities: | All are the Society's responsibility |
| (k) Permitted Use: | The Society shall only use the Premises for
the sole purpose of operating a Paddle
Centre in accordance with the Operating
Requirements in Schedule E |

The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth.

1.2 Schedules

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

SCHEDULE	SUBJECT
A	Site Plan of Premises and License Area
B	Definitions
C	City & Society Responsibility Checklist
D	Certificate of Insurance
E	Operating Requirements
F	Required Society and City Activities During Park Construction

1.3 Definitions

In this Lease, the words, phrases and expressions set forth in Schedule B are used with the meanings defined therein.

2. PREMISES AND LICENSE AREA

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Society to be paid, observed, and performed, the City hereby demises and leases to the Society, and the Society leases from the City, the Premises for the Term.

The City furthermore grants two licenses to the Society:

- i. "Interim License Area" as outlined in Schedule A, for purposes necessarily related to the permitted use of the Premises, and
- ii. "Shared Park License" as outlined in Schedule A. The Society agrees to the use of the Shared Park License as outlined Schedule E, Section 7.

3. TERM

3.1 Term

The Term of this Lease, Interim License Area and Shared Park License, shall be for the period set out in sub-clause 1(e), beginning on the Commencement Date, and subject to earlier termination or renewal on the terms and conditions as set out herein.

3.2 Option to Renew

There are no further options to renew.

4. RENT

4.1 Rent

The Society shall pay to the City:

- (a) annual rent in the amount of \$1.00, plus any and all applicable taxes, payable on the first day of the Term and each anniversary thereafter (the "Base Rent"); and
- (b) all sums of money to be paid by the Society to the City under this Agreement (the "Additional Rent");

(collectively, the "Rent"). The Society shall pay Additional Rent monthly, plus any and all applicable taxes, within 15 days of the Society's receipt of an invoice from the City.

4.2 No Deductions

The Society shall pay the Base Rent and the Additional Rent without deduction, abatement, set-off or withholding whatsoever, despite any law or statute now or in the future to the contrary. The Society's obligation to pay the Base Rent, the Reserve Fund Contribution and the Additional Rent survives the expiry or earlier termination of this Agreement.

4.3 Payment of Taxes, Utilities and Other Expenses

The Society covenants and agrees with the City to pay all charges, costs, duties, expenses, rates, sums, assessments, taxes (including property taxes), telephone, electrical, gas water, sewage and garbage disposal and other utility charges and payments for work and materials in any way relating to the Buildings and the Interim License Area and that to the extent of any such amounts remain unpaid after they come due, such amounts shall be deemed as Additional Rent and may be collected by the City as Rent. In addition, the Society agrees to pay the City any and all applicable taxes in respect of Base Rent, Additional Rent or any other services that may be paid from time to time.

4.4 Interest

All payments due by the Society to the City under this Lease shall bear interest at a rate of 1.5% per month (18% annually) from the date due until paid.

5. SOCIETY'S COVENANTS

5.1 Society's Covenants

The Society covenants and agrees with the City as follows:

- (a) Rent and other Costs

- i. to pay all costs and expenses of any kinds whatsoever associated with and payable in respect of the Premises, the Society's trade fixtures and all equipment, furniture and other personal property brought onto the Premises by the Society and any business or activity conducted on or from the Premises, including without limitation, all taxes, levies, charges and assessments, permit and license fees, repair and maintenance costs, administration and service fees, telephone, electrical, gas, internet, phone, water, sewage disposal and other utility charges and payments for work and materials;
- (b) Occupancy and Use
 - i. to take possession of and occupy the Premises and commence to carry on business in all or substantially all of the Premises no later than 30 days after the Commencement Date;
 - ii. to use the Premises, Interim License Area and Shared Park License only for the purposes set out in this Lease and not for any other purpose and shall comply with all operating requirements set out in Schedule E. Any changes to the components of the Society's business plan and/or operating requirements as outlined in Schedule E require the express written permission of the City;
 - iii. to provide all equipment, furnishings and supplies that may be required to use the Premises and the Interim License Area for its purposes;
 - iv. to carry on and conduct its activities in, on and from the Premises in a good, efficient and business-like manner;
- (c) Waste and Nuisance
 - i. not to do, commit or permit any thing in, on or from the Premises, Interim License Area and Shared Park License that may be or become a nuisance or annoyance to the owners, occupiers or users of land or premises adjacent to or near the Premises, Interim License Area and Shared Park License or to the public, including accumulation of rubbish or unused personal property of any kind;
 - ii. not to do, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the Premises, Interim License Area and Shared Park License.
- (d) Park Setting
 - i. to understand that the Society is operating their organization in a City Park and that they are not permitted to maintain or alter the vegetation, etc.
- (e) Insurance Risks

- i. not to do, omit to do, or permit to be done or omitted to be done upon the Premises, Interim License Area and Shared Park License anything which would cause the City's cost of insurance to be increased (and, without waiving the foregoing prohibition, the City may demand, and the Society shall pay to the City upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation;
 - ii. to obtain and maintain during the Term insurance in accordance with the requirements of section 11. For clarity, the insurance requirements set out in section 11 are minimum requirements and are not to be interpreted in a manner that limits the Society's obligations under this Lease and the Society shall be responsible for obtaining and maintaining such additional insurance as would a prudent tenant having similar obligations to those of the Society under the terms of this Lease;
- (f) Cleanliness
 - i. to keep the Premises and Interim License Area in a safe, tidy and sanitary condition, to the satisfaction of the City;
 - ii. to maintain and repair the Premises and Interim License Area and any improvements therein so that they are at all times in a good condition and state of repair;
 - iii. to keep the Premises, Interim License Area and Shared Park License free of any rubbish, litter resulting from the Society's operation and use of the areas;
 - iv. to keep all grass, gardens and other landscaped areas within the Interim License Area in a good condition in accordance with community standards prevailing from time to time, as determined by the City;
 - v. to keep all reasonable precautions to ensure the safety of all Society Participants using the Premises, Interim License Area and Shared Park License;
 - vi. to keep all outdoor walkways and parking areas within the Interim Licensee clear of snow;
- (g) Compliance with Laws

to carry on and conduct its activities in, on and from the Premises, Interim License Area and Shared Park License in compliance with any and all laws, statutes, enactments, bylaws, regulations, orders and requirements from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on or from the Premises, Interim License Area and Shared Park License in contravention thereof;

(h) Exclusive Sponsorship Agreement

the City reserves the right to enter into exclusive sponsorship agreements and the Society will honour the terms of any such agreement. The Society is aware that at the time of entering into this agreement, the City has an agreement with a beverage provider;

(i) Installations

to permit the City during the Term, at the Society's cost to install any equipment in or make alterations to the Premises and Interim License Area necessary to comply with any and all statutes, laws, bylaws, ordinances, orders, regulations, permits, or requirements from time to time in force;

(j) Activity During Park Construction

to permit the City, during the Term, to undertake the activities agreed to and outlined in Schedule E, "Required KPC and City Activities During Park Construction".

(k) Overholding

that if the Society shall continue to occupy the Premises and the License Area after the expiration of this Lease, then, without any further written agreement and without objection by the City, the Society shall be a monthly tenant paying monthly rent equal to $\frac{1}{12}$ of 125% of the Rent payable by the Society during the last month of the Term and subject always to the other provisions in this Lease insofar as the same are applicable to a month-to-month tenancy and nothing shall preclude the City from taking action for recovery of possession of the Premises;

(l) Signs

not to erect or place any sign or advertising of any kind on or within the Premises, Interim License Area and Shared Park License without the prior written approval of the City, which may be withheld at the City's sole discretion;

(m) Endorsements

enter into sponsorship, media or advertising agreements ("Endorsements") involving the Premises or the programs and services provided that the Endorsements are:

- i. appropriate for families and children;
- ii. consistent with the City's and Society's joint values of equality, accessibility, health, respect and the dignity of the individual;
- iii. respectful of the neighbourhoods surrounding the Premises and all scheduled programs and services at the Premises;

- iv. appropriate to the aesthetics of the Premises; and
 - v. the Society is required to consult with the City and adhere to the requirements of Council Policy 376 – Corporate Sponsorship and Advertising and Council Policy 343 – Civic Community Facility Naming Policy, as amended from time to time, prior to entering into any naming agreement for any portion of any Premises. This requirement does not apply to any interior room in any facility which was named prior to execution of this Agreement.
- (n) Inspection and Access
- i. to permit the City and its officers, employees, contractors and agents at any time and from time to time to enter the Premises and Interim License Area for the purpose of inspection or making repairs, alterations, or improvements to the Premises and Interim License Area as the City may deem necessary or desirable, or as the City may be required to make by law, and to inspect the Society's compliance with this Lease and for the purpose of exercising the City's rights under this Lease;
 - ii. the City shall be allowed to take into the Premises and the Interim License Area all material which may be required for such purpose and the Rent reserved shall in no way abate while such repairs, alterations or improvements are being made by reason of interruption of the business of the Society. The City shall exercise reasonable diligence as to minimize the disturbance or interruption of the Society's operation;
- (o) Showing Premises
- to permit the City and its officers, contractors, authorized agents and employees to show the Premises and Interim License Area to prospective tenants during the normal business hours of the last three months of the Term; and
- (p) Tobacco and Marijuana Sales
- The Society will not permit the sale of tobacco and/or Marijuana products on the Premises, Interim License Area and/or Shared Park License.
- (q) Builder's Liens
- to promptly discharge any builders lien which may be filed against the title to the Land or Premises or that might otherwise affect the Land or Premises, and to comply at all times with the *Builders Lien Act* (British Columbia), in respect of any improvements, work or other activities undertaken in, on or to the Premises.
- (r) Status of the Society
- The Society shall at all times be in good standing as a registered not-for-profit society under the *Societies Act* (British Columbia).

6. REPAIRS, MAINTENANCE AND CHANGES TO THE PREMISES

6.1 Maintenance and Repairs

In addition to the requirements of Schedule C, throughout the Term, the Society must, at its sole expense, keep the Premises and Interim License Area, and all fixtures and appurtenances thereon, in good repair consistent with standards of repair generally accepted in British Columbia with respect to comparable premises. The Society is responsible for and must do all routine maintenance and repairs with respect to the Premises and Interim License Area necessary for the Society's use, occupation and operation of the Premises and Interim License Area. Upon written notice from the City, the Society must make such repairs as are required by the City in the notice. At the end of the Term, the Society must surrender the Premises and Interim License Area to the City in good repair, excepting reasonable wear and tear.

6.2 Minimum Work Standards

The Society must ensure that any repairs or work with respect to the Premises and the Interim License Area done by or on behalf of the Society:

- i. do not affect any structural or foundation elements of the Premises and Interim License Area;
- ii. meet or exceed the standards of material and construction employed in the original construction of the Premises and Interim License Area; and
- iii. comply with all applicable laws, statutes, enactments, regulations, bylaws and orders from time to time in force, including the applicable building code and bylaws of the City of Kelowna.

6.3 Society's Construction of Premises, Structures and Other Improvements

There are a number of activities that the Society must perform for the Kelowna Paddle Centre to integrate seamlessly into the new Pandosy Waterfront Park. These activities are listed in a document called "Required KPC and City Activities During Park Construction" (Schedule E). Other than the activities, listed in Schedule E, the Society must not construct, erect or install or cause to be constructed, erected or installed any buildings, structures, improvements, extensions, installations, alterations, additions, renovations or other constructions in, on, over, under, around and to the Premises, Interim License Area or Shared Park License, or alter the existing state of the Premises in any way, without the prior written consent of the City, which consent may be withheld for any reason at the City sole discretion. If the City gives such consent, the Society must obtain the City's prior approval of drawings and specifications for such work, must do such work strictly in accordance with the approved drawings and specifications and must comply with any conditions the City imposes with that approval.

6.4 Ownership of Improvements at Termination

At the expiry of the Term or earlier termination of this Agreement, any improvements, extensions, installations, alterations, renovations or additions to the Premises, and Interim License Area, whether done by or on behalf of the Society or not, are forfeited to and become the permanent property of the City.

6.5 Builders Liens

The Society shall promptly discharge any builders' lien or other lien or claim of lien which may be filed against title to the Lands relating to any improvements, work or construction that the Society undertakes on the Lands and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, work or construction undertaken on the Lands.

6.6 No Capital Liabilities

Despite any other provision of this Agreement, nothing in this Agreement obligates the City to make any expenditure of a capital nature and nothing in this Agreement shall be interpreted in a manner that results in the City having expressly or implicitly incurred a 'liability of a capital nature' as that phrase is used in the *Municipal Liabilities Regulation*, B.C. Reg. 254/2004.

7. ACCOUNTING, RECORDS AND REPORTING

7.1 Annual Reporting Requirements

By March 31 of each year during the Term, the Society will provide to the City an annual report, in the City's prescribed format, which includes (but is not limited to) the following information relating to the prior calendar year (the "Annual Report"). The City will provide to the Society the prescribed format of the Annual Report no later than January 31.

- (a) Professionally prepared annual financial statements, approved by the Society's Board of Directors, for the most recent fiscal year end.
- (b) Proof of insurance as specified in Section 13;
- (c) Current year revenue and expenditure budget, as approved by the Society's Board of Directors, with actuals or forecast to March 31;
- (d) Program information, in a form acceptable to the City which includes;
 - i. Statistical summary of people served by the Society in the prior year which may take the form of registration, attendance, visitation, participation, membership or a combination thereof;
 - ii. Highlights of particular achievements and successes in the prior calendar year with a focus on the impact of the Society's programs in the community;

- (e) Identification of active partnerships or collaborations, and the beneficial outcomes of same;
- (f) Governance and planning information which includes:
 - i. A list of the Society's directors;
 - ii. An organizational chart indicating key management and staff roles and staffing levels; and
 - iii. Objectives for the current calendar year.

The City may request, at its sole discretion, that the Society provide a public-in-attendance report to the City's Council in a prescribed format, which will reflect the reporting information listed in this section.

7.2 City Feedback on Reporting

Upon reviewing the Annual Report, in each calendar year the City may, at its sole discretion, make specific recommendations and requests to be fulfilled by the Society, which the Society shall implement within a reasonable period of time, upon receipt of such recommendations and requests. The City's feedback is intended to be constructive and offered in the spirit of learning and improvement.

Recommendations and requests made by the City under this section or during the course of other discussions, meetings or communications between the Society staff, officers or board members and the City do not constitute direction or instructions by the City staff, agents or council. The Society is responsible for the direction and governance of all its operations.

8. CITY'S COVENANTS

8.1 City's Covenants

The City covenants and agrees with the Society as follows:

(a) Quiet Enjoyment

The City shall permit the Society, so long as the Society is not in default of the Society's obligations under this Lease, to peaceably possess and enjoy the Premises for the Term, without any interruption or disturbance from the City or its assigns, or any other person or persons lawfully, claiming by, from, through, or under the City, except for the City's express rights under this Lease to enter upon and use the Premises or to permit others to do so.

9. REPAIR, DAMAGE, AND DESTRUCTION

9.1 City's Repairs

With the exception of services normally provided by the City acting in its capacity as the City of Kelowna, to the Premises and Interim License Area and those services specifically mentioned in the terms set out in the City & Society Responsibility Checklist attached to this Lease as Schedule C, the City will not be obliged to furnish any additional services or facilities or to make repairs or alterations in or to the Premises and Interim License Area and the Society hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Premises and Interim License Area.

9.2 Substantial Destruction and Abatement

The Society and City covenant and agree as follows:

- (a) the partial destruction or damage by fire or other casualty of the Premises and Interim License Area will not terminate this Lease or entitle the Society to surrender possession of the Premises and Interim License Area or to demand any abatement or reduction of the Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary;
- (b) if the Premises and Interim License Area are completely or substantially damaged or destroyed by any cause, then either the City or the Society may at its option, exercisable by written notice to the Society or City within 30 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the City nor the Society shall be bound to repair, replace or restore such building in accordance with this Lease.

10. LICENSES, ASSIGNMENTS, AND SUBLETTING

10.1 Subletting and Assigning

The Society may not assign this Lease or the benefits of this Lease in whole or in part.

11. FIXTURES AND IMPROVEMENTS

11.1 Installation of Fixtures and Improvements

The Society will not make, erect, install, or alter any improvements (including the Leasehold Improvements) or fixtures in or to the Premises, Interim License Area and/or Shared Park License, without the City's prior written approval, which may be withheld at the City's sole discretion.

11.2 Removal of Fixtures and Improvements

- i. All Leasehold Improvements, alterations, fixtures and any other improvements to, in or upon the Premises and Interim License Area done by or on behalf of the Society during the Term shall, without compensation to the Society, become the permanent property of the City as they are constructed, installed or placed in, on or under the Premises and Interim License Area unless the Society and the City have otherwise agreed in writing.

- ii. Notwithstanding anything to the contrary in this Lease, the City may, by providing written notice to the Society within 21 days following termination or expiry of this Lease, require that the Society remove any or all improvements done by or on behalf of the Society during the Term. Upon such notice, the specified improvements shall become the property of the Society and the Society shall remove such improvements within 21 days of receipt of such notice, failing which the City may, without notice or compensation to the Society, dispose of such improvements as it sees fit and the Society shall reimburse the City for its costs of doing so (including a 15% administration fee) within 21 days of receipt of an invoice from the City. The City's rights and the Society's obligations under this section shall survive the expiry or earlier termination of this Lease.

11.3 State of Premises at Termination

Upon the expiry or earlier termination of this Lease, the Society shall leave the Premises and Interim License Area in a good, neat and tidy condition and otherwise in the condition they are required to be kept by the Society during the Term under the provisions of this Lease. If the Society does not do so, the City may do so on behalf of the Society and the Society shall pay all of the City's costs (including a 15% administration fee) in that regard within 21 days of receipt of an invoice. The City's rights and the Society's obligations under this section shall survive the expiry or earlier termination of this Lease.

11.4 Alterations by City

The City reserves the right from time to time to make alterations and additions to the Premises, provided that in exercising any such rights, the City will take reasonable steps to minimize any interference cause to the Society's operations in the Premises or Interim License Area, but by exercising any such rights, the City shall not be deemed to have constructively evicted the Society or otherwise to be in breach of this Lease, nor shall the Society be entitled to any abatement of Rent or other compensation from the City.

12. MINIMUM WORK STANDARDS AND DESIGN REQUIREMENTS

12.1 Minimum Work Standards

The Society shall ensure that any repairs or work with respect to the Premises or Interim License Area, including any improvements or alterations approved by the City, done by or on behalf of the Society:

- (a) do not affect any structural or foundation elements of any improvements comprised in the Premises or Interim License Area;
- (b) meet or exceed the standards of materials and construction employed in the original construction of the improvements comprised in the Premises and the Interim License Area; and

- (c) comply with all applicable laws, statutes, enactments, regulations, bylaws, and orders from time to time in force, including the applicable building code and City of Kelowna bylaws.

12.2 Design Requirements

In the case of improvements or alterations to the Premises and the Interim License Area approved by the City and with respect to other work required to be done by the Society under this Lease, the City may require that the Society cause detailed drawings and specifications, acceptable to the City, to be prepared for such work. In such circumstances the Society shall, prior to commencing the contemplated work, submit for approval by the City drawings and specifications for such work, prepared by and under seal of an appropriately qualified professional engineer or registered architect acceptable to the City and shall cause such drawings and specifications to be revised as necessary in order to obtain the City's approval before commencing such work.

13. **INSURANCE AND LIABILITY**

13.1 Society To Provide

The Society shall procure and maintain during the Term, at its own expense and cost, the insurance policies listed in section 13.2 of this Lease. For clarity, the insurance requirements set out in section 13.2 are minimum requirements and are not to be interpreted in a manner that limits the Society's obligations under this Lease and the Society shall be responsible for obtaining and maintaining such additional insurance as would a prudent Society having similar obligations to those of the Society under the terms of this Lease.

13.2 Insurance

As a minimum, the Society 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:

- (a) Workers' Compensation Insurance

Covering all employees of the Society engaged in the agreement, services and/or occupancy in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.

- (b) Comprehensive General Liability Insurance

- i. providing for an inclusive limit of not less than \$5,000,000.00 for each occurrence or accident;
- ii. providing for all sums which the Society shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting there from) 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, services and/or occupancy 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, 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.

13.3 Automobile Liability Insurance

Covering all motor vehicles, owned, operated and used or to be used by the Society directly or indirectly in the performance of this agreement, services and/or occupancy. The limit of liability shall not be less than \$5,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

13.4 The City Named As Additional Insured

The policies required by section 11.2(b) 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.

13.5 Society's Sub-contractors

The Society shall require each of its sub-contractors to provide comparable insurance to that set forth under section 2 of Schedule D.

13.6 Certificates of Insurance

The Society agrees to submit Certificates of Insurance in the form attached as Schedule D for itself and all of its sub-contractors to the City prior to the commencement of this agreement, services and/or occupancy. Such Certificates shall provide that 30 days' written notice shall be given to the City, prior to any material changes or cancellations of any such policy or policies.

13.7 Other Insurance

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

13.8 Additional Insurance

The Society 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. The Society shall ensure that all of its sub-contractors are informed of and comply with the City's requirements set out in this Schedule D.

13.9 Insurance Companies

All insurance, which the Society 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.

13.10 Failure to Provide

If the Society 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 in the name and at the expense of the Society and the Society shall repay any and all costs expended by the City within 21 days of receipt of an invoice. For clarity, the City has no obligation to obtain any insurance required to be maintained by the Society under this Lease.

13.11 Non-payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Society or any sub-contractor shall not be held to waive or release the Society or sub-contractor from any of the provisions of the Insurance Requirements or this agreement, with respect to the liability of the Society otherwise. Any insurance deductible maintained by the Society or any sub-contractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Society as stated in section 13.10.

13.12 Indemnification

The Society must indemnify and hold harmless the City, its elected and appointed officials, officers, agents and employees (the "Indemnitees"), from and against all liabilities, losses, damages, actions, causes of action, costs (including legal fees and costs) or expenses in connection with loss of life, personal injury or damage to any person or property arising from the performance of this Lease, any occurrence on the Premises, or occupancy or use of the Premises, or caused by or arising from any act or omission of the Society, its officers, agents, employees, customers, invitees, or subcontractors. This indemnity shall survive the expiry or earlier termination of this Lease.

14. ENVIRONMENTAL MATTERS

14.1 Definitions

In section 12, the following terms shall have the following meanings:

- (a) **"Contaminants"** means:

- i. as defined in the *Environmental Management Act*: any biomedical waste, contamination, effluent, pollution, recyclable material, refuse, hazardous waste or waste and 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;
- (b) **"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);
- (c) **"Environmental Laws"** means any past, present or future common laws, enactments, statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction relating in any way to the Environment, environmental protection, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and
- (d) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

14.2 Society's Representations and Warranties

The Society 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:

- (a) except as disclosed to the City in writing, the Society 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 proceeding under any Environmental Laws; and
- (b) except as disclosed to and approved in writing by the City, the Society'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 Society and shall be subject to the provisions of Section 17.1 of this Lease.

14.3 Condition of Premises

The Society 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 Society 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 Society has performed such investigations of the Premises as it considered appropriate and is satisfied as to their environmental condition.

14.4 Compliance with Environmental Laws and Use of Contaminants

The Society covenants and agrees with the City to:

- (a) carry on and conduct its activities in, on and from the Premises in compliance with all Environmental Laws;
- (b) not permit the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on, under or from the Premises, except in compliance with all Environmental Laws;
- (c) immediately notify the City of the occurrence of any of the following and provide the City with copies of all relevant documentation in connection therewith:
- (d) a release of Contaminants in, on or about the Premises, Interim License Area or Shared Park License or any adjacent land; or
- (e) the receipt of any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person that is related to any Environmental Law;
- (f) promptly provide to the City a copy of any environmental site assessment, audit, report or test results relating to the Premises or Interim License Area at any time by or for the Society;
- (g) if the City suspects that the Society has not complied with its obligations under this section, obtain from an independent environmental consultant approved by the City an environmental site assessment, audit, report or testing of the Premises or Interim License Area and conduct or cause to be conducted any additional investigations that the environmental consultant may recommend all in order to determine compliance of the Premises or Interim License Area License with Environmental Laws; and
- (h) promptly remove any Contaminants arising from the Society's use or occupation of the Premises or Interim License Area in a manner that conforms to Environmental Laws governing their removal.

14.5 Confidentiality of Environmental Reports

The Society shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises and Interim License Area 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 Society'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.

14.6 Authorizations

The Society 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 Society's compliance with Environmental Laws.

14.7 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 Society or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Society 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.

14.8 Survival of Society's Obligations

The obligations of the Society under this section 12 (including, without limitation, the Society's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Lease.

15. SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES

15.1 Society's Covenants

The Society agrees with the City that:

(a) Sale or Financing of Premises

The rights of the City under this Lease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the City under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Premises, the Society agrees to attorn to and become the Society of such purchaser or purchasers, mortgagee, or trustee under the terms of this Lease.

(b) Registration

The Society agrees that the City shall not be obliged to at any time deliver this Lease or any instrument creating this Lease to the Society in a form registrable under the *Land Title Act* (British Columbia).

(c) Certificates

The Society agrees with the City that the Society shall promptly whenever requested by the City from time to time execute and deliver to the City and, if required by the City, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the City) a

certificate in writing as to the status of this Lease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the City and Society, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the City shall request a certificate. If the Society fails to do so within seven days after the Society receives the form of certificate, the Society hereby irrevocably and conclusively authorizes the City to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Society.

(d) Assignment by City

In the event of the sale by the City of the Premises or the assignment by the City of this Lease or any interest of the City hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the City hereunder, the City shall, without further written agreement, be freed and relieved of liability upon such covenants and obligations.

16. OCCURRENCE OF DEFAULT

16.1 Unavoidable Delay

Except as herein otherwise expressly provided, if and whenever and to the extent that either the City or the Society shall be prevented, delayed, or restricted in the fulfilment of any obligations hereunder in respect of the supply or provision of any service or utility, the making any repair, the doing of any work or any other thing (other than the payment of Rent) by reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfilment thereof, and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall Rent abate; but nevertheless the City will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises, Interim License Area or Shared Park License.

17. SOCIETY'S DEFAULT, REMEDIES OF CITY, AND SURRENDER

17.1 City Right to Remedy Society Default

If at any time during the Term the Society fails to keep the Premises and/or Interim License Area in the condition required under this Lease, the City may, by its employees, contractors and agents, enter upon the Premises for the purpose of remedying the Society's default if the Society fails to remedy such default within 30 days following notice thereof from the City or without notice in the case of an emergency. The Society shall reimburse the City for the City's costs of remedying such default within 21 days following receipt of an invoice from the City, which costs shall include a 15%

administration fee. For clarity, nothing in this section requires or obligates the City to remedy and Society default.

17.2 15.2 Remedies Cumulative

The City and the Society may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Society or the City, as the case may be, either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the City or the Society, as the case may be, by statute or the general law.

17.3 Right of Re-entry on Default

If and whenever:

- (a) the Society fails to pay any rent or other amount owing under this Lease when due, whether or not demanded by the City;
- (b) the Society fails to observe or perform any of the covenants, agreements, provisos, conditions, rules, regulations or other obligations on the part of the Society to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the City has given the Society notice thereof;
- (c) without the written consent of the City, the Premises and Interim License Area is used by any other persons other than the Society or its permitted assigns or permitted sub-tenants or for any purpose other than that for which the Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease;
- (d) without the consent of the City, the Premises are vacated or abandoned or remain unoccupied for 15 consecutive days;
- (e) the Term or any of the goods and chattels on the Premises are at any time seized or taken in execution or attachment by any creditor of the Society or under bill of sale or chattel mortgage;
- (f) if a receiver or receiver-manager is appointed to control the conduct of the business of the Society on or from the Premises;
- (g) the Society makes any assignment for the benefit of creditors or any bulk sale or becomes insolvent or bankrupt;
- (h) the Society becomes bankrupt or insolvent or takes the benefit of any statute or legislation now or hereafter in force for bankrupt or insolvent debtors;
- (i) proceedings are instituted for the winding-up or termination of the corporate existence of the Society;

- (j) the Term or any of the goods or chattels on the Premises are at any time seized by a creditor or the Society receives a notice from a creditor that the creditor intends to realize on security located on the Premises;
- (k) a writ of execution issues against the goods and chattels of the Society;
- (l) any policy of insurance upon the Premises from time to time effected by the City shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises and Interim License Area by the Society or any assignee, sub-tenant, or licensee of the Society or anyone permitted by the Society to be upon the Premises and Interim License Area and the Tenant after receipt of notice in writing from the City shall have failed to take such immediate steps in respect of such use or occupation as shall enable the City to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or
- (m) the City becomes entitled to terminate this Lease or to re-enter the Premises and Interim License Area under any provision hereof;

then and in every such case the City may re-enter and take possession of the Premises and the Interim License Area as though the Society or other occupant was holding over after the expiration of the Term and this Lease may, at the City's option, be immediately terminated by notice left at the Premises. The City may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises and Interim License Area and the Society hereby releases the City from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith.

17.4 Re-entry

No re-entry or entry shall be construed as an election by the City to terminate this Lease unless a written termination notice is given to the Society (which may be given by way of notice left at the Premises).

17.5 Certain Consequences of Termination and Re-entry

If the City re-enters the Premises or if this Lease is terminated by reason of any event set out in section 15.3, then without prejudice to the City's other rights and remedies:

- (a) the provisions of this Lease which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;
- (b) in addition to the payment by the Society of Rent and other payments for which the Society is liable under this Lease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Society or the person then controlling the Society's affairs; and

- (c) the Society or person then controlling the affairs of the Society shall pay to the City on demand such reasonable expenses as the City has incurred, and a reasonable estimate of the City of expenses the City expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Society, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Premises and the License Area in good order, and the expenses of repairing the Premises and the License Area and preparing them for re-letting.

17.6 Waiver of Distress and Bankruptcy

The Society waives the benefit of any present or future statute taking away or limiting the City's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Society on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears. The Society will not sell, dispose of, or remove any other fixtures, goods, or chattels of the Society from or out of the Premises during the Term without the consent of the City, unless the Society is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Society's purposes; and the Society will be the City or lessee of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Society agrees that it will not, without the City's consent, repudiate or disclaim this Lease in any bankruptcy, insolvency, re-organization, or other proceeding or court application, and if required by the City, waives in favour of the City the benefit of s. 65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, and any provision of similar import.

17.7 Re-letting and Sale of Personalty

Whenever the City becomes entitled to re-enter upon the Premises under any provision of this Lease, the City, in addition to its other rights, shall have the right as agent of the Society to enter the Premises and re-let them (for a term or terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the Rent therefore, and as the agent of the Society to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Premises or Interim License Area upon account of the Rent due and to become due under this Lease, and the Society shall be liable to the City for the deficiency, if any.

17.8 Surrender on Termination

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Society shall vacate and deliver up possession of the Premises and Interim License Area in a neat and tidy state and in good and substantial repair in accordance with the Society's obligation under this Lease to repair the Premises and Interim License Area, but subject to the Society's rights and obligations in respect of removal in accordance with section 9.2, and subject to reasonable wear and tear. At the same time the Society shall surrender to the City at the place then fixed for the payment of Rent all keys and other

devices which provide access to the Premises or any part thereof and shall inform the City of all combinations to locks, safes, and vaults, if any, in the Premises.

18. WORKSAFE BC COVERAGE

- 18.1 The Society shall, in its use of and activities on the Premises, comply with the *Workers Compensation Act* (British Columbia) and all regulations and orders from time to time in force thereunder, including Occupational Health and Safety Regulations, and, upon request from the City, provide evidence of any required registration under that Act and evidence of compliance with any requirement under that Act to make any payments or pay assessments. In addition, the Society shall be the "prime contractor" for the Premises under the *Workers Compensation Act* (British Columbia) and fulfill all of the "prime contractor's" obligations under that Act, including by ensuring that the activities of any employers, workers and other persons on the Premises relating to occupational health and safety are coordinated and by doing everything that is reasonably possible to establish and maintain a process that shall ensure compliance with that Act and regulations thereunder, including the Occupational Health and Safety Regulations.

19. MISCELLANEOUS

19.1 Notices

Any notice, request, direction or other communication (any of which is a "Notice") that is to be given or made by a party under this Lease, shall be in writing, and if to the City, either delivered to an executive officer of the City or delivered or mailed (by prepaid registered mail) to the City at the address set out in sub-section 1.1(a), or if the City has given the Society Notice of another address in Canada to which notices to the City under this Lease are to be given, then to the last such address of which the Society has been given Notice or sent by e-mail addressed as set out in sub-section 1.1(a); and if to the Society, either delivered to the Society personally (or to a partner or officer of the Society if the Society is a firm or corporation) at the address set out in sub-section 1.1(b) or delivered or mailed (by prepaid registered mail) to the Society at the Premises or sent by e-mail addressed as set out in sub-section 1.1(b).

Every such Notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered. Any Notice sent by e-mail is to be considered given on the day it is sent, if that day is a business day and if that day is not a business day, it is to be considered given on the next business day after the date it is sent.

19.2 Extraneous Agreements

The Society acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease or the Premises, Interim License Area or Shared Park License save as expressly set out in this Lease and in any agreement to lease in writing between the City and the Society pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may

not be modified except by an agreement in writing executed by the City and the Society, and 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.

19.3 City Discretion

Wherever in this Lease the approval or consent of the City is required, some act or thing is to be done to the City's satisfaction, the City is entitled to form an opinion, or the City is given the sole discretion:

- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the City or its authorized representative;
- (b) the approval, consent, opinion or satisfaction is in the discretion of the City, acting reasonably;
- (c) sole discretion is deemed to be the sole, absolute and unfettered discretion of the City; and
- (d) no public law duty of procedural fairness or principle of natural justice shall have any application to such approval, consent, opinion, satisfaction or discretion.

19.4 Time of Essence

Time shall be of the essence in this Lease.

19.5 Enurement

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the City and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Society.

19.6 References to Society

References to the Society shall be read with such changes in gender as may be appropriate, depending upon whether the Society is a male or female person or a firm or corporation. If the Society is comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Society herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

19.7 Frustration

Notwithstanding the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue which, but for this section, would frustrate or void this Lease, and

notwithstanding any statutory provision to the contrary, the obligations and liability of the Society hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

19.8 Waiver

No condoning, excusing, or overlooking by the City or Society of any default, breach, or non-observance by the Society or the City at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the City's or the Society'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 City or the Society herein in respect of any such continuing or subsequent default or breach, and no acceptance of Rent by the City subsequent to a default by the Society (whether or not the City knows of the default) shall operate as a waiver by the City, and no waiver shall be inferred from or implied by anything done or omitted by the City or the Society save only express waiver in writing.

19.9 Governing Law and Severability

This Lease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Lease shall be Kelowna, British Columbia as long as such venue is permitted by law, and the Society shall consent to any application by the City to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The City and the Society agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

19.10 Captions

The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Lease or of any provision thereof.

19.11 Acceptance

The Society accepts this Lease, to be held by it as Society, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Premises, Interim License Area or Shared Park License shall be conclusive evidence as against the Society that at the Commencement Date of the Term the City had duly completed all work required to be completed by the City prior to the Commencement Date of the Term and the Premises were in good order and satisfactory condition for the commencement of the work and business of the Society.

19.12 Security Deposit

If the City is holding a Security Deposit in connection to the Agreement, then unless the City agreed to in writing to different arrangements at the time the City received the Security Deposit, the Security Deposit shall be held in a non-interest bearing basis. The City may draw from the Security Deposit any amount required to cure any default or breach of this Lease by the Society, or to cover any operational or maintenance expenses the Society would otherwise be required to pay.

If the Society vacates the Premises in accordance with this Lease, the City shall return to the Society any remaining balance of the Security Deposit within 45 days following the termination or expiry of this Lease.

19.13 Expropriation

If at any time during the Term the interest of the Society under this Lease or the whole or any part of the Premises, Interim License Area, or Shared Park License shall be taken by any lawful power or authority by the right of expropriation, the City may at its option give notice to the Society terminating this Lease on the date when the Society or City is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Society shall immediately surrender the Premises, Interim License Area, or Shared Park License and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Society shall forthwith pay to the City the apportioned Rent and all other amounts which may be due under this Lease to the City up to the date of termination. The Society shall have no claim upon the City for the value of its property or the unexpired Term of this Lease, but the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Premises, and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the City specifically includes an award to the Society, the City shall account therefore to the Society. In this section the word "expropriation" shall include a sale by the City to an authority with powers of expropriation, in lieu of or under threat of expropriation.

19.14 No Society Authority to Bind City

Nothing contained in this Lease creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the Society and the City and the Society has no power or authority whatsoever to act on behalf of or bind the City in any way.

19.15 Statutory Functions

Nothing contained herein shall impair or affect in any way the exercise by the City of its functions and authority under any enactment, constating document, law, bylaw, resolution or other source of authority.

IN WITNESS WHEREOF the parties have executed this Lease.

SIGNED, SEALED AND DELIVERED by the City in the presence of:

CITY OF KELOWNA, by its Authorized Signatories:

Mayor

Witness

Address

Clerk

Occupation

**KELOWNA OUTRIGGER RACING
CANOE CLUB ASSOCIATION,**
by its Authorized Signatories:





Witness



3020 ABBOTT ST.

Address

Manager

Occupation

SCHEDULE A
PLAN OF THE LEASED PREMISES AND LICENCE AREA



SCALE: N.T.S.

MAILING ADDRESS: 3020/3030/3040/3050 ABBOTT ST

LEGAL DESCRIPTION: LOT NO. A,B,C,D PLAN NO. EPP96732

TWP. 25 SEC. 13

- PREMISES AREA = $\pm 440\text{m}^2$
- INTERIM LICENSE AREA = $\pm 886\text{m}^2$
- SHARED PARK LICENSE = $\pm 1515\text{m}^2$

PLEASE NOTE THAT THIS SKETCH IS FOR ILLUSTRATIVE PURPOSES ONLY. THE DEGREE OF ACCURACY OF THE AREA IS LIMITED.

SCHEDULE B

DEFINITIONS

In this Lease the following expressions shall have the following meanings:

"Authority" means the City of Kelowna and any other authority having jurisdiction over development on the Land.

"Basic Terms" means those terms set out in section 1.1.

"Commencement Date" means the date the term commences as set forth in or determined under sub-section 1.1(d) and subject to section 3.2.

"Goods and Services Tax" or "GST" means and includes any and all sales Taxes, value added Taxes, business transfer Taxes, or any other Taxes imposed on the City or the Society from time to time in respect of the Rent payable by the Society to the City under this Lease or the Rental of the Premises or the provision of any goods, services, or utilities whatsoever by the City to the Society under this Lease, whether characterized as a Goods and Services Tax, sales Tax, value added Tax, business transfer Tax, or otherwise.

"Insured Damage" means that part of any damage occurring to any portion of the Premises for which the City is responsible, of which the entire cost of repair is actually recoverable by the City under a policy of insurance in respect of fire and other perils from time to time effected by the City, or, if and to the extent that the City has not insured and is deemed to be a co-insurer or self-insurer under section 11.1, would have been recoverable had the City effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured.

"Land" means that parcel of land at:

3020/3030/3040/3050 Abbott Street
in the City of Kelowna, British Columbia;

more particularly described as:

Lot A, B, C, & D Plan EPP96732 District Lot 14 Land District 41

"Lease Year" means, in the case of the first Lease Year, the period beginning on the Commencement Date and terminating 12 months from the last day of the calendar month in which the Commencement Date occurs (except that if the Commencement Date occurs on the first day of a calendar month, the first Lease Year shall terminate on the day prior to the first anniversary of the Commencement Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year.

"Leasehold Improvements" means all fixtures, improvements, installations, alterations, and additions now and from time to time hereafter made, erected or installed, whether by the Society, and the City or anyone else, in the Premises, including all partitions however fixed (including movable partitions) and all wall-to-wall carpeting with the exception of such carpeting where laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage, but excluding trade fixtures and unattached free-standing furniture and equipment.

"Interim License Area" means the landscaping area around the Premises as set out in sub-section 1.1(c) and shown on Schedule A.

"Premises" means the buildings located at the Kelowna Paddle Centre at 3020 Abbott St as set out in sub-section 1.1(c) and shown on Schedule A.

"Rent" means the annual Rent set out in sub-section 1.1(f) and payable by the Society as set forth in section 4.2.

"Shared Park License" means the portion of the public park that the Society may use for their programs as shown on Schedule A.

"Society's Share" means the proportion of Taxes attributed to the Premises and Interim License Area.

"Taxes" means all Taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, which are levied, imposed, or assessed against or in respect of the Premises, the Land, which are from time to time levied, imposed or assessed in the future in addition or in lieu thereof, including, without limitation, those levied, imposed, or assessed for education, schools and local improvements.

"Tax Cost" for any calendar year means an amount equal to the aggregate, without duplication, of all Taxes in respect of such calendar year.

"Term" means the Term of this Lease set forth in sub-section 1.1(d) and any renewal or extension thereof and any period of permitted overholding.

SCHEDULE C

Society Responsibility Checklist KELOWNA OUTRIGGER RACING CANOE CLUB ASSOCIATION dba Kelowna Paddle Centre Society occupied spaces as per Section 1.1(c)	Provided by the <u>City</u> , Cost borne by the <u>City</u>	Provided by the <u>Society</u> , cost borne by the <u>Society</u>	Does Not Apply
Boiler operating permits			X
Electrical field safety representative		X	
Electrical operating permit		X	
Electrical system preventative maintenance		X	
Electrical system repairs		X	
Electrical/lights - lamp & tube replacement		X	
Elevator equipment repairs (liability limit)			X
Elevator maintenance contract			X
Elevator operating permits			X
Emergency lighting testing & repairs		X	
Exterior doors, windows, facades, etc.		X	
Fire alarm system repairs		X	
Fire alarm system testing & inspection contracts		X	
Fire extinguisher monthly & annual inspections		X	
Fire safety plan		X	
Fire safety drills		X	
Fire sprinkler system repairs			X
Fire sprinkler system testing and inspection contracts			X
Furnishings (maintain & replace)		X	
Garbage & recycling bins		X	
Grease trap annual service		X	
HVAC preventative maintenance		X	
HVAC repairs		X	
Insurance – automotive		X	
Insurance – liability		X	
Insurance – property, building	X		

<p style="text-align: center;">Society Responsibility Checklist KELOWNA OUTRIGGER RACING CANOE CLUB ASSOCIATION dba Kelowna Paddle Centre</p>	<p style="text-align: center;">Provided by the <u>City</u>, Cost borne by the <u>City</u>:</p>	<p style="text-align: center;">Provided by the <u>Society</u>, cost borne by the <u>Society</u>:</p>	<p style="text-align: center;">Does Not Apply:</p>
Insurance – Society owned furnishings & fixtures		X	
Insurance – Society owned operational equipment, computers		X	
Interior walls, flooring, doors, ceilings, etc.		X	
Internet		X	
Janitorial services & supplies in leased spaces		X	
Janitorial services & supplies in public washrooms		X	
Kitchen equipment repair & maintenance - City Owned		X	
Kitchen equipment repair & maintenance - Society Owned		X	
Kitchen Exhaust Hood annual cleaning		X	
Kitchen Exhaust Hood repairs		X	
Kitchen Hood Fire suppression system preventative maintenance		X	
Kitchen Hood Fire suppression repairs		X	
Kitchen Hood Fire suppression testing		X	
Keys & locks repair & maintenance		X	
Landscape maintenance		X	
Licenses – Business License		X	
Licenses – Liquor License			X
Licenses – IHA Food Operating Permit / Foodsafe Certification		X	
Parking lots - parking lines, sweeping, asphalt, signage, drainage etc.			X
Pest control		X	
Plumbing system preventative maintenance		X	
Plumbing system repairs		X	
Property taxes		X	
Garbage & Recycling program		X	
Roof inspection & maintenance		X	
Roof repairs		X	
Security system		X	

<p style="text-align: center;">Society Responsibility Checklist KELOWNA OUTRIGGER RACING CANOE CLUB ASSOCIATION dba Kelowna Paddle Centre</p>	<p style="text-align: center;">Provided by the <u>City</u>, Cost borne by the <u>City</u>:</p>	<p style="text-align: center;">Provided by the <u>Society</u>, cost borne by the <u>Society</u>:</p>	<p style="text-align: center;">Does Not Apply:</p>
Signage		X	
Snow removal		X	
Telephone		X	
Society improvements		X	
Society improvements – Repair, maintenance & replacement		X	
Tree removal		X	
Utilities – electricity		X	
Utilities – natural gas		X	
Utilities – propane		X	
Utilities – water, sewer		X	
Vandalism (exterior) (liability limit)		X	
Vandalism (interior) (liability limit)		X	
Window Cleaning (exterior)		X	
Window Cleaning (interior)		X	

SCHEDULE D

CERTIFICATE OF INSURANCE



City staff to complete prior to circulation

City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name:	
Address:	

Broker

Name:	
Address:	

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

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive

- 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.

<hr/> Print Name	<hr/> Title	<hr/> Company (Insurer or Broker)
<hr/> Signature of Authorized Signatory		<hr/> Date

SCHEDULE E Operating Requirements

1. The Society is permitted to operate the Kelowna Paddle Centre within Pandosy Waterfront Park between the hours of 6 am and 10pm unless the City Agrees to changes in the time of operation.
2. The Society will be responsible for operating and maintaining the Premises and Interim License Area including:
 - a. The use of the Premises including but not limited to user access, collection of fees and dues, rental bookings, schedule development and administration
 - b. Maintenance of the Premises and Interim License Area, including annual maintenance planning, preventative maintenance, repairs, regular cleaning and annual maintenance cleaning;
 - c. The safety and security of the Premises and Interim License Area, including evacuation plans, alarms, security systems and monitoring and various equipment such as AED devices;
 - d. Waste management including the collection of refuse consistent with City policies and regulations;
 - e. Any communications, promotions and marketing provided that the Society and the City may choose to jointly promote or communicate recreational and other opportunities to the City.
3. The Society will ensure that the Premises and Interim License Area can be accessed and used by a broad cross section of the community and will not unreasonably exclude anyone by reason of religion, ethnicity, gender, age, sexual orientation, physical or cognitive ability, language or income.
4. The Society will actively participate in the Pandosy Waterfront Park Liaison Committee as provided for in section 13 of the MOU dated February 9, 2021 to identify and address all issues or opportunities arising during the operation and maintenance of the Premises and Interim License Area;
5. Parking –
 - a. The Society confirms and is aware that the City will retain the existing parking lot to provide exclusive parking for the Society's users and as a staging area for park construction until October 31, 2023.
 - b. From November 1, 2023 onwards, the gravel parking lot will be made available for use by both the Society and Pandosy Waterfront Park users until the expiration of this lease or the start of construction of the new facility as outlined in the MOU dated February 9, 2021. The City may utilise parking control measures in order to ensure the greatest availability for all users. The Society will adhere to the mutually agreed up parking program, and use the interim period to educate members and reduce reliance on on-site parking. The Society commits to providing secure bike storage for its members and users of the Facility and to take other measures to strongly encourage the use of car sharing and alternate modes of transport by members and visitors in order to reduce parking demand to minimize the impact of parking on the immediate neighbourhood.
6. During the five (5) year period of this agreement, the Society covenants to take the necessary steps to advance its project to finance, design and build a new purpose-built facility as outlined in the MOU including:
 - a. securing the necessary funding;
 - b. designing the new facility in keeping with the MOU dated February 9, 2021;
 - c. coordinate closely with the City throughout the design process for the new facility and the surrounding new designated park area;

- d. obtaining a development and development variance permits (if required);
 - e. obtaining a building permit for the construction of the new facility;
7. Shared Park License:
- a. The Society is aware that the Shared Park Area is a public beach and open to the enjoyment and use of all citizens and that the Society can not restrict access to the Shared Park License;
 - b. In addition to the use the Interim License Area, the Society may use Shared Park License as shown on Schedule A for pre-approved signature events and other short-term activities as listed below:
 - a. educational activities and programs carried out by the Society;
 - b. weekly events such as paddling competitions;
 - c. dry land training;
 - d. rigging of paddle craft; and
 - e. launching and landing of paddle craft.
 - c. Shared Park License is primarily for use by the general public and are not for the exclusive use by the Society. Long term placement of rolling racks, the storage of paddle craft or the maintenance of paddle craft are not permitted in Shared Park License.
 - d. As the City is responsible for the design, construction, use, management and maintenance of the Shared Park License, the City will collaborate with the Society in developing more detailed guidelines for the use, management and maintenance of Shared Park License prior to the issuance of the Building Permit for the new facility.

SCHEDULE F

Required Society and City Activities During Park Construction

The Society and the City agree to undertake the activities and assume the costs described in the following table.

Note: The City's actions are subject to Riparian, Archaeological and other approvals outside of the City's jurisdiction. Therefore, all dates for City actions are indicative only.

Park Development Phases*:	Required Changes to Society Facilities and Operations:	City Actions:
<p>Phase 1 – Demolition of existing houses and structures within boundaries of Park. Proposed time frame: January March, 2021.</p>	<p>Removal of existing fence along the southern boundary of existing Lot D, Plan EPP 96732 as shown on the plan contained in this schedule.</p> <p>Relocation of Society's existing boat rack presently located on Lot D, Plan EPP 96732 to a new location as shown in plan contained in this schedule.</p> <p>The Society will relocate the existing boat rack structure on Lot D, Plan EPP 96732.</p> <p>Removal of "C Cans" by Society.</p>	<p>City removes all buildings and structures south of the Premises.</p> <p>Existing damaged tree within the riparian area in front of the Premises is removed.</p>
<p>Phase 2 – Construction of Park (other than remediation of Riparian areas.) Proposed time frame: April to November, 2021.</p>	<p>The existing gravel parking lot is retained as a temporary facility for the exclusive parking of the Society's users and as staging area for the adjacent park construction, until October 31, 2023, or when the Contractor is completed the work whatever is later, whereupon it will be controlled by the City and made available for use by both the Society's and Park users until the start of construction of the new facility or the termination of this lease, whichever is the sooner.</p> <p>Existing Society washroom facility is altered to provide public access to the washroom facility.</p>	<p>City constructs Park on land other than land to be included in the Interim License Area</p> <p>The City will pay for any costs associated with alterations to the existing Society's washroom to provide public access and will operate and maintain it until it is removed. Maintenance includes daily opening and closing of the public washroom and provision of security.</p>

Park Development Phases:	Required Changes to KPC Facilities and Operations:	City Actions:
<p>Phase 3 – Remediation of riparian areas.</p> <p>Proposed time frame: January to May, 2022</p>	<p>The Society constructs additional fencing at its cost as shown in plan contained in this schedule to provide additional security during remediation of riparian areas.</p> <p>Existing gravel parking lot area is retained as a temporary facility for the exclusive parking of the Society’s users until October 31, 2023 whereupon it will be made available for use by both the Society and Park users until the start of construction of the new facility. In addition to parking, the lot is available for use as a construction staging area by the City’s contractor during October to May of each year in which Park construction is taking place.</p>	<p>Existing concrete deck currently located in the riparian area will be removed at the City’s cost.</p> <p>City undertakes remediation of all riparian areas within the Park.</p>
<p>Phase 4 – Park Opening</p>	<p>The Society operates within a secure compound as shown in plan below until construction of the new facility is completed.</p> <p>Existing gravel parking lot is retained as a temporary facility for the exclusive parking of the Society’s users until October 31st, 2023 whereupon it will be made available for use by both the KPC and Park users until the start of construction of the new facility. In addition, the lot will be used as a construction staging area.</p>	<p>City will work with the Society to identify measures to provide for exclusive parking by the Society until October 31, 2023 including the use of signage.</p> <p>After Oct 31 2023, the City may impose parking time limits and charges, if necessary, for the temporary parking lot, to ensure adequate access to parking for members and users of KPC facilities and Park users.</p>

SCHEDULE F (continued)

