

LICENCE OF OCCUPATION

Knox Mountain Park Disc Golf Course

THIS AGREEMENT dated for reference the ____th of _____, 20____.

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its office at 1435
Water Street, Kelowna, BC, V1Y 1J4

(the "City")

OF THE FIRST PART

AND: **KELOWNA DISC GOLF ASSOCIATION (S-0061002)**
c/o Paul McManus, Board Member
2323 Devon Crt
Kelowna, BC, V1Z 3L5
pmanus@cacltd.ca
250-488-2075

(the "Society")

OF THE SECOND PART

WHEREAS:

A. The City is the owner of the properties located at:

563 Poplar Point Drive (Plan KAP1306 Lot 40 Blk23),
565 Poplar Point Drive (Plan KAP 6755 Lot A), and
580 Knox Mountain Drive (Plan KAP 8841 Lot 2),

in the City of Kelowna.

(collectively, the "Property").

B. The Society wishes to operate a ten basket Disc Golf Course (the "Works") on a portion of the Property (the "Licence Area", as shown in Schedule 'A' as attached to this Agreement);

C. The Kelowna Disc Golf Association Society is a not-for-profit organization registered (#S-0061002) under the Societies Act (British Columbia) with the mandate to promote, develop and encourage disc golf for the physical, competitive, and social well-being of the members of the Society and of the Central Okanagan community as a whole.

D. The Society wishes to develop the Works with the following mission statement:

"To build and support the sport of Disc Golf in the Central Okanagan".

By playing a disc golf course at the Property, various synergies may be achieved, such as; program and club development, recruiting and maintaining members, developing a sustainable financial model and establishing a community presence. Disc golf provides an opportunity for local citizens to participate in

active play, is available to all age cohorts, and provides an environment for multi-generational participation from novice to competitive.

- E. The Kelowna Disc Golf Association goals include:
- a. To promote the sport of Disc Golf through new course development;
 - b. To support, maintain and upgrade existing courses;
 - c. To actively support and promote inexpensive play;
 - d. To host events intended to introduce new players to the sport of Disc Golf;
 - e. To support organized tournament play;
 - f. To solicit, receive, acquire and hold donations, gifts and legacies and to collect and receive rents, profits and other revenues, grants, appropriations and subsidies, land, and to enjoy all of the benefits of ownership thereof;
 - g. To market, promote, co-ordinate and manage all services provided by the Society;
 - h. To do all other things as are incidental or conducive to the attainment of the purposes of the Society.
 - i. To build stakeholder support for a sustainable business model to ensure that the Society can become financially self-sufficient (i.e. not request financial assistance from the City of Kelowna annually.)
- F. The City is prepared to grant the Society a Licence of Occupation for a term of three (3) years pursuant to the terms and conditions of this Agreement.

NOW THEREFORE: in consideration of \$1 per year and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Society covenant and agree as follows:

1. **Grant** – The City grants to the Society the non-exclusive right and licence to enter onto and use the Licence Area for the purposes of operating a disc golf course including installation of equipment and signage, as approved by the City.
2. **Additional Rights** – For the purposes outlined in Section 1, the Society shall have the right to bring onto the Licence Area all necessary materials, and equipment.
3. **Term** – The duration of this Agreement and Licence herein granted shall be for a term of three (3) years (the "Initial Term") commencing on the 1 day of December 2021, unless earlier terminated in accordance with Section 27.
4. **Extension** – The term of this Licence of Occupation may be renewed, at the City's sole discretion, for a further three (3) year period (the "Renewal Period") upon written agreement by the City and the Society. All other terms and conditions with the exception of Article 4 will apply.
5. **State of Licence Area at Termination** – In the event that this Agreement terminates or expires for any reason, the Society will cease all occupation of the Licence Area and will remove all equipment, chattels, fixtures, buildings and other improvements from the Licence Area. The Society will leave the Licence Area in a safe, clean and tidy condition and clear of contamination occurring since the date of commencement of this Agreement. In the event that the Society fails to remove any equipment or chattels upon termination of this Agreement then the City may do so and recover the expense thereof from the Society. All improvements and fixtures remaining on the Licence Area become the sole property of the City upon termination of this Agreement, without any compensation whatsoever to the Society.
6. **Services** – The City appoints the Society to provide the following services in consultation with the City and the Society hereby accepts such appointment:

- (a) Inspect the course on a regularly scheduled basis and record the results of the inspection on a predetermined inspection form; all records shall be made available to the City for inspection on 24 hours notice;
- (b) Report to the City immediately any hazardous condition that poses a life-threatening hazard and prevents the public from using the License Area until City Staff arrive to remedy the condition;
- (c) Be responsible for picking up loose garbage within the License Area and place in trash container(s) provided by the City;
- (d) In the interest of safety of workers / volunteers, the Society agrees to the Prime Contractor (see item 26) designation. The Society is responsible for having utility locates conducted prior to any digging onsite. In addition, general safety precautions should be exercised including safe use of hand tools and / or power tools, recognition of overhead hazards (power lines / tree branches), inclement weather (heat / wind, etc.) and the terrain itself (potential trip hazards);
- (e) Set, implement, monitor and enforce Disc Golf Course rules and standards (the Disc Golf Course Rules); as posted onsite and updated from time to time; and,
- (f) Host, and / or co-host recreational, training and competitive programs at the Disc Golf Course. The Society will be responsible for obtaining a Facility Use Agreement (through Sports & Events Services) when hosting large events. As part of the permit approval process there may be the requirement to submit a parking plan and to address the impacts to neighbouring residents.

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 24;
- (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 Premises usage in the prior year which may take the form of registration, bookings, rentals, events, 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 operational personnel who may be paid staff or volunteers; and
 - iii. Objectives for the current calendar year.

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.

7.3 Good Standing

The Society shall at all times be in good standing as a registered not-for-profit society under the Societies Act of BC. The Society shall, on an annual basis, provide to the City a Certificate of Good Standing and a list of the Society's Board of Directors. The Society must provide the City thirty (30) days advance written notice of any changes to the Society's constitution (including name and purposes but excluding bylaws) as stated in its incorporating documents. If the City deems that any changes to the Society's constitution have a material impact on the public benefit for granting this lease, the City may terminate this lease as per section 27 of this Agreement.

8. Code of Conduct

- a. The Society is to use the License Area only for the purpose of disc golfing or such 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.
- b. The Society shall not construct or install any permanent structures (including tee boxes) or buildings.
- c. The Society shall not affix any signage or other features to existing trees in the Licence Area.
- d. The Society shall not display any advertising and/or signs without first obtaining written approval from the City and following all appropriate sign bylaws. The Society is aware that it is responsible to provide all safety and course signage consistent with the City's standards for park signage and will obtain City approval prior to installation.
- e. The Society shall not commit or permit: any waste or injury to the License Area including the Works; any conduct which impedes or, in the opinion of the City acting reasonably, could constitute a nuisance to the City or anyone else; any other use or manner of use which, in the opinion of the City acting reasonably, may have an adverse impact on the reputation of the Licence Area.
- f. The Society shall permit the City at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the License Area for the purpose of inspection or making repairs, alterations, or improvements to the Licensed Area as the Landlord may deem necessary or desirable, or as the City may be required to make by law. 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 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.

- g. No alcoholic beverages are permitted within the License Area;
 - h. The Society shall take reasonable measures to ensure people utilizing the License Area do not adversely impact parking in the neighbourhood;
 - i. The hours of use for the License Area are 8:00 am to 10:00pm or dawn to dusk whichever are shorter.
 - j. While it is recognized that there will be noise that comes from the nature of the activity within the License Area, the Society agrees to make reasonable efforts to control this noise. Noise should be reduced or eliminated between the hours of 8pm and 8 am daily (for example: participants must be discouraged from using automatic vehicle locking devices that emit a noise to confirm doors are locked).
 - k. The License Area will be used for the operation of a disc golf course by the Society. The License Area is not to be rented to another organization.
 - l. The Society and its members shall act as role model in the community with respect to the development, operation and promotion of the Disc Golf Course.
 - m. The Society shall take reasonable measures to inform the neighbourhood of the use of the site. This includes special events that will attract a large number of participants.
 - n. The Society shall take reasonable measures to ensure the daily activities and events associated with the Society work in harmony with the neighbourhood.
 - o. The Society is permitted to run a special event up to 3 times per year and work with the City to meet all Facility Use Permit requirements.
 - p. The Society is responsible to ensure safety of the License Area. The Society assumes the risk of maintaining the Works on public land. The City of Kelowna does not assume any liability for equipment maintenance.
 - q. The Society is responsible for all aspects of the daily operations.
 - r. The Society shall ensure any temporary toilet structure(s) are located as far away from neighbouring residents as possible while still maintaining access by service vehicles and that they are cleaned out on a regular basis to reduce the odour in the neighbourhood.
 - s. In the event that the operation of the Society in the License Area has an adverse effect on the neighbourhood, the City reserves the right to impose additional operational restrictions at its sole discretion;
9. **Non-exclusive Use** – The Society agrees that:
- (a) the rights granted under this Agreement do not constitute any interest in the Licence Area or entitle the Society to exclusive possession of the Licence Area;
 - (b) the Society's rights under this Agreement are at all times subject to the rights and interest of the City as owner and possessor of the Licence Area.
 - (c) Members of the public may enter into and use the License Area for the purpose of using the Works without any fee or admission charge.

10. **Park Maintenance** - The City will maintain the trees, fences and parking area on the Property.
11. **Garbage Collection** - The City will pay for garbage containers for the collection and disposal of refuse from the garbage containers. The City will provide and pay for portable toilets on site. Both of these services will be provided for day-to-day operations. Special events will require event organizers to pay for adequate garbage containers and collection as well as adequate on-site portable toilets.
12. **Operating Grant** - The City will not provide the Society an annual operating grant.
13. **Capital Grant** – The City will not provide the Society an annual capital grant.
14. **Property Taxes** – The Society will be responsible to pay for any property taxes payable on the Property as result of this Agreement, unless approved under a Permissive Tax Exemption Bylaw.
15. **No Waste or Nuisance** – The Society will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
16. **Terms and Conditions** – The Society will comply with all the terms, conditions, rules or regulations that the City may from time to time impose in respect of the use and administration of the Licence Area. The Society acknowledges that the fact that the Licence is granted by the City does not excuse the Society from obtaining building permits, development permits, business licences and other required permissions.
17. **Maintenance** – The Society will at its own expense keep the Licence Area in a safe, clean and tidy condition including maintenance, repair and replacement of all Disc Golf Course signage, tees, tee boxes, baskets and other features directly related to the operation of the disc golf course.
18. **Compliance with Laws** – The Society will comply with all laws and regulations pertaining to its use and occupation of the Licence Area.
19. **Inspection by the City** – The City may review and inspect the Licence Area and the work which the Society is undertaking pursuant to this Agreement to determine if the Society is in compliance with the terms of this Agreement.
20. **Emergency Use** – The Society shall make all or part of the License Area available for use as an emergency reception centre in the event of a community emergency, as determined by the City in accordance with applicable enactments. The City shall solely be responsible for determining whether the License Area can safely be used for an emergency reception centre at the time of the emergency, and shall:
 - a. Be responsible for any direct expense incurred or damage caused to the License Area as a result of such use;
 - b. Be responsible for any and all liabilities, costs, expenses, suits, or claims arising as a result of such use;
 - c. Compensate the Society for all increased operating costs incurred during such use by the City; and
 - d. Compensate the Society for uninsured business losses arising out of such use, provided that the Society must act reasonably in re-arranging bookings and events to minimize the extent of any business losses during such use;
21. **No Transfer** – The rights granted to the Society under this Agreement may not be sub-licensed, assigned or otherwise transferred.
22. **Risk** – The Society accepts the Licence Area on an as-is basis and agrees that it will use the Licence Area at its own risk, and the City will not be liable in respect of any loss of life, personal injury, damage to property, loss of property or other loss or damage suffered by the Society, its contractors,

subcontractors, agents, invitees, employees or any other person arising out of this Agreement or the use and occupation of the Licence Area except in the case of negligence or wilful act or omission by the City, its employees, agents or invitees.

23. **Indemnity** – The Society will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and others from and against any claim, action, damage, liability, cost and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from this Licence or any occurrence on or around the Licence Area during the term of this Licence, or by use or occupancy of the Licence Area by the Society or any default of the Society under this Agreement or any wrongful act, omission or negligence of the Society or its officers, employees, contractors, agents or others for whom the Society is responsible. This indemnity will survive the expiry or sooner termination of this Agreement.
24. **Release** – The Society hereby releases and forever discharges the City, its elected officials, officers, employees, agents and invitees, of and from any claim, causes of action, suit, demand, expense, cost, legal fees and compensation of whatever kind, whether known or unknown, at law or in equity, including without limitation any claim under the *Property Law Act* (collectively "Claims"), which the Society may have, sustain or suffer, as the case may be, now or in the future arising from the Works, other improvements in the Licence Area, the expiry or termination of this Licence, the exercise by the City of any of its rights under this Licence or from or in any way connected with the Society's use of the Licence Area, except claims arising from the exclusive negligence of the City.
25. **Insurance** – At all times during the Term hereof, the Society shall at no expense to the City maintain, to the City's satisfaction, commercial general liability insurance against any and all third party claims for bodily injury, death, or property damage whatsoever. Such insurance shall name the City as an ADDITIONAL INSURED but not as ADDITIONAL NAMED INSURED and shall cover for not less than Two Million Dollars (\$2,000,000).
26. **Certificate of Insurance** - Upon signing this Agreement, the Society shall promptly forward a Certificate of Insurance including insuring agreements acceptable to the City, as shown in Schedule "B". The City will supply a form of insurance certificate to be completed by the Society's insurer containing minimum insurance coverage required by the City. During the Term hereof, the City may obtain directly from the Society's insurer copies of all such Certificates of Insurance and all such insuring agreements required under this Agreement.
27. **Prime Contractor** – The Society agrees to be designated as the Prime Contractor as per the requirement of the British Columbia, *Workers Compensation Act Part 3, Division 3, Section 118*, in so doing the Society agrees to be responsible for delivery and coordination of all occupational health and safety requirement on the site and licence area during the course of providing any of the Services, Signage, Maintenance, Hosting and events and other operations or works under this Agreement.
28. **Termination** – The City reserves the right to terminate this agreement, adjust the boundaries of the License Area, or in any other way alter the terms and conditions of this Agreement, at its sole discretion for any reason by providing 60 days notice in writing. The City may require the Society to cease using the License Area should the conduct of the members of the Society result in an unacceptable level of complaints from the neighbours. The City will not be liable to compensate the Society for damages, costs or losses resulting from the exercise of this right of termination or any termination of this Licence.
29. **Notices** – Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by hand or mailed by prepaid registered mail or sent by facsimile transmission to the intended party at its address set out on page 1 of this Agreement or to such other address as either party may provide in writing to the other pursuant to the provisions of this paragraph.

All notices:

To the City:

Attention: Property Manager
1435 Water St.
Kelowna, BC V1Y 1J4

To the Society:

Attention: Kelowna Disc Golf Association
c/o Paul McManus, Board Member
2323 Devon Crt
Kelowna, BC, V1Z 3L5
pmcmanus@cacltd.ca
Telephone: 250-488-2075

A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or 3 days after the date it was mailed or if that day is not a business day, the next day that is a business day. If mailed, should there be at the time of mailing or between the time of mailing and the deemed receipt of the notice, a mail strike or slowdown, labour or other dispute which might affect the delivery of such notice by the mails, then such notice will only be effective if delivered by hand or sent by facsimile transmission.

30. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Licence Area, all of which may be fully and effectively exercised in relation to the Licence Area as if this Agreement had not been fully executed and delivered.
31. **Severance** – If any portion of this Agreement is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid must not affect the validity of the remainder of the Agreement.
32. **Further Actions** – Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
33. **Waiver or Non-action** – Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Society must not be deemed to be a waiver of any subsequent default by the Society. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Society must not be deemed to be a waiver of such term, covenant or condition.
34. **Reference** – Every reference to a party is deemed to include the heirs, executors, administrators, successors, servants, employees, agents, contractors and officers of such party wherever the context so requires or allows.
35. **General** –
 - a. This Agreement will bind and benefit each party to this Agreement, and its respective corporate successors;
 - b. The Schedules attached to this Agreement form part of this Agreement;

Schedule "A"
License Area



SCALE: N.T.S.

MAILING ADDRESS: 565 POPLAR POINT DR, 580 KNOX MOUNTAIN DR

LEGAL DESCRIPTION: LOT NO. A, 1 PLAN NO. KAP6755, KAP8841

TWP. 25 SEC. 36



LICENSE AREA = $\pm 15,581\text{m}^2$

Schedule "B"
Certificate of Insurance



1435 Water Street
Kelowna, BC V1Y 1J4
250-469-8500
kelowna.ca

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>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</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.

Print Name

Title

Company (Insurer or Broker)

Signature of Authorized Signatory

Date