

LEASE

THIS LEASE dated for reference the 22th day of November, 2019 is

BETWEEN:

CITY OF WEST KELOWNA, 2760 Cameron Road, West Kelowna, British
Columbia, V1Z 2T6

(the "City")

AND:

WEST KELOWNA PICKLEBALL CLUB

C/o James Chivers-Wilson
17-2155 Horizon Drive
West Kelowna, B.C.
V1Z 3Z8

(the "Club")

WHEREAS:

- A. The City is the registered owner of the certain lands located in West Kelowna, British Columbia and legally described as:

Legal Description: Plan Number KAP48075
Lot 1
District Lot 3486

Parcel Identifier: 017-915-457

("Land"), and the City owns pickleball and tennis courts located on the Land shown on Schedule "A" (the "Mt. Boucherie Pickleball and Tennis courts") collectively, the "Premises"; ("Court Use Schedule") the court times assigned to the Pickleball Club shown in Schedule C and D.

- B. The City has agreed to lease the Pickleball courts to the Club, as marked in Schedule A, for the operation of a West Kelowna Pickleball Club.

NOW THEREFORE IN CONSIDERATON of the mutual covenants, terms and conditions set for in this Lease the parties agree as follows:

1. LEASE OF THE PREMISES

- 1.1 The City does hereby lease the Premises to the Club on the terms and conditions hereinafter set forth.

2. TERM

- 2.1 The term of this agreement shall be for five (5) years commencing on the 1st day of March 2020 and terminating on the 28th day of February 2025 unless otherwise terminated by mutual agreement as per article 7.3.

3. RENT

- 3.1 The rent paid to the City shall be based on a per member fee as described in Schedule "B".

4. GENERAL DUTIES AND OBLIGATIONS

In addition to the other covenants and obligations to be performed by the Club under this Agreement, the Club covenants and agrees that it will, at all times:

- 4.1 Continue to be a society registered and in good standing in the Province of British Columbia;
- 4.2 Perform promptly and safely all of its obligations under this Agreement;
- 4.3 Be just and faithful in the performance of its obligations under this Agreement and in its dealing with the City under this Agreement;
- 4.4 Provide to the City, a true copy of its current constitution and bylaws upon execution of this Agreement;
- 4.5 Provide quality pickleball programs to the West Kelowna community for adults and seniors.

5. CITY COVENANTS

5.1 Club's Access to Pickleball Courts

- 5.1.1 The City agrees to permit the Club, its members and invitees, to exercise the full right of access to and from the Premises for the purposes of the Club.
- 5.1.2 The City agrees to permit the Club to utilize the Premises for the provision of pickleball related activities including, pickleball lessons, tournaments, Club programs and Club special events.
- 5.1.3 The City agrees that the Club may use all the pickleball courts at the Premises, for a pre-determined number of special events. The City will review and confirm Club special event requests 60 days prior to each event.
- 5.1.4 For mutually agreed upon events, the club shall be allowed to temporarily use the tennis court to create additional pickleball courts using taped pickleball court lines. Permission will not be unreasonably withheld for such requests.
- 5.1.5 The City agrees to review the Court Use Schedule with Pickleball Club Officials annually or as needed as the Club grows. The Club's Court Use Schedule is identified in Schedule C.
- 5.1.6 If the Mt. Boucherie tennis court is converted to permanent pickleball courts, clause 5.1.4 shall become void and the Pickleball Club shall abide by the Court Use Schedule as shown in Schedule D.
- 5.1.7 During the course of this Lease Agreement, if more than 3 hours of permanent court time is added to the Court Use Schedule, as stated in Schedule C and D, then the City agrees to renegotiate the per-member fee

with the Club.

- 5.1.8 The City agrees to post signage indicating which courts are available for Pickleball Club and the General Public.
- 5.1.9 The City agrees that pickleball should be the only activity or sport to use the pickleball courts.

5.2 Pickleball Club Programs

- 5.2.1 The City agrees that the Club is responsible for managing, the use of the Premises and the programs of the Club, during the time assigned in the Court Use Schedule.

5.3 Utilities

- 5.3.1 The City agrees to pay all utility fees and charges in respect of all water, gas, sewer, electric and power used in connection with the Club.

5.4 Maintenance and Repair

- 5.4.1 The City agrees to maintain and repair the Premises, including the exterior grounds, during the term of this Lease. The City will respond to any facility maintenance requests made by the Club, as time and resources permit. See Schedule E for further details on maintenance and repair.

5.5 Net Installation and Take Down

- 5.5.1 The City agrees to install all-pickleball nets in the Spring and take down and store the nets in November each year.

6. CLUB COVENANTS

6.1 Club's Access to Pickleball Courts

- 6.1.1 The Club agrees to control and properly manage all use of the Premises during the time assigned in the Court Use Schedule.
- 6.1.2 The Club agrees to adhere to the Court Use Schedule as stated in Schedule C and to review the Court Use Schedule with City Staff annually or as needed as the Club grows.
- 6.1.3 If the Mt. Boucherie tennis court is converted to permanent pickleball courts, clause 5.1.4 shall become void and the Pickleball Club shall abide by the Court Use Schedule as shown in Schedule D.
- 6.1.4 During the course of this Lease Agreement, if more than 3 hours of permanent court time is added to the Court Use Schedule as stated in Schedule C and D, then the Club agrees to renegotiate the per-member fee with the City.
- 6.1.5 If the Mt. Boucherie tennis court is converted to pickleball courts. The Club agrees to adhere to the Court Use Schedule as stated in Schedule D.
- 6.1.6 The Club will have access to the pickleball courts for the provision of lessons, programs and a predetermined number of special events (including Tournaments and Clinics).
- 6.1.7 The Club agrees to provide a schedule of special events that Club intends to host each year. This schedule of events will be provided to the City 60 days prior to any special event.

6.2 Access by the City

- 6.2.1 The Club agrees that during the term of this Lease any officials, officers, employees or authorized agents of the City may have

access to and conduct inspections and or maintenance of the Premises.

6.3 Compliance with Regulations

- 6.3.1 The Club shall comply with all Federal, Provincial and Local Government regulations respecting the operation of a registered society.

6.4 Maintenance, Repair and Operation

- 6.4.1 The Club shall provide a written/email request for any repairs or maintenance to the Premise. The request shall be made to the Recreation and Culture Department.
- 6.4.2 The Club shall maintain cleanliness of the Premise during Club times. Cleaning tasks are included in Schedule E.
- 6.4.3 The Club shall not undertake any structural changes or additions to the Premises without prior approval from the City.
- 6.4.4 The Club shall pay all costs arising from the operation of the Club.

6.5 Public Safety

- 6.5.1 The Club shall take all possible precautions to ensure the safety of persons using the Premises during Club times.

6.6 Energy Efficiency

- 6.6.1 The Club shall maintain the Premises in a way that promotes recycling, energy efficiency, and use of biodegradable products, use of recycled materials so as to reduce disposable materials.

6.7 Safe and Healthy Environment

Throughout the term, the Club will ensure that the Premises is a safe and healthy environment and will:

- 6.7.1 Identify and report to the City, within 48 hours, any repairs to be done by the City.
- 6.7.2 Identify and report to the City, within 48 hours, any safety issues in and around the Premises.
- 6.7.3 Immediately record and report to the City any:
- Accidents that are or may be life threatening to users, volunteers and staff of the Club and;
 - Incidents of major vandalism or that have any risk management implications.
- 6.7.4 Any/all safety issues, accidents or incidents are to be reported to the City Department of Recreation and Culture.

6.8 No Discrimination

- 6.8.1 The Club acknowledges and agrees that it is in the community's best interest that recreation and community services be provided in a non-discriminatory manner. The Club hereby covenants and agrees to provide programs and services offered at the Premises in accordance with the *Human Rights Code* (British Columbia). Notwithstanding the above, the Club has the right to discipline or remove membership rights of members under the Club's Constitution and By-laws.

6.9 Obligation to Insure

- 6.9.1 The Club shall, at its sole expense, obtain and maintain during the Term, comprehensive general liability insurance providing coverage against any and all claims whether for bodily injury, death or property damage arising out of the use and occupation of the Premises by the Club in an amount of not less than \$2 million dollars for each occurrence or such increased amount as the City may require.
- 6.9.2 All policies of insurance required to be taken out by the Club must name the City and School District 23 as an additional insured and provide copies of such policies to the City and School District 23 annually.

6.10 Indemnification

- 6.10.1 Save and except for the negligence of the City or School District 23 and their Representatives, the Club will and hereby does indemnify and save harmless, the City and School District 23 and their Representatives from any and all suits, actions, causes of actions, liabilities, damages, costs, claims, expenses (including actual fees of professional advisors) and harm of any nature or kind whatsoever, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, which may be directly or indirectly connected with or arise from:
- Any breach of obligation set forth in this Agreement to be observed or performed by the Club;
 - Any act, omission, or negligence of the Club, its members, officers, directors, employees, volunteers, agents, contractors, subcontractors, sub-licensees, invitees, or others for whom it is responsible;
 - The use or occupation of the Premises;
 - The provision of programs or services; or
 - The granting of this Agreement.

7. **General Terms**

7.1 Right of Renewal

- 7.1.1 The parties agree that one year prior to the expiry of the term of the Lease, the City and the Club may enter into negotiations for a new Lease on such terms and conditions as the parties may mutually agree.
- 7.1.2 The period of negotiation for such terms and conditions of this Agreement shall be deemed to continue on a month-by-month basis until such negotiations are concluded. In the event that the parties are unable to reach an agreement on the terms and conditions of such extension within six (6) months of the expiration of the Term, then the Club agrees to vacate the Premises within one (1) month of receiving written notice from the City that the negotiations have failed.

7.2 Arbitration in the event of a Dispute

- 7.2.1 In the event of a dispute between the City and the Club as to the interpretation of any term or condition of this Lease, such dispute shall be resolved, if necessary, by a single arbitrator appointed pursuant to the provisions of the *Commercial Arbitration Act*.

7.3 Early Termination

- 7.3.1 The Club may terminate this Lease by giving the City a period of twelve (12) months notice in writing, at the expiry of which the Club shall have no further obligations to the City, save and except for any obligation arising prior to the expiry of such notice period.
- 7.3.2 The City may terminate this Lease by giving the Club a period of twelve (12) months notice in writing, at the expiry of which the City shall have no further obligation to the Club, save and except for any obligation arising prior to the expiry of such notice period. The City shall only utilize this clause should the City be put in a position whereby it cannot provide the facilities to the Club due to unforeseen or catastrophic events that are beyond the City's control.
- 7.3.3 At the Expiry or earlier termination of this Agreement, the Club shall deliver the Premises to the City vacant and in good and clean condition excepting reasonable wear and tear.

7.4 Freedom of Information

- 7.4.1 The parties acknowledge, agree and consent to the disclosure of this Agreement as a matter of public record and further acknowledge and agree that the applicable laws may require disclosure of information provided by one party to the other pursuant to or in connection with this Agreement.

7.5 Notice

- 7.5.1 Where any notice, request, direction or other communications must be or may be given or made by a party, it must be in writing or via email and is effective if delivered personally on the date of such personal delivery or, if faxed or emailed on the day of the transmission, or if mailed, on the third business day after the mailing of the same in British Columbia by prepaid post addressed:

To the City:

The City of West Kelowna
Attn: Manager of Recreation and Culture
2760 Cameron Road
West Kelowna, B.C.
V1Z 2T6

To the Club:

West Kelowna Pickleball Club
C/o James Chivers-Wilson
17-2155 Horizon Drive
West Kelowna, B.C.
V1Z 3Z8

Or other such address as the parties may advise each other in writing from time to time.

As evidence of their agreement to be bound by the above terms, the Landlord and the Tenant each have executed this Lease on the respective dates written below:

CITY OF WEST KELOWNA

by its authorized signatories:

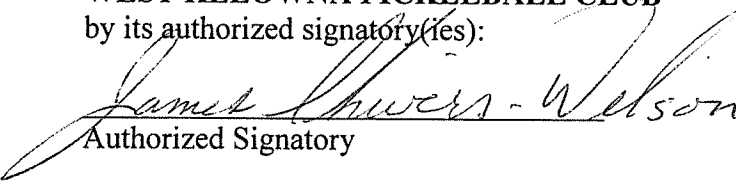
Mayor

Corporate Officer

Date

WEST KELOWNA PICKLEBALL CLUB

by its authorized signatory(ies):



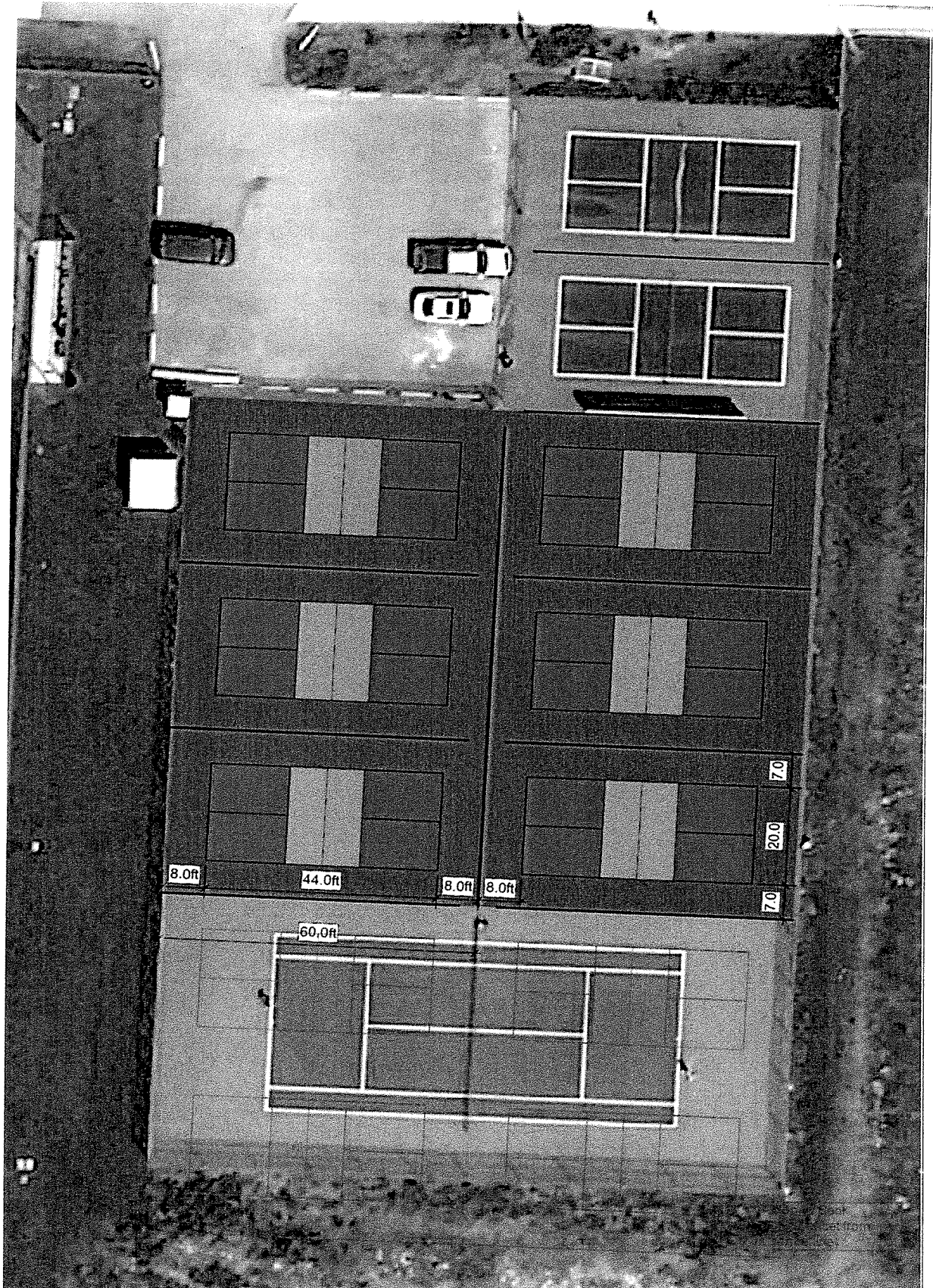
Authorized Signatory

Authorized Signatory:

Date

Nov 22 2019

SCHEDULE A
SKETCH PLAN SHOWING LEASE AREA



SCHEDULE B

ANNUAL FEE SCHEDULE

The Club shall pay, to the City, the following fees on May 1st and September 1st of each year of this Agreement:

- The total for the May 1st fee will be equal to the number of registered Club members as of that date.
- The total for the September 1st fee will be equal to the balance of registered Club members from May 1st to the end of the season.

The Club shall pay \$5.00 to the City for every registered member of the West Kelowna Pickleball Club.

This agreement will be in effect for 5 years commencing March 1, 2020 and ending February 28, 2025.

SCHEDULE C

PICKLEBALL COURT USE SCHEDULE

This schedule shall be in effect on the 8 permanent Mt. Boucherie Pickleball

Day Time Schedule

- Monday (courts 1- 8) 8:30am - 12:30pm
- Tuesday (courts 1- 8) 8:30am - 12:30pm
- Wednesday (courts 1- 8) 8:30am - 12:30pm
- Thursday (courts 1- 8) 8:30am – 12:30pm
- Friday (courts 1- 8) 8:30am – 12:30pm
- Saturday (courts 3- 8) 8:30am – 12:30pm

Evening Schedule

- Monday Evening (courts 3 - 8) 6:30 pm – 8:30 pm
- Thursday Evening (courts 3 - 8) 6:30 pm – 8:30 pm

SCHEDULE D

PICKLEBALL COURT USE SCHEDULE

This schedule shall be in effect if the Mt. Boucherie tennis court has been converted to 4 permanent pickleball courts.

The Pickleball Club shall have access to courts 3 – 12 for the scheduled times below. Courts 1 and 2 are available for community use at all times unless otherwise posted by the City of West Kelowna.

Day Time Schedule

- Monday (courts 3 - 12) 8:30am - 12:30pm
- Tuesday (courts 3 - 12) 8:30am - 12:30pm
- Wednesday (courts 3 - 12) 8:30am - 12:30pm
- Thursday (courts 3 - 12) 8:30am – 12:30pm
- Friday (courts 3 - 12) 8:30am – 12:30pm
- Saturday (courts 5 - 12) 8:30am – 12:30pm

Evening Schedule

- Monday Evening (courts 5 - 12) 6:30 pm – Dusk
- Thursday Evening (courts 5 - 12) 6:30 pm – Dusk

SCHEDULE E

MAINTENANCE, REPAIR AND CLEAN UP OF PICKLEBALL FACILITY

The City is responsible for the maintenance, repair and clean up for all City owned facilities. The Club will work with the City to ensure the Mt. Boucherie Pickleball Courts are clean, safe, and well maintained so all users can safely play pickleball.

The City will set up and take down the Pickleball facility annually. The setup of the facility includes the following:

- Facility Inspection and subsequent repairs
- Facility clean up (including power washing the courts)
- Net set up to proper height

Please note: some repair work requires planning of resources and purchase of equipment. It is the City's intention to complete all repair work in a timely manner.

The Club can make requests to the City for maintenance, repairs or cleanup of the Mt. Boucherie Pickleball Courts at any time. City Staff will respond to maintenance requests and determine the priority and resources available to meet the request in a timely manner.

All requests are addressed to the Supervisor of the Recreation Department.

The Club will perform duties that the City deems safe and appropriate for Club members to perform and will abide by City rules and regulations.

Club Commitments to Facility Maintenance, Repairs and Clean Up

The Club will:

- Clean the court surfaces to remove grit, water and debris to ensure safe play.
- Make minor height adjustments to the nets to meet pickleball regulations.
- Repair and /or reattach weeping tiles on top of interior court fences.
- Repair and / or reattach cloth wind barriers on the perimeter fences.
- Pick up garbage and litter around the courts and parking lot.

Please note: some repair work that requires ladders (reattaching cloth wind barriers) or excessive physical labour will not be performed by volunteer club members due to safety issues. It is the Club's intention to maintain and keep the facilities safe and clean for Club use during scheduled club time.