

LEASE AGREEMENT

THIS CONTRACT AGREEMENT made the 1st day of September, 2021.

BETWEEN:

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

(hereinafter called the "City")

OF THE FIRST PART

AND:

JMRH HOCKEY DEVELOPMENT ULC,
671 Westpoint Court
Kelowna, BC, V1W 4Y3

(hereinafter called the "Hockey Club")

OF THE SECOND PART

WHEREAS:

- A. The City is the owner of certain lands and premises in the City area known as the Mount Boucherie Recreation Complex, located at 2760 Cameron Road, and legally identified as:

Lot 2, Plan KAP 48075, PID #017-915-465

(the "Lands");
- B. The Hockey Club is the current owner of the rights to the West Kelowna Warriors junior hockey franchise (the "Franchise") in the British Columbia Hockey League ("BCHL") and has a desire to use a portion of the improvements on the Lands for the operation the Franchise as well as youth hockey development programs; and
- C. The parties wish to enter into this Lease Agreement to set out the terms and conditions for the Hockey Club's use of a portion of such improvements.

THIS AGREEMENT WITNESSES THAT in consideration of the premises and of the rents, terms, covenants and conditions contained in this Agreement, the sufficiency of which the parties each acknowledge, the parties agree as follows:

1. DEFINITIONS

In this agreement the following words and phrases shall have the meanings set out below:

- 1.1. "Common Areas" shall mean public parking areas, common loading and service areas and other facilities of the Lands from time to time for the common use of the Hockey Club, other tenants and users of the Recreation Complex, the City, and their respective employees, agents and invitees, including the public;
- 1.2. "Recreation Complex" shall mean the buildings and improvements located on the Lands, and commonly known as the Mount Boucherie Recreation Complex;
- 1.3. "Manager" shall mean the Facilities and Recreation Manager for the City and/or designate or replacement, from time to time;
- 1.4. "Dressing Room" means a dedicated dressing room in Royal LePage Place, as currently exists and named the "Warriors Dressing Room" which will include the recently added gym currently located in dressing room #10;
- 1.5. "Leased Premises" means all of the following areas located in the Recreation Complex:
 - The Royal LePage Place Ice Sheet;
 - The Jim Lind Ice Sheet;
 - The Dressing Room;
 - The Office;
 - Jim Lind Arena Storage Lockers
 - Royal LePage Place Basement Storage
 - The Concession
 - The Ticket Booth; and
 - The Gondola;
- 1.6. "Office" means an office space located in the Recreation Complex, as existing on the front exterior of Jim Lind Arena; and
- 1.7. "Ticket Booth" means the existing ticket booth located at the Jim Lind Ice Sheet or any new ticket booth which may in the future be constructed at Royal LePage Place.

2. DEMISE

- 2.1. Subject to the terms and conditions contained in this Agreement, the City hereby demises the Leased Premises to the Hockey Club, primarily for the purposes of operating the Franchise and to operate youth hockey development programs.

- 2.2. The Hockey Club acknowledges and agrees that its use of Royal LePage Place and the Jim Lind Arena and the Ticket booth are non-exclusive uses, to be used and scheduled strictly in accordance with the terms of this Agreement.
- 2.3. The City acknowledges and agrees that the Hockey Club's use of the Office and the Dressing Room shall be on an exclusive basis.
- 2.4. The City grants the Hockey Club, its employees, agents and invitees, the right in common with the City and all others having a like right, the free and non-exclusive use of all the Common Areas.

3. TERM

- 3.1. To have and to hold the Leased Premises for and during the term which commences on the 1st day of September, 2021 (the "Commencement Date") and ending on the 31st day of August, 2026, unless determined or earlier terminated in accordance with the provisions of this Agreement (the "Term").

4. PAYMENTS UNDER THE LEASE

During the Term, the Hockey Club shall pay the City the following amounts:

- 4.1. Annual Premise Lease: a total of \$2,000 per month (\$24,000 annually) plus applicable taxes for the usage and payment for the following during the length of Term:
 - The office space (*approx. 500 sq. ft.*) at the current location as of the date of this Agreement;
 - The Dressing Room (*including the recently added dressing #10*);
 - Equipment Storage Lockers
 - Basement Storage
 - Alcohol Sales Rights (as per this agreement);
 - Advertising Sales Rights (as per this agreement);
 - Concession Sales Rights (as per this agreement);
 - Utilities (electricity, gas, water, sewer, wifi, television, internet – as per this agreement)
- 4.2. Ice Rental Rates:

The Hockey Club will be invoiced at the end of each month for ice rentals. Payment is due in full within 30 days. If payment is not received within 30 days, the City holds the right to cancel or withhold any future ice rentals.

 - 4.2.1. The Hockey Club will be invoiced at month's end the Youth Prime Rate for all outstanding ice rentals, as described in the City of West Kelowna Fees and Charges Bylaw, unless otherwise stated in this agreement.

4.2.2. The Hockey Club will be invoiced the Youth Prime Rate for all Regular, Spring, and Summer ice rental seasons.

4.2.3. Current Youth Prime Rates are listed below:

2021- 2022 Season	Regular Season	\$97.25 per hour
	Spring Season	\$112.10 per hour
	Summer Season	\$112.10 per hour
2022-2023 Season	Regular Season	\$100.15 per hour
	Spring Season	\$115.45 per hour
	Summer Season	\$115.45 per hour

4.2.4. The Hockey Club acknowledges that rental rates have increased approximately 3% annually in the past and that this percentage increase should be anticipated for the duration of this agreement, as per City of West Kelowna Fees and Charges Bylaw.

4.2.5. The Hockey Club will be invoiced \$500 per Junior Hockey playoff game, at month's end, for all outstanding playoff game ice rentals.

4.3. Ice Rental Hours

The City will grant the Hockey Club the following estimated ice rental time, on an annual basis, unless otherwise agreed to in writing.

Junior Hockey Franchise

Spring Evaluation Camps: 2 weekends requested. 3 days per weekend.
Approximately 40hrs of ice each weekend.

Total Estimated Hours: 80

Main Camp Tryouts 1 weekend. 3 days per weekend.
Approximately 40 hrs per weekend.

Total Estimated Hours: 40

Preseason Training Camp: 1 week. 3hrs per day average.

Total Estimated Hours: 21

Preseason Games 3 games maximum. 4hrs per game.

Total Estimated Hours: 12

Regular Season Games 28 home games. 4hrs per game

Total Estimated Hours 112

Regular Season Practices 5 practices per week. 30 weeks. 1 ¾ hours per practice.

Total Estimated Hours 263

Game Day Skates 40 games day skates per year. 1hr per game day skate.

Total Estimated Hours 40

Playoff Games TBD

Total Estimated Junior Team Hours:	568hrs	+ playoffs
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Youth Development Programs

Regular Ice Season: *(Sept – March)*

Monday thru Friday between 5:30 and 8:30am (practice time slots) that does not conflict with City or youth minor sport / skating programs.

Weekend ice will not be made available to this program unless agreed to in writing sometime in the future.

Total Estimated Hours: 315hrs

Spring Ice Season: *(April – May)*

Monday thru Friday between 5:30 and 8:30am (practice time slots) that does not conflict with City or youth minor sport / skating programs .

(approximately 10 hrs per week)

First right of refusal for ice after 3pm (Monday thru Friday) that does not conflict with City or youth minor sport / skating programs.

(approximately 35hrs per week)

First right of refusal for weekend ice on Royal LePage Place only, (Saturday thru Sunday) that does not conflict

with City ice programs or youth minor sport / skating programs.

(approximately 24 hrs per weekend)

Four (4) tournament weekends during spring ice season where the Hockey Club has first right of refusal for both Royal LePage Place and Jim Lind Arena ice that does not conflict with City or youth minor sport / skating programs.

(approximately 16 additional hrs for each weekend - JLA)

Total Estimated Hours: 650hrs

Summer Ice Season: *(July – August)* Three (3) one week long youth development camps.
- One (1) one week long camps in July.
- Two (2) one week long camps in August.

(approximately 40 hrs week)

First right of refusal for ice after 8pm.
(approximately 15 hrs week)

Warrior ice rentals cannot conflict with City or youth minor sport / skating programs.

Total Estimated Hours: 180hrs

Total Estimated Youth Development Annual Hours:	1148hrs
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4.3.1. Ice allocation is determined by the City's Ice Allocation Guidelines and Procedures.

5. SCHEDULING OF ICE TIME

- 5.1. The Hockey Club acknowledges that Royal LePage Place and Jim Lind Arena are public ice facilities and other than the Hockey Club's specific rental thereof as set out in this Agreement, the City is free to rent or use such ice facilities in its sole discretion.
- 5.2. The Hockey Club acknowledges and agrees that the City has the prior preferential right to reserve and use the Recreation Complex for special events that it may schedule at any time prior to the Hockey Club's reservation of ice times in accordance with paragraph 5.4 of this Agreement.

5.3. When the ice sheets are scheduled for use by the Hockey Club for any Junior Hockey games, the measurement of the rental scheduling for the game shall be from one (1) hour prior to the scheduled drop of the puck and shall go for three (3) hours after the scheduled drop of the puck. When the ice sheets are scheduled for use in training camp, hockey school, game day skates or practices, the measurement of the rental scheduling shall be the actual ice times used.

5.4. Subject to the City's reservations for events as set out in the preceding paragraph, the Hockey Club may reserve the Jim Lind Arena or Royal LePage Place for the use in training camp, practices, game day skates, hockey school sessions, youth development, preseason games, regular season games and playoff games. Upon request to the Hockey Club by the BCHL to provide blackout dates of ice times that will not be available to the Hockey Club for scheduling, the City shall provide such blackout dates to the Hockey Club within the BCHL deadline. The Hockey Club will then provide the City with the BCHL schedule of games immediately upon the BCHL providing the schedule and the City shall reserve those times for the Hockey Club. The Hockey Club and the City shall fairly discuss and negotiate the remainder of required ice time for practices, game day skates, hockey school sessions and camps within consideration of all other required uses of Royal LePage Place and Jim Lind Arena. Should the Hockey Club make the playoffs, the Hockey Club will, acting reasonably, work with the City to find suitable dates and times to provide the game and practice times in accordance with the BCHL playoff requirements. Considering all of the above:

- With respect to use during training camp, preseason and regular season of the BCHL, the Hockey Club may cancel such ice times without recourse upon forty-eight (48) hours' notice and thirty (30) days' notice for hockey school sessions; or,
- With respect to use during the playoffs of the BCHL, the Hockey Club may cancel such ice times without recourse where such cancellation arises from the conclusion of any playoff series the Hockey Club is participating in.
- With respect to weather cancellations of regular season or play-off games, the Hockey Club will notify the City as soon as it becomes aware of the need to cancel, and at such time the City will work with the Hockey Club to secure an alternate date to allow the missed game to occur.
- With respect to Covid-19 or other acts of God, the Hockey Club will notify the City as soon as it becomes aware of the need to cancel, and at such time the City will allow the cancellation of ice without any recourse.
- With respect to Spring / Summer camps, hockey schools, or tournaments, the Hockey Club will be required to pay a 50% non-refundable deposit at the time of booking and full payment 30 days prior to rental date. If the Hockey Club cancels ice time as described above, the City will make every effort to book that time with another rental group. If the

City is able to fill the vacancy, the non-refundable deposit will be returned. If this ice time is not booked by another rental group, the Hockey Club may be responsible for the full payment.

6. DRESSING ROOMS AND OFFICE

- 6.1. The Hockey Club shall have continued access to the Office and Dressing Room for the purpose of completing any of the Hockey Club's desired work therein. The City shall provide basic IT Services to the Leased Premises as listed in Appendix "A" within the payment stated in Clause 4.1. Should there be any additional services required by the Hockey Club over and above those listed in Appendix "A" they will be negotiated at a fee over and above the payments listed in Clause 4.1
- 6.2. The Hockey Club shall not make any alterations or installations to the Office or Dressing Room without the prior written consent of the City.
- 6.3. During any scheduled game use, the City shall provide the Hockey Club with the use of a designated visitors' dressing room for use by the Hockey Club's opponent. The Hockey Club shall be responsible for all damage, repair and maintenance required from the use of such dressing room by the Hockey Club's opponents, upon written notice being provided by the City to the Hockey Club.

7. CONCESSIONS

- 7.1. The Hockey Club shall have continued access to the Concession area for the purpose of completing any of the concession related responsibilities as written in this agreement.
- 7.2. It is the expectation that the concession will be made available to the public during public skating, minor sport, and special events.

8. ALCOHOL SALES

- 8.1. The Hockey Club shall maintain, conduct and operate the alcoholic beverage services set out in this Agreement within the premises in accordance to their 3rd Party Operator responsibilities associated with the City liquor license for the Mt Boucherie Complex, so that such services shall be available on an event by event basis, at the hours determined by the City and the Hockey Club. The Hockey Club agrees to open for appropriate ticketed hockey events, special events and other occasions deemed appropriate by the City and the Hockey Club.

- 8.2. The Club will have access to the Leased Premises a maximum of two (2) hours before the scheduled event and up to two (2) hours after the end of such event for time needed for alcohol sale set up and take down requirements.
- 8.3. The City will have no liability for theft or spoilage of any products or equipment of the Hockey Club stored at the Recreation Complex at any time.
- 8.4. The Hockey Club shall not serve any glass containers to anyone acquiring products and any liquids purchased by a patron must be poured by the Club's employees into disposable containers.
- 8.5. The Hockey Club agrees to offer and sell products in accordance with first class standards of the liquor service industry. To do so the Hockey Club shall be responsible for the hiring and costs of any and all personnel necessary to provide such service and to the satisfaction of the City.
- 8.6. The Hockey Club agrees to abide by all applicable lawful rules, regulations and bylaws of the federal, provincial and municipal governments with respect to the sale and consumption of alcoholic beverages on the City's properties, including but not limited to having the appropriate "Serving It Right" Certification and to operate with the required number of personnel certified thereunder at any given point in time.
- 8.7. The Hockey Club will ensure a designated driver program is in place at each ticketed hockey event or special event during which alcoholic beverages are being sold.
- 8.8. The Hockey Club acknowledges that the City reserves the right to terminate the service of alcoholic beverages at any ticketed hockey event or special event if the City deems that there is a possible violation of the laws regulations governing the sale of the alcoholic beverages and/or that persons may be injured or property may be damaged as a result thereof.

9. ADVERTISING

- 9.1. All advertising locations must be approved by the City prior to any installation.
- 9.2. The City provides the Hockey Club with its consent to advertise within Royal LePage Place in the following manner:
 - In Ice Logos
 - Rink Board Advertising
 - 43 Backlit signs (39 12' signs and 4 4' signs)
 - Column Wraps
 - Stair Riser Advertising
 - Score Clock
 - On "League Standings" Sign

- On "Next Home Game" Sign
- Concrete Fascia

9.3. The City provides the Hockey Club with its consent to advertise within Jim Lind Arena in the following manner:

- In Ice Logos
- Rink Board Advertising
- On each players' bench.

9.4. The City agrees that it shall be responsible for the expenses associated with the electricity used by the backlit signs.

9.5. The Hockey Club agrees that:

- It shall be responsible at its sole cost for the installation of all of the advertising.
- The City will install all advertising unless otherwise agreed upon by the City Facilities Manager or designate.
- The design, appearance and installation of the stair risers cannot cover up, or otherwise interfere with the visual aid strip on the front of each stair riser.
- The Hockey Club acknowledges that the City has the right to advertise within the Recreation Complex where the Hockey Club cannot collect any revenue from the City for such advertising.
- Advertising that conflicts with major sponsors (example: Royal LePage Place) is not permitted to be posted.

10. COVENANTS OF THE HOCKEY CLUB

The Hockey Club covenants and agrees as follows:

- 10.1. To pay to the City the rent reserved by this Agreement during the Term and all other sums to be paid by the Hockey Club under this Agreement without any deduction or set-off whatsoever;
- 10.2. To produce to the City from time to time at the request of the City, satisfactory evidence of the due payment by the Hockey Club of all other payments required to be made by the Hockey Club under this Agreement;
- 10.3. Not to affix or have exposed any sign, sign board, advertisement, or other indication of the occupation of the Hockey Club, to or near any wall, door, stair, or other portion of the Recreation Complex, or on the Lands, without the prior written consent of the City, and such consent may be arbitrarily withheld;

- 10.4. Except to the extent demised to the Hockey Club on an exclusive basis, the City retains the sole authority and control over any portion of the Lands, which shall be exercised by the Manager;
- 10.5. To be responsible for the supervision of the Leased Premises, and for controlling and managing the use of the Leased Premises and the business conducted by the Hockey Club during the Term;
- 10.6. To use, and allow members of the public to have the full right of access to the Common Areas at all times in accordance with the approved policies of the City, as may be amended from time to time, provided however, during any ice time schedule by the Hockey Club, the Hockey Club may control which members of the public are entitled to view such ice time and may exclude members of the public from being present;
- 10.7. To ensure all users of the Leased Premises abide by the City's policies and practices with respect to persons smoking and/or consuming alcohol on City property, as amended from time to time;
- 10.8. Not to rent any portion of the Leased Premises to third parties, without prior written consent of the City, which consent may be arbitrarily withheld;
- 10.9. To be responsible for all janitorial supplies and services used for the Office and Dressing Room;
- 10.10. Not to make any repairs and/or improvements to the Office and Dressing Room without the prior written consent of the City;
- 10.11. To operate the Leased Premises in an energy conscious manner and implementing all energy saving recommendations and directions provided by the City or consultants hired by the City;
- 10.12. To permit the City to post notices at the Leased Premises that the City will not be responsible for any liability under the provision of the Builders' Lien Act of the Province of British Columbia;
- 10.13. To operate the Leased Premises in such a way as to provide equal opportunity for access by both males and females and all members of the community regardless of race, creed, spiritual belief or physical ability;
- 10.14. To allow the City and its agents, at all reasonable times and with reasonable notice, to enter the Leased Premises to examine its condition and to make good all necessary repairs found by the City, including those by negligence, within fifteen (15) days of notice from the City subject to repairs that may be the responsibility of the City as set out within this Agreement;

- 10.15. To bear all responsibility for property damage or personal injury caused by equipment used for playing hockey in the Recreation Complex, including but not limited to, hockey pucks leaving the playing surface;
- 10.16. To take good care of the Leased Premises and keep them in a tidy, healthy and safe condition at all times;
- 10.17. To pay all business taxes payable by the Hockey Club in respect of the Hockey Club's occupancy of the Leased Premises;
- 10.18. To be responsible for the hiring and costs of all staff for security, ticket booth, emergency, timekeeping, goal judging, on-ice officiating, parking control and any and all personnel necessary for the proper presentation of junior hockey games to the public to a standard required by the City at its sole discretion and to obtain Workers' Compensation Insurance covering all employees of the Hockey Club, in accordance with the statutory requirements of the Province of British Columbia and agrees to provide the City with a certified copy of its Work Safe BC Registration;
- 10.19. To use the Leased Premises solely for operating a junior hockey franchise in the British Columbia Hockey League and youth hockey development programs and to conduct its affairs in a proper and efficient manner considered to be reasonable standards in nature.
- 10.20. To not assign, sublet, mortgage or encumber its interest in this Agreement, in whole or in part without the City's prior consent in writing, which consent may be arbitrarily withheld;
- 10.21. To not place on any portion of the Leased Premises any safe, heavy business machine or other heavy thing without obtaining prior written consent of the City;
- 10.22. To allow prospective purchasers or tenants to enter and inspect the Leased Premises on weekdays, for at least (90) days prior to the expiration of the Term;
- 10.23. To not use, exercise, or carry on or permit to be used, exercised or carried on, in or upon any part of the Leased Premises any noxious, noisome, or offensive act, trade business, occupation, matter or thing whatsoever shall at any time be done which is an unreasonable annoyance, nuisance or disturbance to the occupiers or users of the Recreation Complex or adjoining land and properties;
- 10.24. To not permit to be done any act or thing which may render void or voidable or conflict with the requirements of any policy of insurance, on the Leased Premises or the Recreation Complex, including any regulations of fire insurance underwriters applicable to such policy;
- 10.25. To comply with all statutes, regulations, and bylaws of any governmental authority relating in any way to the Hockey Club's use or occupation of the Leased Premises;

- 10.26. Not to make any alterations, decorations, installations or changes of any kind in the Leased Premises without the prior written consent of the City, which consent may be arbitrarily withheld; The Hockey Club shall ensure that any or all work to be done will be carried out by competent contractors and workmen;
- 10.27. That all alterations, additions, improvements and fixtures to, in or upon the Leased Premises including everything attached to any part of the Leased Premises other than the Hockey Club's machinery, plant and equipment shall become the property of the City and shall remain on the Leased Premises upon the expiration or earlier termination of this Agreement subject to such exceptions that the City may consent to in writing;
- 10.28. To not remove from the Leased Premises any goods, chattels or fixtures moved into the Leased Premises, except in the normal course of business, until all rent and other payments due or to become due during the Term are fully paid;
- 10.29. The Hockey Club agrees to indemnify and save harmless the City from and against any and all claims for payment for services rendered to the Hockey Club or contracts of any kind including any claims of builder's lien, wages, material supply or for any other liabilities of any kind arising out of the use and occupation of the Leased Premises by the Hockey Club.
- 10.30. To observe and obey and cause its employees, agents and invitees to obey the reasonable regulations, including hours of operation, from time to time made by the City for the management and operation of the Recreation Complex;
- 10.31. To permit the City to install, maintain, replace, repair and service wires, ducts or other installations in, under or through the Leased Premises for or in connection with the supply of any service or utility to the Leased Premises or to other parts of the Recreation Complex;
- 10.32. To not knowingly contaminate the Leased Premises with toxic or hazardous contaminants. If toxic or hazardous contaminants are produced by the Hockey Club in the Premises, the Hockey Club will notify the City immediately and enter into a contract with a properly authorized disposal authority, which contract must have the prior approval of the City, for neutralizing, disposing or both of such contaminants;
- 10.33. To indemnify and hold harmless the City from liability for pollution in, caused by, or escaping from the Leased Premises contributed by the Hockey Club and this indemnity shall expire upon final inspection by the City, of the Leased Premises;
- 10.34. Permit the City, with 48 hours' notice, to inspect the Leased Premises with such experts and technical personnel as the City deems necessary, to oversee the production, storage, stock-piling and disposal of any substances deemed toxic by the City, or liable to cause pollution within or outside of the Leased Premises;

- 10.35. When required to do so by notice in writing from the City, obtain insurance coverage with an insurance company and in the amounts and on terms having prior approval of the City, sufficient to protect the City from liability in respect of pollution arising from the activities of the Hockey Club in the Leased Premises;
- 10.36. Acknowledges that the City shall be obtaining insurance on the City's behalf with respect to the Lands, and the Hockey Club agrees to cooperate with the City and/or provide further documentation in respect of the application to any insurance companies as the City may reasonable request;
- 10.37. The Hockey Club agrees to retain for a period of not less than to (2) years following the end of the Term, adequate books and records which shall show all sales and charges, and daily receipts from all sales and other transactions on the premises by the Hockey Club. The City and its authorized representatives shall have the right to examine the Hockey club's records during regular business hours.

11. INSURANCE

The Hockey Club shall take out and maintain, during the Term, the following insurance at its sole cost:

- 11.1. "All Risks" property insurance, including flood and earthquake, subject to terms, conditions, and exclusions normally found in policies carried by prudent owners of properties, improvements and equipment similar to the Leased Premises, insuring property of every description owned by the Hockey Club including, without limiting the foregoing, leasehold and freehold improvements, while located on or in the Leased Premises;
- 11.2. Commercial General Liability insurance, with inclusive limits of a least \$10,000,000, shall include the following extensions of coverages:
- Occurrence property damage;
 - Personal injury;
 - Independent contractors;
 - Employees as insured;
 - Blanket contractual;
 - Contingent employers;
 - Broad form property damage; and
 - Non-owned automobile;
- 11.3. Tenants Legal Liability Insurance on the standard industry "All Risks" basis in an amount equal to the actual cash value of the Leased Premises;
- 11.4. Any other form of insurance which the City, acting reasonably, requires, from time to time, in amounts and for risks which a prudent Hockey Club would insure;

11.5. All policies referred to in this clause 11 shall:

- Name the City as an additional insured
- State that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured;
- Be taken out with Insurers acceptable to the City;
- Be in a form acceptable to the City;
- Contain a waiver of subrogation rights by the Hockey Club insurers against the City;
- Include a cross-liability clause;
- Be primary and non-contributing with respect to any policies carried by the City and that any coverage carried by the City is excess coverage;
- Contain an undertaking by the insurers to notify the City by registered mail not less than thirty (30) days prior to any material change, cancellation or termination of coverage.

11.6. Certificates of Insurance, or, at the City's option, certified copies of the policies shall be delivered to the City prior to the commencement of the Term and forthwith upon request by the City from time to time.

11.7. The Hockey Club shall not keep or use in the Leased Premises any article which may be prohibited by any insurance policy in place covering the Leased Premises.

11.8. If any insurer under any insurance policy covering any part of the Leased Premises cancels or threatens to cancel its insurance policy, or reduces or threatens to reduce its coverages under its insurance policy by reason of the use of the Leased Premises by the Hockey Club or by any one permitted on such facilities by the Hockey Club, the Hockey Club shall remedy such condition within 48 hours after notice thereof by the City;

11.9. The Hockey Club shall immediately notify the City if any insurer threatens to cancel any insurance policy required by this Agreement.

11.10. The City shall not be liable for any personal injury or damage to property to the Hockey Club or others at the Leased Premises from any cause, unless such damage results from the negligence of the City. All property of the Hockey Club kept or stored at the Leased Premises shall be so kept or stored at the sole risk of the Hockey Club, and the Hockey Club releases the City from any claims arising out of any damage to same, including, without limiting the foregoing, any subrogation claims by Hockey Club's insurers.

12. COVENANTS OF THE CITY OF WEST KELOWNA

The City covenants and agrees as follows:

- 12.1. Except to the extent set out in this Agreement, and subject to paying the rent and performing its covenants, the Hockey Club shall and may peaceably possess and enjoy the leased Premises for the Term without interruption or disturbance from the City or any other person lawfully claiming by, for or under the City;
- 12.2. The Hockey Club has the right to sell and distribute novelties, souvenirs and programs in the Recreation Complex, in a location to be approved by the City, immediately prior to and during Hockey Club games and no one except the Hockey Club shall be entitled to that right, provided all such sales shall be in accordance with City policies, in force from time to time;
- 12.3. The City shall be responsible for making repairs to and maintain in the Recreation Complex, including the Leased Premises, except those obligations specifically assumed by the Hockey Club set out within this Agreement;
- 12.4. To allow the Hockey Club, its licensees, invitees and staff to have non-exclusive access over, in and upon the Recreation Complex to the extent necessary to permit access to and from the Leased Premises during hours when the Leased Premises are open for Hockey Club use;
- 12.5. Except for janitorial supplies used in the Office and Dressing Room, the expenses for staff, equipment and supplies used to provide the Janitorial services by the City will be borne by the City.
- 12.6. The Hockey Club shall have the exclusive right to operate a junior hockey franchise in the arenas owned by the City during the Term; provided however, if a special event is proposed for such arenas involving another junior hockey team, the City may engage in a "one-off" contractual arrangement, with the prior written consent of the Hockey Club, which consent shall not be unreasonably withheld;
- 12.7. To provide and pay for all major building, parking lot and grounds maintenance and repairs to the Lands in accordance with the City's annual budgeting process in place from year to year;
- 12.8. To pay all utility rates and charges in respect of and for all water, gas, sewer, electric and power used in connection with the Leased Premises, save and except for telephone charges, which shall be paid for by the Hockey Club;
- 12.9. To cause the Recreation Complex to be open, lighted, heated/air conditioned (where appropriate), and otherwise useable to a standard consistent with the operating of a facility for use by the Hockey Club;
- 12.10. That in the event of major repairs, renovations or improvements to the Lands, the most expedient manner shall be taken to deal with any interruption of facility availability and/or disruption of service, and appropriate notice shall be given to the Hockey Club;

- 12.11. Notwithstanding clause 10.3, the Hockey Club is entitled to install exterior signage on the Recreation Complex to indicate that the Recreation Complex is the official home of the Hockey Club, provided that such signage is smaller than the signage denoting the name of the building, and the Hockey Club obtains prior written consent of the City, which shall not be unreasonably withheld, and at the cost of the Hockey Club;
- 12.12. To pay when due all real property taxes with respect to the lands and the Recreation Complex;
- 12.13. To provide access to water, heat, sewer and electricity for the Leased Premises to the extend reasonably necessary for the Hockey Club to carry on its business;
- 12.14. To maintain the Common Areas in good condition; and
- 12.15. With respect to parking facilities;
- At all times during the Term of this Agreement to maintain parking facilities as required by law;
 - To allow invitees of the Hockey Club to use the parking areas in common with the invitees of the other occupiers of the Recreation Complex;
 - Not to block or interfere with any existing access to the Lands; and
 - Should the City choose to implement pay parking at the Recreation Complex, parking for Warriors games shall be exempt from any such charges;
 - Should the City choose to install a locked gate to the entrance to the parking lot, the City will work with the Hockey Club for access if such access is outside of normal Recreation Complex operating hours;

13. ADDITIONAL REVENUE SOURCES

- 13.1. The Hockey Club shall not be entitled to any compensation for the naming rights set out in the Sponsorship Agreement and acknowledges that the Sponsorship Agreement provides the sponsor with an exclusive right to advertise within the real estate sales industry and Hockey Club will not solicit, display or conduct any advertising, promotion or sponsorship of any nature, whatsoever, within the Recreation Complex which refers to the real estate sales industry;
- 13.2. The Hockey Club acknowledges and agrees that if there are any other advertising opportunities beyond those set out within this Agreement, the Hockey Club and the City shall negotiate the inclusion of such advertising opportunity into this Agreement prior to entering into any commitments to that advertising opportunity.

14. RIGHT AND REMEDIES OF THE CITY OF WEST KELOWNA

- 14.1. If and whenever the rents reserved by this Agreement or any part of them are in arrears or unpaid for thirty (30) days after were due, the City will provide a written letter notifying the Hockey Club that all outstanding invoices are due in full prior to 60 days in arrears. After 60 days, there is a breach or non-performance of this Agreement by the Hockey Club, then it shall be lawful for the City, at any time hereafter, without notice, to re-enter the Leased Premises and may repossess the Leased Premises, anything herein contained to the contrary notwithstanding.
- 14.2. Upon the City becoming entitled to re-enter upon the Leased Premises, the City shall have the right to immediately terminate this Agreement by giving notice in writing to the Hockey Club and rent shall be apportioned and paid to the date of such determination and the Hockey Club shall immediately deliver up possession of the Leased Premises and the City may re-enter and take possession of the same.
- 14.3. If this Agreement or any extension of it shall be seized or taken in execution or attachment by any creditor or shall become bankrupt or insolvent or the Leased Premises shall become vacant or unoccupied for a period of ten (10) days, then the current months' rent shall immediately become due and payable and the Term shall, at the option of the City, become forfeited and void. Neither this Agreement nor any interest in it nor any estate created by it shall pass to or ensure to the benefit of any trustee in bankruptcy or any receiver of any assignee for the benefit of creditors or otherwise by operation of law.
- 14.4. When so ever the City shall be entitled to levy distress against the goods and chattels of the Hockey Club it may use such force as necessary for the purpose of gaining admittance to the Leased Premises without being liable in any action in respect of such action, or of any loss or damage occasioned by such action and the Hockey Club expressly releases the City from all actions, proceedings, claims or demands whatsoever for or on account of or in respect of any such forcible entry or any loss or damage sustained by the Hockey Club in connection with such forcible entry.
- 14.5. The waiver by the City of any breach of the Agreement by the Hockey Club shall not be construed as or constitute a waiver of any further or other breach of the same or any other covenant or condition and the consent of the City to or of any act by the Hockey Club requiring the City's consent or approval shall not be deemed waived or rendered unnecessary the City's consent or approval to any subsequent act, similar or otherwise, by the Hockey Club.
- 14.6. If the Hockey Club shall fail to perform any of the covenants or obligations of the Hockey Club under this Agreement the City may, at its discretion, perform said covenants or obligation or do things as required and may enter upon the Leased Premises to do such things and all expenses incurred and made by or on behalf of the City shall be paid immediately by the Hockey Club to the City and if the Hockey Club fails to pay the same the City may add the same to the rent and recover the same by all remedies available to the City to recover rent in arrears. The Hockey Club shall not be entitled to any claim or compensation for any inconvenience,

nuisance, discomfort or loss of business occasioned directly or indirectly from any action of the City under this paragraph.

- 14.7. The City may undertake, for the rent owed by this Agreement, including additional rent, by distress upon the goods and chattels of the Hockey Club wherever situated. The Hockey Club agrees that they shall remain liable for any deficiency should a distress sale not yield sufficient monies to pay all rent due and owing.

15. CITY OF WEST KELOWNA'S PROTECTION AGAINST CLAIMS

- 15.1. Notwithstanding any other provision of this Agreement, the Hockey Club shall indemnify and hold harmless the City from all losses, claims, damages, liability, and expenses in connection with loss of life, bodily injury, personal injury, damage to property, or any other loss or injury of any nature arising out of this Agreement, or any occurrence in, upon or at the Lands or any part thereof, or occasioned wholly or in part by any act or omission of the Hockey Club or by anyone permitted to be on the Lands by the Hockey Club. If the City shall, without fault on its part, be made a party to any litigations commenced by or against the Hockey Club, then the Hockey Club shall protect, indemnify and hold harmless the City in connection to such litigation. At its discretion the City may require the Hockey Club to assume sole responsibility for said action. The provisions of this Paragraph shall survive the expiration or earlier termination of this Agreement.
- 15.2. Whenever and to the extent that the City shall be unable to fulfill or shall be delayed or restricted in the fulfillment of any obligation under this Agreement in respect of the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of the City being unable to obtain the materials goods, equipment, service, utility or labour required to enable it to fulfill such obligation or by reason of any strike or lock-out or any statute, law or order-in-council or any regulation or order passed or made pursuant to or by reason of the order or direction of any administration, controller or board or any governmental department or officer or other authority or by reason of any cause beyond its control the City shall be relieved from the fulfillment of such obligation and the Hockey Club shall not be entitled to compensation for any loss, inconvenience, nuisance or discomfort.
- 15.3. The Hockey Club will examine the Leased Premises before taking possession of them under this Agreement and unless the Hockey Club has furnished the City with notice in writing specifying any defects in the construction or condition of the Leased Premises, the Hockey Club shall be deemed to have found the Leased Premises in good order and satisfactory condition. The Hockey Club acknowledges that there are no promises, representations or undertaking by the City as to any alterations, remodeling or decorating of the Leased Premises or installations of equipment or fixtures therein except such, if any, as expressly set forth in this Agreement.

16. FUTURE CONSIDERATIONS

16.1. The City acknowledges that the Hockey Club has expressed an interest in obtaining additional lease space at the Recreation Complex. If the City in its sole discretion deems such space to be available for lease and suitable for use by the Hockey Club in the future, the City grants the Hockey Club first right of refusal for such space provided it is not needed for City business, or other community or user group use. Costs associated with additional lease space will be negotiated by the City and the Hockey Club at a time in the future when such an amendment to this agreement is required.

16.2. The City acknowledges that the Hockey Club has expressed an interest in being an equity partner, if a future expansion to the Recreation Complex were to be considered in the future. If such a partnership were to be considered in the future, the Hockey Club and City will enter into negotiations to amend this agreement to reflect the financial contribution made by the Hockey Club. In the event a partnership is established, the Hockey Club acknowledges that the partnership agreement will provide the City a right of first refusal to purchase the Hockey Club's equity stake at fair market value should the Hockey Club sell or dispose of its shares in the Franchise.

17. GENERAL PROVISIONS

17.1. If during the Term, the Leased Premises or the Recreation Complex shall be destroyed or damaged by any cause whatsoever the following rules shall apply:

17.1.1. If the Leased Premises are unfit in whole or in part for occupancy by the Hockey Club the rent shall be suspended until the Leased Premises have been rebuilt, repaired or restored;

17.1.2. If there is Substantial Destruction of the Leased Premises or of the Recreation Complex whether or not the Leased Premises are affected, the City or the Hockey Club may, within one (1) month after such destruction and on giving written notice to the other, declare this Agreement terminated immediately and in such event rent shall be apportioned and shall be payable up to the time of such destruction and the Hockey Club shall immediately deliver up possession of the Leased Premises. "Substantial Destruction" means such damage as in the opinion of a competent contractor to be appointed by the City, requires substantial alterations to or reconstruction of the Leased Premises or the Recreation Complex or such damages as in the opinion of such contractor cannot be repaired with a period of one hundred and eighty (180) days from the time of such damage occurred.

17.2. This Agreement shall forthwith terminate, at the option of the City if:

17.2.1. At the time during the currency of the term, or any extension thereof, imminent life-safety issues arise, without incurring any liability thereof; and upon such notice being given, the Hockey Club shall immediately cease and it shall vacate and deliver over

peaceful possession of the Leased Premises on the date stipulated in the notice and failure to do so shall permit the City to enter the said premises and remove any and all manner of properties belonging to the Hockey Club; or

17.2.2. In the event of bankruptcy, dissolution or winding down of the Hockey Club, or demand for payment is made upon the Hockey Club by its bank or foreclosure actions commenced against the Hockey Club by its bank; or

17.2.3. The Hockey Club fails to abide by the terms of this Agreement and remains in breach of this Agreement after receiving thirty (30) days notice in which to rectify said breach; or

17.2.4. At any time, the contract is assigned to any other person without the written consent of the City; or

17.2.5. At any time the Hockey Club sells or disposes of the shares of Franchise, the City may terminate this Agreement if the assignment of this Agreement is not included in the sale or disposition. The consent to the assignment shall not be unreasonably withheld by the City provided the City has been provided reasonable notice of the sale or disposition;

17.2.6. This Agreement shall terminate if the Hockey Club gives to the City twelve (12) months' notice in writing of its intention to so terminate;

17.2.7. Furthermore, this Agreement may be terminated by mutual agreement between the parties with less than twelve (12) months' notice.

17.3. Nothing contained in this Agreement shall be construed as creating the relationship of principal and agent or of partners or of joint ventures between the parties, their only relationship being that of landlord and tenant.

17.4. If at the expiration or earlier termination of this Agreement, the Hockey Club remains in possession of the Leased Premises, with or without the consent (whether express or implied) of the City, no renewal or extension of this Agreement by operation of law or otherwise, shall be implied, and the tenancy of the Hockey Club shall be from month to month only, with rent equal to the monthly rent last payable under this Agreement, calculated and payable in advance on a monthly basis, and be subject to all of the other terms and conditions of this Agreement, with the exception of any terms and conditions dealing with the length of the tenancy, in the absence of written agreement to the contrary.

17.5. This Agreement contains the whole agreement between the parties on the subject matter hereof. It is expressly agreed that there are no agreements, undertaking, representations, warranties, covenants, conditions, terms or reservations, other than as may be implied by applicable law that are not merged herein or superseded hereby.

- 17.6. Neither party shall be responsible for the failure or delay to comply with their obligations under this Agreement caused by fire, flood, strike, labour dispute, other industrial disturbance, riot, civil commotion, embargo, blockage, prohibition of expropriation, governmental direction, intervention of civil authorities, intervention of military authorities, legal restriction, or any other causes beyond the control of such party, which prevents the party from complying with their obligations under this Agreement.
- 17.7. This Agreement shall be construed in accordance with the laws of the Province of British Columbia.
- 17.8. The headings or subheadings to the clauses in this Agreement form no part of this Agreement, and are inserted for convenience and internal reference only and are not to be relied upon or considered by any person in the interpretation of such clause.
- 17.9. Any notice required to be given hereunder shall be deemed to be sufficiently given if delivered at the time of delivery and if mailed from any government post office in the Province of British Columbia by prepaid, registered mail addressed as follows:

The City:

City of West Kelowna
2760 Cameron Road
West Kelowna, British Columbia,
V1Z 2T6

The Hockey Club:

JMRH HOCKEY DEVELOPMENT ULC,
671 Westpoint Court
Kelowna, BC, V1W 4Y3

Or at such other address as the parties may advise each other in writing from time to time and such notice shall conclusively be deemed to have been received forty-eight (48) hours after the time and date of mailing PROVIDED ALWAYS, HOWEVER, that if at the time of mailing any notice hereunder, the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lockout or other labour dispute that any notice required to be given hereunder may only be given by actual delivery thereof.

- 17.10. This Agreement shall be binding upon and ensure to the benefit of the parties and their respective successors and permitted assigns.

17.11. Wherever the singular or the masculine is used in this Agreement, the same shall be deemed to include the plural or the feminine or the body politic or corporate where the context or the parties so require.

17.12. Time shall be of the essence of this Agreement.

17.13. If any provision of this Agreement is unenforceable or invalid for any reason whatever, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement and such provisions shall be severable from the remainder of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

CITY OF WEST KELOWNA
by its authorized signatories

JMRH HOCKEY DEVELOPMENT ULC
by its authorized signatories

(insert name)

(insert name)

Appendix A

City Provided IT Services to the Hockey Club

Internet Access:

The City will provide internet access to the Hockey Club utilizing existing internet feeds in the City server room. The service provided is up to 50Mbps download and 50Mbps upload with no data cap. This service is shared across of the Hockey Club devices regardless of location in the building.

Network Infrastructure:

Provided network connections included are:

- 2 Network connections to the Hockey Club Office telecom cabinet.
- 2 Network connections to the Hockey Club's coaches office
- 1 Network connection to the Gondola for broadcasting
- 1 Network connection for the 2nd concession TV
- 1 Public IP address that can have a 1:1 NAT translation to the Hockey Club Office router (to enable port-forwarding for ticketing system).

TV Services:

The following TV packages/services are provided:

- 1 TV service with digital box to the Hockey Club's coaches office
- 1 TV service with digital box to the TV located in the upper floor hallway
- 1 TV service with digital box for the TV located outside upper floor washrooms.
- 1 TV service with digital box in the Gondola

Phone Services:

The City will provide 2 Basic IP Phones in the Gondola with outgoing local dialing (No long distance, no incoming calls, no voicemail)

WiFi:

Hockey Club staff WiFi is not included. The Hockey Club may configure their own wireless networking for its staff providing it does not cause interference with the City WiFi. The City will provide public WiFi in Royal LePage Place.

Security:

The City firewall performs deep packet inspection that provides intrusion detection and prevention, anti-virus, and anti-phishing. Statistics will be available to the City IS Department including security events, bandwidth usage, hardware device ID's, and;

The City firewall performs deep packet inspection that provides intrusion detection and prevention, anti-virus, and anti-phishing. Statistics will be available to the City IS Department including security events, bandwidth usage, hardware device ID's, and application usage. It will continue to be essential that the Hockey Club utilize their own security and anti-virus systems in addition to the protection included. The City IS Department approval and staffing will be needed for opening any ports on the City firewall and the City has the right to refuse opening ports that may cause harm to the City network.

Maintenance Outages:

Bi-weekly maintenance will be performed by the City every Wednesday night between 4:30 p.m. and 9:00 p.m. which may cause service disruptions on occasion. Notification will be made to the Hockey Club if maintenance is to occur outside of this maintenance window and which may cause an Internet service disruption.

Service Desk:

IS Department Service Desk requests must be submitted via email to:

helpdesk@westkelownacity.ca or by phone for urgent requests (778-797-8880).

Response times will typically be on a best effort basis, usually within one hour for critical service requests during business hours which are 8:30 a.m. - 4:30 p.m., Monday through Friday. There will be no after-hours or weekend support.

Software:

No Software products are included in this agreement.

Hardware:

The City will provide no client hardware to the Hockey Club.