

Attachment 2

SUBLEASE

THIS SUBLEASE dated the _____ day of _____, 2018.

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

(the "**Landlord**")

OF THE FIRST PART

AND:

THE PARKSVILLE CURLING CLUB SOCIETY

(#28480)
193 Island Highway East
Box 1624
Parksville, BC V9P 2H5

(the "**Tenant**")

OF THE SECOND PART

W H E R E A S:

- A. The Landlord is the lessee of the land described in Schedule 'A' annexed to this Sublease (the "**Lands**") under the terms of a Lease between the Landlord and the City of Parksville (the "**Head Lease**") made the 1st day of April, 2018, a copy of which is attached as Schedule 'D';
- B. The Landlord is the owner of an arena facility situated upon the Lands known as the "**District 69 Arena**";
- C. On the 1st day of October, 2003, a Sublease was entered into between the Tenant and the Landlord to manage and operate the District 69 Ice Arena as a curling facility for a period of five years ending on the 31st day of March, 2008 and was subsequently renewed for two five-year terms, ending on the 31st day of March, 2018;
- D. The Parties wish to enter into an agreement for a Sublease of the same lands and premises for a further term of five years to permit the Tenant to continue to operate the District 69 Ice Arena as a curling facility;
- E. The Tenant has requested, and the Landlord has agreed, to grant a Sublease of the Lands and the District 69 Arena on the following terms.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the rents and agreements to be paid and performed by the Tenant:

1.0 Premises

- 1.1 The Landlord leases to the Tenant the Land and the District 69 Arena (together described hereafter as the "**Premises**").

2.0 Term

- 2.1 The Landlord leases the Premises to the Tenant for a term commencing on the 1st day of April, 2018 and ending on the 31st day of March, 2023 (the "**Term**").

3.0 Use

- 3.1 The Tenant may use the Premises for the purpose of curling and related activities of the Tenant, for operating a facility for the use of sports under the control of local organizations, for the rental of facility use time to community groups for community activities, community special events, or for recreational programs or activities generated by and under the authority of the Landlord's Recreation and Parks Department, provided that such use complies with the City of Parksville Zoning and Development Bylaw 1994 No. 2000 and any amendments thereto;
- 3.2 Should the Tenant receive a request to use the Premises for concerts, sports contests, performances, displays, exhibits, conventions, trade shows, meetings or social gatherings of a commercial nature, the admission to which requires the purchase of a ticket, the payment of an admission fee or a usage fee, ("**Commercial Events**"), the Tenant will refer the request to the Landlord, and the Landlord will determine whether the Commercial Event may be accommodated at the Premises. The Tenant will not proceed with accommodating the request unless it has received written consent from the Landlord's Manager of Recreation Services, which may be withheld by the Landlord in its sole discretion. The Landlord's Manager of Recreation Services will respond to any such request from the Tenant within fifteen (15) business days. In exercising its discretion, and without limitation, the Landlord may refuse the Tenant's request if the Landlord determines that the proposed Commercial Event should be held at the Landlord's Oceanside Place multipurpose facility;
- 3.3. The Tenant acknowledges and agrees that a City of Parksville Special Events Permit (a "**Special Events Permit**") may be required for certain Commercial Events and that, without limiting the generality of section 3.2, the Landlord may withhold written consent under section 3.2 until such time as the Tenant presents evidence that demonstrates to the Landlord's satisfaction that a Special Events Permit has or will be obtained for the Commercial Event;
- 3.4 From time to time, the Landlord may receive requests to host Commercial Events at its Oceanside Place multipurpose facility ("**Oceanside Place**"). Should the Landlord, acting in its sole discretion, elect not to host the Commercial Event at Oceanside Place, it will make reasonable efforts to refer the organizer of the Commercial Event to the Tenant, who may, subject to this Sublease, consider hosting the Commercial Event at the Premises;
- 3.5 The Tenant and the Landlord's Recreation and Parks Department will meet on an annual basis to review the use of the Premises;

4.0 Rent

- 4.1 The Tenant shall pay to the Landlord rent of **TWENTY-FIVE (\$25.00) DOLLARS** due and payable within 30 days of the first day of the Term.

5.0 Tenant's Covenants

The Tenant covenants with the Landlord, at all times:

Rent

- 5.1 To pay all rents reserved under this Sublease;

Taxes

- 5.2 To pay all taxes, rates, duties and assessments whatsoever, whether municipal, provincial, federal, or otherwise charged upon the Tenant or the Landlord as a result of the Tenant's occupation of or use of the Premises unless exempted by law;

Utilities

- 5.3 To pay as they become due all charges for utilities used at or in the Premises, including, without limitation, all gas, oil, telephone, electric, light, power, internet, water, sewer, storm, garbage and recycling;

Construction

- 5.4 That it will not construct any buildings or structures on the Premises, and will not make any alterations, additions or improvements on or to the Premises including, without limitation, to the District 69 Arena mechanical and ice-making equipment, unless it has obtained:

- (a) the written consent of the Landlord;
- (b) if required by law, a development permit or zoning approval from the City of Parksville;
- (c) if required by law, a building permit authorizing the construction or renovations of the buildings and structures set out in the permit and the plans and specifications attached to it;

and all such work including without limitation, all fees and costs related to permit applications and approvals shall be carried out at the cost of the Tenant;

Assign or Sublet

- 5.5 That it will not assign nor sublet without the Landlord's written approval, and without limiting the discretion of the Landlord to grant or refuse such approval, the Tenant acknowledges that under the terms of the Head Lease, any proposed assignment or sublease of this Sublease will require the approval of the Council of the City of Parksville;

Nuisance

- 5.6 That it will not carry on or do or allow to be carried on or done on the Premises anything that
- (a) may be or may become a nuisance to the Landlord or the public;
 - (b) increases the hazard of fire or liability of any kind;
 - (c) increases the premium rate of insurance against loss by fire or liability upon the Premises;
 - (d) invalidates any policy of insurance for the Premises; or
 - (e) directly or indirectly causes damage to the Premises;

Regulations

- 5.7 That it will
- (a) comply promptly at its own expense with the legal requirements of all authorities, including, without limitation, an association of fire insurance underwriters or agents and all provincial and federal occupational health and safety regulations and policies related to facilities where ammonia is used as a refrigerant, and all notices issued under them that are served upon the Landlord or the Tenant; and
 - (b) indemnify the Landlord from all lawsuits, damages, losses, costs or expenses that the Landlord may incur by reason of non-compliance by the Tenant with legal requirements or by reason of any defect in the Premises or any injury to any person or to any personal property contained on the Premises unless the damages, losses, costs, expenses or injuries are the result of the negligence of the Landlord;

Insurance

- 5.8 That it will take out and maintain during the Term, a policy of general public liability insurance, including a Tenant Legal Liability endorsement, against claims for bodily injury, death or property damage arising out of the use and occupancy of the Premises by the Tenant in the amount of not less than Five Million (\$5,000,000.00) Dollars per single occurrence or such greater amount as the Landlord may from time to time designate, naming the Landlord as an additional insured party thereto and shall provide the Landlord with a Certificate of Insurance;
- 5.9 That
- (a) it will take out and maintain during the Term a policy of insurance insuring the Premises to the full insurable replacement value thereof against risk of loss or damage caused by or resulting from fire, lightning, tempest, or earthquake or any additional peril against which the Landlord normally insures;
 - (b) this policy of insurance shall name the Landlord as an additional insured party to it and shall be in a form satisfactory to the Landlord; and
 - (c) the Tenant shall provide the Landlord with a Certificate of Insurance;

- 5.10 That all policies of insurance shall contain a waiver of subrogation clause in favour of the Landlord and shall also contain a clause requiring the insurer not to cancel or change the insurance without first giving the Landlord 30 days prior written notice;
- 5.11 That if the Tenant does not provide or maintain in force the insurance required by this Sublease, the Landlord may take out the necessary insurance and pay the premium for periods of one year at a time, and the Tenant shall pay to the Landlord as additional rent the amount of the premium immediately on demand;
- 5.12 That if both the Landlord and the Tenant have claims to be indemnified under any insurance required by this Sublease, the indemnity shall be applied first to the settlement of the claim of the Landlord and the balance, if any, to the settlement of the claim of the Tenant;
- 5.13 That it shall take out and maintain during the Term worker's compensation coverage as required by Worksafe BC in respect of the Tenant's use and occupation of the Premises;
- 5.14 That it shall be the sole responsibility of the Tenant to determine what additional insurance coverage, including, without limitation, Participants Insurance, is necessary and advisable for its own protection or to fulfill its obligations under this Lease. Any such additional insurance shall be maintained and provided at the sole expense of the Tenant;

Release and Indemnification

- 5.15 That it will release and indemnify the Landlord from and against all lawsuits, damages, losses, costs or expenses that the Landlord may incur by reason of the use or occupation of the Premises by the Tenant or the carrying on upon the Premises of any activity in relation to the Tenant's use of the Premises and in respect of any loss, damage or injury including, without limitation, property damage or death, sustained by the Tenant, or by any person while on the Premises for the purpose of doing business with the Tenant or otherwise dealing with the Tenant, including all costs and legal costs, taxed on a solicitor and own client basis, and disbursements and this indemnity shall survive the expiry or sooner determination of this Sublease;

Builders' Liens and Other Charges

- 5.16 That it will not permit, do or cause anything to be done to the Premises that would allow any lien, certificate of pending litigation, judgment or certificate of any court, or any mortgage, charge, conditional sales agreement, personal property security or other encumbrance to be imposed or remain on title to the Premises, or any part thereof. In the event of registration of any lien, charge, conditional sales agreement, personal property security or other encumbrance against the Premises, or part thereof, the Tenant shall, within 10 days notice thereof, and at its sole expense, immediately cause the same to be discharged whether by payment or security or other manner as may be permitted by law, and failing which the Landlord, may, but shall not be obliged to, make any payments required to procure the discharge of such lien, charge or encumbrance and the Tenant shall forthwith indemnify the Landlord for all amounts incurred by the Landlord in procuring discharge under this section 5.16, including, without limitation, legal fees on a solicitor and own client basis in connection therewith;

Maintenance

- 5.17 To maintain the Premises, at all times to a high standard of maintenance consistent with the maintenance standards of a local government recreation facility and a City of Parksville Community Park, such maintenance to include, without limitation, the provision of janitorial services, grounds maintenance and upkeep of the parking areas, snow, ice, and leaf removal, grounds keeping, exterior and interior painting and the regular maintenance of all equipment, furnishings and fittings;

Repairs

- 5.18 To carry out all repairs that are necessary for the proper operation of the District 69 Arena, including without limitation, any necessary repairs or replacements of the structural components of the District 69 Arena, or its roof, electrical and mechanical systems, flooring, furnishings, fittings or equipment;

Occupational Health and Safety Inspections and Maintenance

- 5.19 Without limiting the generality of section 5.7, 5.17, or 5.18, to, at its sole cost, carry out all occupational health and safety inspections, repairs, upgrades and maintenance required or recommended for the Premises under all federal and provincial occupational health and safety enactments, policies, and guidelines;

Continuous Operation

- 5.20 To operate the District 69 Arena for the purposes contemplated hereunder continuously throughout the Term, so that the District 69 Arena is operated as a curling facility for the use of the Society, and third parties to whom the Society may licence the use of the District 69 Arena as provided for under sections 3.1 and 3.2 of this Agreement;

Staffing

- 5.21 To provide sufficient personnel for the safe and proper operation of the District 69 Arena, whether through volunteers or paid staff, or a combination of those;

Booking of Dry Floor Events

- 5.22 To cooperate with the Landlord's Recreation and Parks Department in the booking of dry floor sports and public recreation events;

Annual Report and Financial Statement

- 5.23 To provide an annual report to the Board of the Landlord within 30 days of the end of each year of the Term, such report to include information on the Tenant's membership and programming;
- 5.24 On or before July 31st during each year of the Term, except in the final year as outlined in 5.23, the Tenant shall submit to the Manager of Recreation Services a statement of results for the prior fiscal year comprised of a balance sheet and income statement and a copy of the final bank statement for the year showing a reconciliation of the Tenant's bank account to the balance sheet. The balance sheet and income statement shall each contain the following certification and be signed by the Tenant's Treasurer and President:

"The undersigned certify that these statements have been prepared in accordance with sound accounting principles and represent in all material respects the financial results and activities of the Parksville Curling Club Society for the fiscal year that ended on Month, Year";

- 5.25 On or before July 31st in the final year of each Term the Tenant shall submit to the Manager of Recreation Services a financial statement prepared by an independent accountant or accounting firm qualified to prepare statements in the Province of BC as a Chartered Professional Accountant, Chartered Management Accountant, or a Chartered Accountant;

Head Lease

- 5.26 To perform all of the obligations of the Regional District of Nanaimo as tenant under the Head Lease, except for those contained in sections 4.0, 5.1, 5.8 and 5.9 to the intent and for the purpose that no default under the Head Lease will arise from the tenancy created by this Sublease.

6.0 Landlord's Covenants

- 6.1 The Landlord covenants with the Tenant for quiet enjoyment.

7.0 Miscellaneous Covenants

And it is hereby mutually agreed:

Re-entry

- 7.1 That if the Tenant shall default in the payment of rent, or the payment of any other sum payable hereunder, or fail to perform any covenant hereunder and if such default shall continue for thirty (30) days after the giving of written notice by the Landlord to the Tenant, then the Landlord may re-enter the Premises and the rights of the Tenant with respect to the Premises shall lapse and be absolutely forfeited;

Forfeiture

- 7.2 That the Landlord, by waiving or neglecting to enforce the right to forfeiture of this Sublease or the right of re-entry upon breach of any covenant, condition or agreement in it, does not waive the Landlord's rights upon any subsequent breach of the same or any other covenant, condition or agreement in this Sublease;

Revenue

- 7.3 That all revenue from the operation of the District 69 Arena during the Term shall be for the account of the Tenant;

Destruction

- 7.4 (a) that if the Premises are damaged by fire, flood or other casualty the Tenant shall, within thirty (30) days after the fire, flood or other casualty advise the Landlord in writing whether the Tenant intends to restore, repair or replace the Premises or the portion damaged. If the Tenant intends to undertake and complete restoration, repair or replacement the Tenant shall do so within twelve (12) months after the damage has occurred;

- (b) if the Tenant elects not to undertake restoration, repair or replacement this Sublease shall terminate and, for the purpose of this subsection, if the Tenant does not advise the Landlord concerning the Tenant's intention within the thirty (30) days, the Tenant shall be deemed to have elected not to undertake restoration, repair and replacement;

Fixtures

- 7.5 That, unless the Tenant, upon notice from the Landlord, removes them, all buildings, structures or improvements constructed on the Premises by the Tenant, save and except for moveable business fixtures of the Tenant, shall, at the determination of the Sublease, become the sole property of the Landlord at no cost to the Landlord;

Insolvency

- 7.6 That if
- (a) the Term or any of the goods or chattels on the Premises are at any time seized or taken in execution or attachment by any creditor of the Tenant or under bill of sale or chattel mortgage;
 - (b) if a writ of execution issues against the goods or chattels of the Tenant;
 - (c) if the Tenant makes any assignment for the benefit of creditors;
 - (d) if the Tenant becomes insolvent or bankrupt;
 - (e) being an incorporated company or society if proceedings are begun to wind up the company or society; and
 - (f) if the Premises or any part of them becomes vacant and unoccupied for a period of thirty (30) days or is used by any other person or persons for any purpose other than permitted in this Sublease without the written consent of the Landlord;

the Term shall, at the option of the Landlord, immediately become forfeited and all rents and other amounts payable under this Agreement and the Landlord may re-enter and repossess the Premises despite any other provision of this Sublease;

Removal of Goods

- 7.7 If the Tenant removes its goods and chattels from the Premises, the Landlord may follow them for 30 days;

Renewal

- 7.8 That upon the expiration of the Term the parties may mutually agree to enter into a new sublease of the Premises containing agreed terms and conditions, subject to a renewal of the Head Lease, and the approval of the Council for the City of Parksville to a new sublease between the Landlord and the Tenant;

Time

- 7.9 That time shall be of the essence of this Sublease;

Termination

- 7.10 That the Landlord may, in its sole and unfettered discretion terminate this Sublease at any time and for any reason upon the provision of thirty (30) days' notice in writing to the Tenant;
- 7.11 That the Tenant may terminate this Sublease at any time upon the provision of six (6) months written notice;

Notices

- 7.12 That any notice required to be given under this Sublease shall be deemed to be sufficiently given:

- (a) if delivered, at the time of delivery, and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid, registered mail addressed as follows:

If to the Landlord:

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2
Email: _____
Fax: _____

Attention: General Manager of Recreation and Parks

If to the Tenant:

Parksville Curling Club
Box 1624
Parksville, BC V9P 2H3
Email: _____
Fax: _____

Attention: President

or at the address a party may from time to time designate, then the notice shall be sent by mail, deemed to have been received five business days (meaning any day that is not a Saturday, Sunday or "holiday", as defined in the *Interpretation Act*) five (5) days after the time and date of mailing, and if sent by email or fax, deemed to be received on the date and at the time of transmission. If, at the time of the mailing the notice, 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 then the notice may only be given by actual delivery of it;

Net Sublease

- 7.13 That this Sublease shall be a complete carefree net lease to the Landlord as applicable to the Premises and the Landlord shall not be responsible during the Term for any cost, charges, expenses or outlays of any nature whatsoever in respect of the Premises or its contents, or the operation of the Premises, except those mentioned in this Sublease;

Landlord's Insurance

- 7.14 That in the event the cost to the Tenant of the property insurance required under section 5.9 exceeds the cost of such insurance, should it be placed and maintained by the Landlord, that by agreement of the Landlord and Tenant, the Landlord may place and maintain such property insurance for the Premises and charge the cost of that insurance to the Tenant;

Fitness of Premises

- 7.15 (a) that the Landlord has made no representation or warranties as to the condition, fitness or nature of the Premises and by executing this Sublease, the Tenant releases the Landlord from any and all claims, which the Tenant now has or may in future have in that respect;
- (b) that the Tenant admits that it has inspected the Premises in their present state, that they are suitable for the Tenant's purposes, and that the Tenant shall at its sole cost be responsible for any and all repairs, improvements and upgrades necessary for the operation of the District 69 Arena by the Tenant;
- (c) that without limiting sections 7.5, 7.15(b), or section 5.17 and 5.18, the Tenant shall be solely responsible for the maintenance, repair and replacement of the equipment and fixtures listed in Schedule 'C' to this Sublease, and that all of the said equipment and fixtures, including any replacements thereof, shall be and remain the sole property of the Landlord;

Inspection and Access

- 7.16 That the Landlord may:
- (a) enter the Premises at any time during the Landlord's regular business hours, and at any other time on providing 24 hours notice to the Tenant, for the purpose of inspecting the Premises and determining whether the Tenant is in compliance with its obligations under this Sublease; and
- (b) permit the City of Parksville to, at any time, enter and to have its authorized agents, employees, and contractors enter the Premises for the purpose of inspection, making repairs, alterations, and improvements to the Premises in general or to make improvements as outlined in the City of Parksville 2017-2037 Community Park Master Plan or to have access to utilities and services, and the Tenant shall provide free and unimpeded access for the purpose, and shall not be entitled to compensation for any inconvenience, nuisance, or discomfort caused thereby.

Paramountcy of Head Lease

- 7.17 That to the extent any right or benefit conferred by this Sublease contravenes or is incompatible with the Head Lease, such right or benefit will be amended or modified so as not to contravene or be incompatible with the Head Lease;

Binding Effect

- 7.18 That this Sublease shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees;

Amendment

- 7.19 That the parties hereto may by agreement amend the terms of this Sublease, such amendment to be evidenced in writing and executed by both parties;

Law Applicable

- 7.20 That this Sublease shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia;

Relationship of the Parties

- 7.21 No provision of this lease shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, or a principal-agent relationship between the parties;

Interpretation

- 7.22 That this Sublease's recitals and schedules form part of this Sublease;
- 7.23 That when the singular or neuter are used in this Sublease they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require;
- 7.24 All provisions of this Sublease are to be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph;
- 7.25 That the headings to the clauses in this Sublease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Sublease or provision of it.

IN WITNESS the parties have signed and sealed this revised Sublease on the ____day of _____, 2018.

Regional District of Nanaimo by its authorized)
signatories)

_____)
Name:)

_____)
Name:)

The Parksville Curling Club Society by its)
authorized signatories)

_____)
Name:)

_____)
Name:)

SCHEDULE 'A'

PID

That part of the remainder of Parcel "B" (DD34903-I) of District Lot 13, Nanoose District, as shown outlined on the reference plan annexed hereto as Schedule "B" and prepared by N. Roger Parry, B.C.L.S., dated the 2nd day of December, 1997, and marked "Lease Area A".

Dwg. No. P3000

SCHEDULE 'C'

**District 69 Arena
193 East Island Highway
Parksville, B.C**

Equipment to remain at the facility and be included for use under the terms and conditions of the facility lease arrangement with the Parksville Curling Club Society:

Refrigeration

1. Compressors and system components
2. Chiller
3. Condenser
4. Dehumidifiers
5. Operational control systems (does not include personal safety equipment)

Building Equipment

1. Domestic and operational water system
2. Roof top furnaces and controls
3. All air handling systems and controls
4. Fire control systems
5. Fire suppression equipment
6. Electrical control panels
7. Washroom sink and toilets (paper dispensers are on loan from supplier, Acme Supplies and may be removed at the supplier's discretion)

Lighting fixtures

1. All fixed lighting throughout the building.
2. All fixed exterior lighting

Alarm System

1. Key pads and motion detectors (decommissioned)

Concession

1. Hand Sink and grease trap
2. Exhaust fan
3. Food preparation and storage equipment
 - a. Popcorn Maker
 - b. Self-contained Fryer
 - c. Nacho Warmer
 - d. Hot Dog Machine
 - e. Freezer
 - f. Fridge

Mill Work

1. All affixed millwork will remain in the washrooms, staff room and front office.

SCHEDULE "D"

HEAD LEASE