

PARTNERING & LOAN AGREEMENT
FOR PROVISION OF LAWN BOWLING FACILITIES

THIS AGREEMENT made this ___ day of _____, 2021

BETWEEN:

THE CITY OF WHITE ROCK, a municipal corporation incorporated pursuant to the *Local Government Act*, having offices at 15322 Buena Vista Avenue, White Rock, BC V4B 1Y6

(the “**City**”)

AND:

THE WHITE ROCK LAWN BOWLING CLUB (Incorporation No. S0002248), a society incorporated pursuant to the laws of British Columbia, having offices at 1079 Dolphin Street, White Rock, BC V4B 4G4

(the “**Club**”)

WHEREAS:

- A. The City has authority under the *Community Charter* to enter into a partnering agreement, under which a person or public authority agrees to provide a service on behalf of the City.
- B. The Club operates a lawn bowling facility within the City on lands it licenses from the City at 1079 Dolphin Street, White Rock, BC (the “**Facility**”).
- C. The Club has requested a loan from the City of up to \$62,000 for the purpose assisting it to replace the artificial turf at the Facility and associated works (the “**Project**”).
- D. The City wishes to enter into this Agreement with the Club so that the Club may complete the Project as part of its desire to promote recreational and community facilities within the City and promote recreational and community activities amongst its residents;
- E. This is a partnering agreement under section 21 of the *Community Charter*.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, and the terms and conditions hereinafter contained, the sufficiency and receipt of which is hereby acknowledged, the parties covenant and agree each with the other as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in this Agreement:

- a. **“Agreement”** means this Agreement as from time to time supplemented or amended by one or more agreements entered into pursuant to the applicable provisions of this Agreement together with all other attachments to it and reference to a part or a section means the corresponding part or section of this Agreement;
- b. **“City’s Conditions Precedent”** has the meaning given in Section 8.1 of this Agreement;
- c. **“Event of Default”** has the meaning given in Section 11.1 of this Agreement;
- d. **“Facility”** has the meaning given in Recital B of this Agreement;
- e. **“Governmental Authority”** means any federal, provincial, territorial or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;
- f. **“Interest Rate”** means the prime interest rate set by the Bank of Canada for the previous calendar year;
- g. **“Loan”** has the meaning given in Section 2.1 of this Agreement;
- h. **“License Agreement”** means the agreement by which the City licenses to the Club the Facility;
- i. **“License Extension”** has the meaning given in Section 7.1 of this Agreement;

- j. **“Loan Advance Date”** has the meaning given in Section 2.1 of this Agreement;
 - k. **“Person”** means any individual, corporation, limited-liability company, partnership, firm, joint venture, association, trust, or other entity or organization, including a Government Authority;
 - l. **“Project Completion”** means the stage of construction where the Project is complete, as certified by the representatives of both parties, acting reasonably and in writing;
 - m. **“Project Documents”** means all design, construction and financial and planning budgeting documents related to the Project.
 - n. **“Segregated Account”** has the meaning given in Section 8.1(d) of this Agreement; and
 - o. **“Security”** has the meaning given in Section 6.1 of this Agreement;
- 1.2 **Interpretation** – For the purposes of this Agreement, except as otherwise expressly provided or as the context otherwise requires:
- a. the word **“including”**, when following any general term or statement, is not to be construed as limiting the general term or statement to the specific terms or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
 - b. an accounting term not otherwise defined in this Agreement has the meaning assigned to it, and except as otherwise directed in this Agreement, every calculation to be made under this Agreement is to be made in accordance with generally accepted accounting principles;
 - c. except as otherwise expressly provided, all references to currency mean Canadian currency;

- d. words in the singular include the plural and words importing a corporate entity include individuals and vice-versa;
- e. reference in this Agreement to a particular numbered paragraph, article or section, or lettered schedule is a reference to the correspondingly numbered paragraph, article, or section, or lettered schedule of this Agreement;
- f. reference in this Agreement to an enactment is a reference to an enactment as defined in the *Interpretation Act* (British Columbia), and includes a reference to an enactment of Canada, British Columbia or White Rock, as applicable;
- g. reference in this Agreement to an enactment is a reference to that enactment as amended, revised, consolidated or replaced; and
- h. reference in this Agreement to a party is a reference to a party of this Agreement.

1.3 **Governing Law** - This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada.

1.4 **Headings** - The headings given to paragraphs, articles and sections in this Agreement are for convenience of reference only and do not form part of this Agreement and must not be used in the interpretation of this Agreement.

1.5 **Invalidity of clauses** - If any clause or portion of this Agreement is declared or held invalid for any reason, the invalidity does not affect the validity of the remainder of that clause or this Agreement, and the terms and provisions of this Agreement continue to be in force and in effect and are to be construed as if the Agreement had been executed without the invalid portion.

1.6 **Import of Words** - If the context so requires, words importing number shall be deemed to include a greater or lesser number, words importing gender shall be deemed to include the other gender or the body corporate, and words importing the body corporate shall be deemed to include either gender.

2.0 AMOUNT OF LOAN

2.1 Subject to the provisions of this Agreement, the City will make available to the Club a loan in the sum of \$62,000 (the “**Loan**”). The City will advance to the Club \$59,000 of the Loan on the date that is 5 business days after the Club has satisfied the City’s Conditions Precedent in Section 8.1 of this Agreement or the City has waived the City’s Conditions Precedent in writing to the Club (the “**Loan Advance Date**”).

2.2 Subject to the provisions of this Agreement, the City will advance to the Club the remaining \$3,000 of the Loan on the date that is five business days after Project Completion.

3.0 PURPOSE OF LOAN

3.1 The Club will only use the Loan for the purposes of the Project, and such other purposes as the City may agree to, in the City’s sole discretion and in writing.

4.0 INTEREST RATE, CALCULATION AND PAYMENT

4.1 **Payment of Interest** – The Club will pay interest from the Loan Advance Date, at the Interest Rate, calculated on the outstanding balance of the Loan, annually, with the first interest payment due one year after the Loan Advance Date, and every one year thereafter on the anniversary of the Loan Advance Date.

4.2 **Notice** – The City will advise the Club of the amount of interest due for each payment at least five business days before the due date of that payment.

5.0 REPAYMENT OF LOAN

5.1 **Repayment** – The Club will repay the Loan, together with interest, as follows:

- a. interest at the Interest Rate is payable as provided for under Section 4.0;
- b. the principal in ten equal, annual installments based on a 10 year amortization and term with the first payment due one year after the Loan Advance Date, and every one year thereafter on the anniversary of the Loan Advance Date.

5.2 **Early Payment** – The Club may make greater or earlier payments than required under Section 5.1 without penalty or bonus.

5.3 **Place & Method of Payment** – The Club will make all payments pursuant to this Agreement at the City’s address set out in Section 13.1 and by certified cheque.

6.0 SECURITY

6.1 **Loan Security** – The Club will execute and deliver, or cause to be executed and delivered, to the City the following:

- a. a security interest in registrable form satisfactory to the City over all its present and after acquired personal property, including but not limited to its equipment, furnishings, and accounts, details of which are described on **Schedule A**.

(the “**Security**”).

7.0 LICENSE AGREEMENT

7.1 The Parties will replace with the existing License Agreement with a new agreement, or amend the License Agreement, such that the term of the Club’s license over the Facility is no shorter than the Loan term (the “**License Extension**”), and the Club will execute and deliver, or cause to be executed and delivered, the License Extension agreement to the City.

8.0 CONDITIONS PRECEDENT TO ADVANCE OF LOAN

8.1 The City will have no obligation to advance the Loan unless:

- a. the Club provides, or causes the provision of, Project Documents to the City;
- b. in the discretion of the City, acting reasonably, the Club is financially capable of completing the Project and the Project is appropriately designed;
- c. the Parties complete the License Extension, including the delivery or execution of any documents required under that process;

- d. the Club opens a separate bank account for the purposes of holding the Loan (the “**Segregated Account**”);
- e. the Club has executed and delivered, or caused the execution and delivery of all Security and all other documents required by the City in form and substance satisfactory to the City;
- f. each of the representations and warranties contained in this Agreement is true and correct in all material respects as if made on the dates of the advance of the Loan; and
- g. no Event of Default has occurred;

(Collectively, the “**City’s Conditions Precedent**”).

8.2 The City’s Conditions Precedent are for the sole benefit of the City and only the City may waive, in whole or in part, the City’s Conditions Precedent by giving notice of waiver to the Club.

9.0 REPRESENTATIONS AND WARRANTIES

9.1 The Club represents and warrants to the City that:

- a. the Club has full power, authority and capacity to enter into this Agreement and to carry out its obligations and covenants under this Agreement and that all actions in respect of this Agreement by the Club have and will have been duly and validly authorized by all required signing authorities;
- b. there is no provision in the Club’s constating documents, or any other agreement to which the Club is a party, that restricts or limits the Club’s powers to borrow and to secure such borrowing in the manner contemplated by the Security;
- c. the Club is not insolvent, and the execution and delivery of this agreement will not render the Club insolvent; and
- d. there are no actions, suits or proceedings pending, or to its knowledge, threatened against the Club in any court or before any Governmental

Authority that are likely to have a material adverse impact on the financial condition of the Club;

10.0 CLUB COVENANTS

10.1 Positive Covenants of the Club – Until the Club fully repays the Loan, interest and any other amounts owing under this Agreement, the Club covenants and agrees with the City that it will:

- a. administer, manage, control and operate the Facility in a proper and efficient manner;
- b. provide a service on behalf of the City, namely to complete the Project as part of its desire to promote recreational and community facilities within the City and promote recreational and community activities amongst its residents;
- c. make all reasonable efforts to collaborate with other lawn bowling clubs in the City, including the Mann Park Lawn Bowling Club, to jointly sponsor the following events at the Facility:
 - i. Lower Mainland competitions as approved by the BC Lawn Bowling Association; and
 - ii. other events approved by the boards of both clubs.
- d. promptly inform the City of any fact it becomes aware of that could materially and adversely impact the Club, its financial condition, or the Facility;
- e. give the City prompt notice of any Event of Default or any event which, with notice or lapse of time or both, would consist of an Event of Default;
- f. maintain and keep the Facility and lands licensed from the City in good and proper order and repair, to the City's satisfaction;
- g. maintain all Loan advances it receives in the Segregated Account;

- h. provide to the City, within 10 business days of a written request, all bank records and accounting information regarding the Segregated Account; and
- i. maintain its good standing with any applicable Governmental Authority, such that it continues to be a validly incorporated society;

10.2 **Negative Covenants** – Until the Club fully repays the Loan, interest and any other amounts owing under this Agreement, the Club covenants and agrees with the City that it will:

- a. not obtain any additional financing, or incur additional financial liabilities without the City's prior, written consent, which the City may withhold in its sole discretion.

11.0 **DEFAULT**

11.1 Any one or more of the following events will constitute an event of default under this Agreement ("**Event of Default**"):

- a. the Club fails to pay to the City, at the time due, any principal, interest or other amount owing pursuant to the Loan;
- b. the Club fails to perform or comply with any of its covenants to the City contained in Section 10.0 of this Agreement;
- c. the Club sells all, or substantially all, of its assets;
- d. the Club commits an act of bankruptcy; becomes insolvent (as such term is defined pursuant to the *Bankruptcy and Insolvency Act (Canada)*), makes an assignment for the benefit of creditors, files a notice of intention to file a proposal or makes a proposal under the *Bankruptcy and Insolvency Act (Canada)*, admits the material allegations of any petition filed against it in any bankruptcy, reorganization or insolvency proceeding, petitions or applies to any tribunal for the appointment of any receiver, trustee or similar liquidator of it or all or a substantial part of its assets, or if any action shall be taken by the Club for the purpose of effecting any of the foregoing, or if any Person takes possession of all or

- a substantial portion of the property of the Club by way of or in contemplation of enforcement of security, or a distress, execution or similar process is levied or enforced against any such property;
- e. any petition in bankruptcy is filed or any other proceeding is commenced against the Club or any part of its property under any law relating to reorganization, arrangement or re-adjustment of debt, dissolution, winding-up or similar law, unless there is a bona fide defence to such proceeding and such proceeding is diligently contested by all appropriate action; or an order, judgment or decree shall be entered by any court of competent jurisdiction approving a petition seeking reorganization of the Club or appointing a receiver, trustee or liquidator of the Club, or of all or a substantial part of its assets;
 - f. damage to or destruction of the Facility by fire or other casualty and the loss, in the City's opinion, is not adequately insured, and the Club on demand by the City fails to deposit forthwith with the City an amount equal to the loss sustained;
 - g. the Club obtains any additional financing, or incurs additional financial liabilities without the City's prior, written consent, which the City may withhold in its sole discretion.

11.2 Consequences – If any Event of Default occurs and is continuing:

- a. the City may declare the outstanding Loan balance, together with any accrued interest and other costs, to be immediately due and payable;
- b. the Club will immediately take all necessary actions to repay the Loan;
- c. the City will be entitled to enforce all Security and exercise any and all other rights it may have against the Club by agreement or law; and
- d. immediately after the City declares under this the outstanding Loan balance, together with any accrued interest and other costs, is immediately due and payable, interest calculations will be made using the Interest Rate plus 2%.

12.0 INDEMNIFICATION

12.1 The Club will indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against any losses, damages, expenses (including legal fees on a solicitor and own client basis) and liabilities (including those arising from any litigation or other proceeding) with respect to any breach or default by the Club of this Agreement or any document contemplated by or delivered under or in connection with this Agreement.

13.0 NOTICE

13.1 Any notices hereunder or documents or deliveries required hereby may be served or made on the City and Club by personal delivery, registered mail or e-mail from within the Province of British Columbia to the following addresses:

To the City:	City of White Rock 15322 Buena Vista Avenue, White Rock, BC V4B 1Y6 C/O: Tracey Arthur, Director of Corporate Administration Email: tarthur@whiterockcity.ca
To the Club:	1079 Dolphin Street, White Rock, BC V4B 4G4 C/O: Gayle Saunders Email: gaylesaunderswr@gmail.com

or at such other address as the City and Club may from time to time notify in writing. Any delivery or service as aforesaid which is made by registered mail shall be deemed to have been received when actually delivered.

14.0 DISPUTE RESOLUTION

14.1 The Parties will promptly notify each other of any dispute arising under this Agreement and will attempt to negotiate, promptly and in good faith, a resolution to such disputes prior to commencing any legal proceeding regarding such dispute.

15.0 GENERAL PROVISIONS

15.1 **Assignment** – No party may assign its rights under this Agreement without the prior written consent of the other party.

15.2 **Entire Agreement** – This Agreement constitutes the entire agreement between the parties with respect to the matters herein and may not be modified except by subsequent agreement in writing.

15.3 **Time is of the Essence** – Time is of the essence of this Agreement.

15.4 **Enurement** – This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns

15.5 **Counterparts** – This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

15.6 **Further Assurances** – Each party will perform all such other acts and things and execute all such other documents as are necessary or desirable in the reasonable opinion of the other to evidence or carry out the terms or intent of this Agreement.

15.7 **Remedies Cumulative** – The rights and remedies under the Agreement are cumulative and are not in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

15.8 **No Fettering** – Nothing in this Agreement shall affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law.

EXECUTED BY the City at White Rock, BC, this ____ day of _____, 2021
by its authorized signatories:

Darryl Walker, Mayor

**Tracey Arthur, Director of Corporate
Administration**

EXECUTED BY the White Rock Lawn Bowling Club at White Rock, BC, this ____
day of _____, 2021
by its authorized signatories:

Name: Gayle Saunders, President

Name: Trudy Gordon, Vice President

SCHEDULE A
PROPERTY OF THE CLUB

Item	Quantity	Value (\$)
Industrial dishwasher	1	\$ 5,000
Kitchen refrigerator	1	\$ 2,000
Bar refrigerator	1	\$ 1,500
Stoves	2	\$ 3,000
Tables/chairs	For 100 people	\$12,000
Kitchen utensils	For 100 people	\$ 5,000
Television	1	\$ 1,500
Locker room equipment	40	\$ 2,000
Outside benches and awnings	16	\$ 3,600
Lawn mowers	2	\$ 500
Power washers	2	\$ 800
Leaf blower	1	\$ 200
Industrial carpet vacuum	1	\$ 8,000
TOTAL:		\$45,100