**Minute No. 462**
**Report – Standing Policy Committee on Property and Development – May 4, 2023**

**Item No. 2** **Proposed Lease Agreement with St. James Seals Swim Club Inc. for a Portion of City-owned Property at 2055 Ness Avenue (commonly known as St. James Civic Centre)**
**(St. James Ward)**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That an amendment to the "Real Estate - Leasing and Licensing of Property" Policy to add 2055 Ness Avenue to Appendix A – List of Non-Profit Building Locations, as attached to this report as Schedule A, be approved.

2. That subject to the approval of Recommendation 1, the proposed terms and conditions for a Lease Agreement, attached hereto as Schedule B, in favour of St. James Seals Swim Club Inc. located at 2055 Ness Avenue (identified as "Leased Area" on the attached Misc. Plan No. 15614/3), be approved.

3. That the City enter into, execute and deliver a Lease Agreement with St. James Seals Swim Club Inc. and such other agreements as determined necessary by the Director of Legal Services and City Solicitor to implement the intent of the foregoing (the "Ancillary Agreements").

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

**Report – Standing Policy Committee on Property and Development – May 4, 2023**

DECISION MAKING HISTORY:

Moved by Councillor Rollins,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 16, 2023, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 4, 2023, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

# ADMINISTRATIVE REPORT

**Title:** Proposed Lease Agreement with St. James Seals Swim Club Inc. for a portion of City-owned property at 2055 Ness Avenue (commonly known as St. James Civic Centre)

**Critical Path:** Standing Policy Committee on Property and Development – Executive Policy Committee – Council

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| G. Chappell (Acting) | M. Pittet (Acting) | C. Kloepfer | M. Jack |

## EXECUTIVE SUMMARY

The Public Service has negotiated Terms and Conditions for a Lease Agreement in favour of St. James Seals Swim Club Inc. ("Seals") for that portion of City-owned land located at 2055 Ness Avenue shown as Leased Area on Misc. Plan No. 15614/3, a copy of which is attached in Schedule B to this report. The Seals have used the proposed Leased Area for the purpose of storage over the last number of years through previous facility use agreements and would now like to enter into a long-term lease arrangement for their continued use of the space.

The Seals are a non-profit entity qualifying for a below-market lease in accordance with the City's "Real Estate - Leasing and Licensing of Property" Policy. However, as the Leased Area is contained within a building which has not been designated by Council as a Non-Profit Building, the Public Service is also recommending that Council amend Appendix A of the "Real Estate - Leasing and Licensing of Property" Policy to add 2055 Ness Avenue to the list of Non-Profit Building Locations. In addition to an annual rent of $1.00, the Seals will be responsible for all costs associated with the operation and maintenance of the Leased Area as well as property taxes (if applicable).

The purpose of the lease is to allow for tenant storage, a passive use which places no added demand to the facility. The Ward Councillor has been notified of the intentions of the Public Service.

## RECOMMENDATIONS

1. That an amendment to the "Real Estate - Leasing and Licensing of Property" Policy to add 2055 Ness Avenue to Appendix A – List of Non-Profit Building Locations, as attached to this report as Schedule A, be approved.

2. That subject to the approval of Recommendation 1, the proposed terms and conditions for a Lease Agreement, attached hereto as Schedule B, in favour of St. James Seals Swim Club Inc. located at 2055 Ness Avenue (identified as “Leased Area” on the attached Misc. Plan No. 15614/3), be approved.

3. That the City enter into, execute and deliver a Lease Agreement with St. James Seals Swim Club Inc. and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the “Ancillary Agreements”).

4. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

## REASON FOR THE REPORT

On September 29, 2021, Council approved the “Real Estate - Leasing and Licensing of Property” Policy which allows for consideration of less than market rent where six criteria are met.

The tenant meets the less then market rent criteria with the exception that the Leased Area is not within a designated Non-Profit Building. All new non-profit building locations must be approved by Council and incorporated into Appendix A of the “Real Estate - Leasing and Licensing of Property” Policy.

## IMPLICATIONS OF THE RECOMMENDATIONS

The proposed Lease Agreement is for an initial term of five years with an option to renew for a further five-year term. The Lease Agreement may be terminated upon 180 days’ written notice.

The Seals will be responsible for all costs associated with the operation and maintenance of the Leased Area. There will be no expenses incurred by the City as a result of this agreement.

## HISTORY/DISCUSSION

The subject property, commonly known as the St. James Civic Centre, is located in the western ward of St. James, in the Deer Lodge neighbourhood, and has existed as a City-owned and operated recreational facility for more than 50 years.

The Seals are a non-profit organization offering competitive swim training in the St. James community. The Seals have used the proposed Leased Area for the purpose of storage over the last number of years through previous facility use agreements and would now like to enter into a long-term lease arrangement for their continued use of the space.

The proposed Lease Agreement was circulated to applicable City departments and no objections were received. The Community Services Department supports this Agreement.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed Lease Agreement, and their comments have been incorporated into the terms and conditions.
The proposed base rental rate for the Lease Agreement is $1.00 per annum, and the terms and conditions are consistent with the City's non-profit lease criteria outlined in the “Real Estate - Leasing and Licensing of Property” Policy. Subject to the approval of Recommendation 1 of this report, the Lessee has met the six non-monetary grant criteria attached as Schedule C.

In accordance with the Real Estate Transaction Management Framework, the Public Service completed an appraisal to determine the opportunity cost of the Lease Agreement. The appraisal indicated a market value of between $5.00 - $6.00 per square foot, which translates into an annual rental rate of $530.00 to $636.00. The highest and best use of the appraisal determined that the Leased Area should be used for recreational multi-use purposes under its current use and zoning.

The lease is considered to represent the ‘best value’ to the City based on the programming the tenant provides.

The Public Service recommends approval of the proposed Lease Agreement as negotiated in the terms and conditions and the designation of 2055 Ness Avenue as a Non-Profit Building Location. If the proposed Lease Agreement is approved, the Agreement will commence in the first month after Council approval (anticipated June 2023).

The Ward Councillor has been notified as to the intentions of the Public Service.

**FINANCIAL IMPACT**

## Financial Impact Statement

**Date:** March 13, 2023

**Project Name:**

**First Year of Program** 2023

Proposed Lease Agreement with St. James Seals Swim Club Inc. for a portion of City-owned property at 2055 Ness Avenue (commonly known as St. James Civic Centre)

| | 2023 | 2024 | 2025 | 2026 | 2026 to 2032 |
|---|---|---|---|---|---|
| **Capital** | | | | | |
| Capital Expenditures Required | $ - | $ - | $ - | $ - | $ - |
| Less: Existing Budgeted Costs | - | - | - | - | - |
| Additional Capital Budget Required | $ - | $ - | $ - | $ - | $ - |
| **Funding Sources:** | | | | | |
| Debt - Internal | $ - | $ - | $ - | $ - | $ - |
| Debt - External | - | - | - | - | - |
| Grants (Enter Description Here) | - | - | - | - | - |
| Reserves, Equity, Surplus | - | - | - | - | - |
| Other - Enter Description Here | - | - | - | - | - |
| Total Funding | $ - | $ - | $ - | $ - | $ - |
| Total Additional Capital Budget Required | $ - | | | | |
| Total Additional Debt Required | $ - | | | | |
| **Current Expenditures/Revenues** | | | | | |
| Direct Costs | $ - | $ - | $ - | $ - | $ - |
| Less: Incremental Revenue/Recovery | (259) | (267) | (275) | (283) | (1,885) |
| Net Cost/(Benefit) | $ 259 | $ 267 | $ 275 | $ 283 | $ 1,885 |
| Less: Existing Budget Amounts | 259 | 267 | 275 | 283 | 1,885 |
| Net Budget Adjustment Required | $ - | $ - | $ - | $ - | $ - |

**Additional Comments:** Revenues in each year from 2023 (assumed to commence on June 1) to 2032 consists of the $1 rent + $258 admin fee and assumes that the 5-year extension will be exercised. Total revenues will be $2,969. An internal appraisal indicated annual rental market value of $530 to $636 for the highest and best use of the Licensed Area, that being for recreational multi-use purposes, as outlined under its current zoning. Assuming a market exists, there is an opportunity cost of up to approximately $6,360 (not adjusted for inflation) associated with the potential 10-year lease agreement.

Mike McGinn Mar. 13, 2023

Mike McGinn, CPA, CA
Manager of Finance

## CONSULTATION

This Report has been prepared in consultation with:

- Legal Services (as to legal issues)
- Risk Management (as to insurance requirements)
- Community Services Department , Recreation Services Division

## OURWINNIPEG POLICY ALIGNMENT

**Goal 4 Good Health and Well-Being**

**Objective 1.** Enable access to basic needs for good physical and mental health.

**Policy 4.11 Equitable Service Access**. Prioritize equitable access to recreation and parks systems, services, and infrastructure, in order to: enable active living; connect people and nature; create supportive environments; build community capacity; and achieve desired health outcomes, with a focus on children and youth.

## WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

## WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

The information and recommendations presented in this report align with and advance the Winnipeg Poverty Reduction Strategy (2021-2031) and embody the following Guiding Principles:

**Goal 6: All City Services are Equitable, Inclusive and Accessible**

The City should explore opportunities to collaborate and partner with community organizations and groups to ensure service planning and delivery is as inclusive as possible.

Recreation services and access to nearby greenspace contribute to enhanced individual and community well-being, social inclusion, and positive health outcomes.

## SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Bridget Peterson
Date: March 20, 2023
File No: 5099/2

Attachments:
Schedule A – Real Estate - Leasing and Licensing of Property Policy Amendment
Schedule B – Proposed Terms and Conditions and Misc. Plan No. 15614/3
Schedule C – Eligibility Criteria for a Below Market Lease to Non-Profit Organizations

**SCHEDULE A**

APPENDIX A – Amendment to Policy PD-028

Winnipeg

**CITY OF WINNIPEG POLICY NO. PD-028**

| **POLICY TITLE**<br>*Real Estate – Leasing and Licensing of Property* | **ADOPTED BY**<br>*City Council* | **EFFECTIVE DATE**<br>*September 29,2021* |
|---|---|---|
| **ORIGIN / AUTHORITY**<br>*City Council* | **CITY POLICY NO**<br>**PD-028** | **MOST RECENT CONSOLIDATION**<br>*XXX-XXX* |

**1. Purpose:**

To update the non-profit building location list in Appendix A.

**2. Definitions:**

No changes

**3. Leasing and Licensing of Property Policy**

No changes

**4. Responsibilities**

No changes

## Appendix A

## List of Non-Profit Building Locations

Replace:

| # | Address | # | Address |
|---|---|---|---|
| 1 | 444 Adsum Dr | 41 | 687 Minto St |
| 2 | 601 Aikins St | 42 | 365 Murdoch Rd |
| 3 | 1880 Alexander Ave | 43 | 282 Niverville Ave |
| 4 | 80 Allard Ave | 44 | 535 Oakdale Dr |
| 5 | 659 Alverstone St | 45 | 3450 Pembina Hwy |
| 6 | 218 Antrim Rd | 46 | 346 Perth Ave |
| 7 | 112 Ashland Ave | 47 | 3180 Portage Ave |
| 8 | 75 Brazier St | 48 | 4540 Portage Ave |
| 9 | 2370 Burrows Ave | 49 | 2777 Portage Ave |
| 10 | 50 Cass St | 50 | 25 Poseidon Bay |
| 11 | 480 Chalmers Ave | 51 | 75 Poseidon Bay |
| 12 | 1885 Chancellor Dr | 52 | 295 Pritchard Ave |
| 13 | 80 Churchill Dr | 53 | 219 Provencher Blvd |
| 14 | 1100 College Ave | 54 | 233 Provencher Blvd |
| 15 | 1212 Dakota St | 55 | 900 Raleigh St |
| 16 | 577 Dalhousie Dr | 56 | 141 Regent Ave W |
| 17 | 255 de la Cathedrale Ave | 57 | 4246 Ridgewood Ave |
| 18 | 410 Desalaberry Ave | 58 | 5006 Roblin Blvd |
| 19 | 251 Donald St | 59 | 505 Ross Ave |
| 20 | 377 Dufferin Ave | 60 | 759 Ross Ave |
| 21 | 120 Eugenie St | 61 | 475 Rutland Ave |
| 22 | 90 Frobisher Rd | 62 | 836 St Joseph St |
| 23 | 100 Frobisher Rd | 63 | 598 St Mary's Rd |
| 24 | 466 Gertrude St | 64 | 669 St Matthews Ave |
| 25 | 1430 Gibbs St | 65 | 811 St Paul Ave |
| 26 | 266 Graham Ave | 66 | 491 Salter St |
| 27 | 22 Granite Way | 67 | 100 Sinclair St |
| 28 | 200 Isabel St | 68 | 370 Southport Blvd |
| 29 | 510 King St | 69 | 415 Stella Ave |
| 30 | 725 Kylemore Ave | 70 | 1600 Summit Rd |
| 31 | 430 Langside St | 71 | 494 Tache St |
| 32 | 1057 Logan Ave | 72 | 545 Watt St |
| 33 | 50 Mac St | 73 | 4403 Waverley St |
| 34 | 910 Maginot St | 74 | 900 Waverley St |
| 35 | 1637 Main St | 75 | 328 Whittier Ave |
| 36 | 56 Maple St | 76 | 1960 William Ave W |
| 37 | 31 McBeth St | 77 | 1466 William Ave W |
| 38 | 875 McMeans Ave E | 78 | 110 Winona St |
| 39 | 581 McPhillips St | 79 | 185 Young St |
| 40 | 140 Meade St | 80 | 360 Cockburn St |
| | | 81 | 2050 Ness Ave |
| | | | |

With:

| # | Address | # | Address |
|---|---|---|---|
| 1 | 444 Adsum Dr | 42 | 365 Murdoch Rd |
| 2 | 601 Aikins St | 43 | 282 Niverville Ave |
| 3 | 1880 Alexander Ave | 44 | 535 Oakdale Dr |
| 4 | 80 Allard Ave | 45 | 3450 Pembina Hwy |
| 5 | 659 Alverstone St | 46 | 346 Perth Ave |
| 6 | 218 Antrim Rd | 47 | 3180 Portage Ave |
| 7 | 112 Ashland Ave | 48 | 4540 Portage Ave |
| 8 | 75 Brazier St | 49 | 2777 Portage Ave |
| 9 | 2370 Burrows Ave | 50 | 25 Poseidon Bay |
| 10 | 50 Cass St | 51 | 75 Poseidon Bay |
| 11 | 480 Chalmers Ave | 52 | 295 Pritchard Ave |
| 12 | 1885 Chancellor Dr | 53 | 219 Provencher Blvd |
| 13 | 80 Churchill Dr | 54 | 233 Provencher Blvd |
| 14 | 1100 College Ave | 55 | 900 Raleigh St |
| 15 | 1212 Dakota St | 56 | 141 Regent Ave W |
| 16 | 577 Dalhousie Dr | 57 | 4246 Ridgewood Ave |
| 17 | 255 de la Cathedrale Ave | 58 | 5006 Roblin Blvd |
| 18 | 410 Desalaberry Ave | 59 | 505 Ross Ave |
| 19 | 251 Donald St | 60 | 759 Ross Ave |
| 20 | 377 Dufferin Ave | 61 | 475 Rutland Ave |
| 21 | 120 Eugenie St | 62 | 836 St Joseph St |
| 22 | 90 Frobisher Rd | 63 | 598 St Mary's Rd |
| 23 | 100 Frobisher Rd | 64 | 669 St Matthews Ave |
| 24 | 466 Gertrude St | 65 | 811 St Paul Ave |
| 25 | 1430 Gibbs St | 66 | 491 Salter St |
| 26 | 266 Graham Ave | 67 | 100 Sinclair St |
| 27 | 22 Granite Way | 68 | 370 Southport Blvd |
| 28 | 200 Isabel St | 69 | 415 Stella Ave |
| 29 | 510 King St | 70 | 1600 Summit Rd |
| 30 | 725 Kylemore Ave | 71 | 494 Tache St |
| 31 | 430 Langside St | 72 | 545 Watt St |
| 32 | 1057 Logan Ave | 73 | 4403 Waverley St |
| 33 | 50 Mac St | 74 | 900 Waverley St |
| 34 | 910 Maginot St | 75 | 328 Whittier Ave |
| 35 | 1637 Main St | 76 | 1960 William Ave W |
| 36 | 56 Maple St | 77 | 1466 William Ave W |
| 37 | 31 McBeth St | 78 | 110 Winona St |
| 38 | 875 McMeans Ave E | 79 | 185 Young St |
| 39 | 581 McPhillips St | 80 | 360 Cockburn St |
| 40 | 140 Meade St | 81 | 2050 Ness Ave |
| 41 | 687 Minto St | **82** | **2055 Ness** |
| | | | |

## SCHEDULE B

### PROPOSED TERMS AND CONDITIONS FOR A LEASE OF

### A PORTION OF 2055 NESS AVENUE

| | |
|---|---|
| Landlord: | 1. The City of Winnipeg (hereinafter called the “City”). |
| Lessee: | 2. St. James Seals Swim Club Inc. (hereinafter called the “Lessee”). |
| Location: | 3. 2055 Ness Avenue, Winnipeg, Manitoba (hereinafter called the “City Property”). |
| Leased Premises: | 4. Shown, shaded and identified as “Leased Area: +/-106 $ft^2$” on a drawing on file in the City’s Planning, Property and Development Department as Misc. Plan No. 15614/3, attached hereto (hereinafter called the “Leased Premises”). |
| Primary Use: | 5. For the sole purpose of a storage room only, and not for any other purpose except with the prior written consent of the City of Winnipeg’s Director of Planning, Property & Development (hereinafter called the “Director”). |
| | 6. The Lessee acknowledges that the City Property is subject to the exclusive control and management of the City, and building access will be limited to public operating hours. |
| Initial Term: | 7. Five-year term commencing the first day of the month following approval from the City’s Standing Committees and Council, or such other date as mutually agreed upon and approved by the Director (hereinafter called the “Term”). |
| Extension Option: | 8. One (1) Five (5) year option to extend on the same terms and conditions. |
| Rent: | 9. One Dollar ($1.00) plus GST per annum, payable on the commencement date and the anniversary of the commencement date in each year of the Term thereafter. |
| Non-Profit Lease: | 10. The Lessee represents and warrants that it has provided eligibility information required to apply for a Below Market Lease to Non-Profit Organizations, attached as Schedule "B", and that such information is true and accurate to the best of the Lessee’s knowledge. |

Administrative Fee:

11. Annual fee of Two Hundred Fifty-Eight Dollars ($258.00) plus GST, payable on the commencement date and on the anniversary of the commencement date in each year of the Term hereafter.

12. This fee may be reviewed by the City at any time and may be subject to change as directed by Council or its delegated authority.

Document Preparation Fee:

13. A one-time Document Preparation Fee in the amount of Four Thousand Eight Hundred Twenty Dollars ($4,820.00) plus GST payable within 30 days of the approval of these terms and conditions and only payable in the event that the Lessee does not meet the eligibility criteria set out in the Below Market Lease to Non-Profit Organizations attached as Schedule “B”.

Municipal Taxes:

14. The Lessee shall pay to the local taxing authority all/its proportionate share of municipal taxes, realty taxes, school taxes, local improvements taxes, etc. of which may be charged in respect of the use and occupation of the Leased Premises and which shall be billed directly to the Lessee.

15. The Lessee is entitled to make an application to the City pursuant to the provisions of *The Municipal Assessment Act*, C.C.S.M. c. M226 and the City’s *Community Groups Occupying City-Owned Facilities By-law No. 89/2005*. If the application is successful, and the resulting amendment to the By-law is approved, the Leased Premises will be exempt from real property taxes and school taxes as of the date of such By-law approval. If the application is not successful or if the Lessee loses its exemption, the Lessee shall, in accordance with the provisions of the above paragraph, pay all applicable real property tax and/or school tax.

Operating Costs & Utilities

16. Unless otherwise specified herein, the Lessee is to pay all operating costs, including but not limited to identification and direction signage; the cost of any utilities, including but not limited to electricity, water and gas consumed in the Leased Premises; the cost of cleaning, maintaining and servicing the Leased Premises, including garbage and waste collection and disposal; and the cost of security, policing and supervising the Leased Premises.

Other Fees, Licenses, Taxes etc.:

17. The Lessee shall be responsible for all license fees, realty and business tax, levies etc. which may be charged in respect of the use and occupation of the Leased Premises.

18. The Lessee shall be responsible for applying for and obtaining all permits, licenses or permissions (including but not limited to occupancy permits), required for the use and occupation of the Leased Premises, at its sole cost, effort and expense.

19. All fees may be reviewed by the City at any time and may be subject to change as directed by Council or its Delegated Authority.

Insurance Requirements:

20. The Lessee shall provide and maintain the following insurance coverage at all times during the Term of the Lease Agreement:
    (a) commercial general liability policy including, but not limited to, the following provisions:
        i. The City to be included as an additional insured;
        ii. The policy to contain a cross liability clause or severability of interest clause;
        iii. Protection for claims of bodily injury and property damage, personal and advertising injury liability, liquor liability if alcohol will be allowed in the dressing room, contractual liability, non-owned automobile liability, products and completed operations liability, tenant's legal liability for a limit commensurate with the space occupied in the inclusive amount of at least two million dollars ($2,000,000) per occurrence with a minimum of two million dollars ($2,000,000) general aggregate; and
        iv. Shall not contain any special limitations on the scope of coverage afforded the City, its officers, officials, employees, agents or volunteers;

    (b) a broad form property insurance policy for the full replacement cost insuring all contents;

21. All deductibles shall be entirely borne by the Lessee.

22. The Lessee shall ensure that all property policies and commercial general liability policies written on behalf of the Lessee contain a waiver of any subrogation right which the Lessee's insurers may have against the City and against those for whom the City is, in law, responsible, whether any such

damage is caused by the act, omission or fault of the City or by those for whom the City, is in law, responsible.

23. The Lessee shall take all policies out with insurers licensed in the Province of Manitoba.

24. The Lessee shall not cancel, or cause any such policy or policies to lapse without a minimum of thirty (30) days' prior written notice to the City.

25. The Lessee shall provide written notice to the City of any material changes to their policies within thirty (30) days of the change taking effect.

26. The City shall have the right to alter the limits and/or coverages as reasonably required from time-to-time during the continuance of the Lease Agreement or any subsequent extensions thereof, provided that the City shall give the Lessee reasonable notice and shall request reasonable change.

27. The Lessee shall file a certificate of insurance with the City upon occupancy and annually thereafter in a form satisfactory to the City's Supervisor of Insurance. All certificates of insurance are to be sent to:

    The City of Winnipeg
    Risk Management Division
    3rd Floor - 185 King Street,
    Winnipeg, Manitoba, R3B 1J1
    Attention: Supervisor of Insurance
    Fax: 204-986-6132
    Email: insurance@winnipeg.ca

Termination:

28. The Lease Agreement may be terminated:

    a. Upon One Hundred and Eighty (180) days' written notice by either party; or

    b. Should the Lessee be in default of any of the terms and conditions of the Agreement, the City shall provide the Lessee with fifteen (15) days written notice to remedy the default along with a description of the nature of the default (or such longer period as may be reasonably required to cure such default considering the nature thereof and as agreed to by the City). Should the Lessee

not remedy the default to the satisfaction of the City, the City, at its sole discretion, may terminate this Agreement immediately upon the expiration of the fifteen (15) days' notice period.

29. Upon termination or cancellation of the Lease Agreement, the Lessee shall remove, at its sole cost, effort and expense, all of its property (including both fixtures and chattels) from the Leased Premises and leave same in a condition satisfactory to the Director. Should the Lessee default in so doing the City may:

    a. Restore the Leased Premises at the sole risk and expense of the Lessee; and

    b. Remove and/or dispose of the Lessee's property (including both fixtures and chattels) at the City's sole discretion without the consent of the Lessee and at the risk and expense of the Lessee. The City shall not be required to provide any compensation to the Lessee for such removal and/or disposal.

30. Notwithstanding the forfeiture or termination of the Lease Agreement in any manner herein provided for, the Lessee shall be and remain liable to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeitures or termination and for the fulfillment of all obligations on the part of the Lessee to be observed and performed upon after the said termination.

Development:

31. Unless otherwise specified herein, all improvements, development, construction and maintenance of the Leased Premises will be performed at the sole cost, expense and effort of the Lessee, including, but not limited to, obtaining all permits required to develop, occupy and utilize the Leased Premises for its intended use. All improvements, development and construction are subject to the prior written approval of the Director.

32. The Lessee shall bear the cost for caveats and plans of easement for any structure or improvements requiring utility servicing.

33. The Lessee shall follow the accessible design standards in its improvements construction and installations.

34. The Lessee shall not suffer or permit any claim, lien, or charge under the Builders' Liens Act, C.C.S.M.c.B91, or any like statute to be made, filed, or registered against the City or against the Leased Premises or any fixtures or improvements thereto by reason of Work, labor, services or materials supplied or claimed to have been supplied to the Lessee.

35. The Lessee will not erect or permit the erection of any building or structure whatsoever on the Leased Premises, nor do any excavation therein or improvement thereon, without the prior written consent and authority of the City's Director of Planning, Property, and Development.

36. The Lessee is advised that no permanent structures are permitted above public utilities.

37. Unless otherwise specified herein, title to all buildings and structures currently existing, as well as those hereafter erected, shall vest in the City upon termination, cancellation or expiration of the Lease Agreement, subject to the option of the City to demand removal of the buildings or structures from the Leased Premises at the termination, cancellation or expiration of the Lease Agreement.

38. The Lessee shall, in case of every installation and removal of improvements, either during or at the end of the Term, make good any damage caused to the Leased Premises by the installation and removal, provided, however, that in the event that the Lessee fails to make good any such damage as aforesaid, the City may so repair the Leased Premises and the Lessee shall, immediately upon demand of the City, reimburse the City for all expenses incurred with respect to such repair. Such a claim by the City shall survive the termination of the Lease Agreement.

Repairs and Maintenance:

39. The Lessee shall, at its sole cost, effort and expense:

    a. Maintain and repair the Leased Premises in a safe, clean and tidy condition to the satisfaction of the Director, including, but not limited to: maintenance, repair and replacement of heating, plumbing and electrical systems;

    b. Ensure that access to, use of, and occupancy of the Leased Premises is conducted in a careful manner, in accordance with good industry standards and in compliance with the provisions of any and all applicable environmental, health or safety statutes, regulations, orders or directives of any government or governmental agency having jurisdiction over such matters;

    c. Assume responsibility for any and all damage done to the Leased Premises by reason of, or arising out of, forcible entry into any structures located on the Leased Premises by any person for an unlawful purpose such as, but not limited to, theft, attempted theft, burglary, or attempted burglary; and

    d. Comply with any written notice from the City to repair the Leased Premises at the Lessee's sole cost, expense and effort within fifteen (15) days of receiving such notice.

40. The Lessee shall reimburse the City for any and all costs incurred by the City in making good any loss or damage to the Leased Premises, City's property and/or utilities caused as a result of the Lessee's use and occupancy of the Leased Premises or, without limiting the generality of the foregoing, caused as a result of any negligent or willful act of the Lessee, its contractors, agents, servants or employees.

41. All maintenance and repair costs associated with the use and operation of the Leased Premises during the Term shall be the sole responsibility of the Lessee.

Signage:

42. The Lessee shall not paint, display, inscribe, place or affix any sign, symbol, notice, advertisement or lettering of any kind, including affixing items in the form of resources to the walls, without the prior written approval of the City as to design, size

and location, which approval the City may in its absolute, sole and uncontrolled discretion withhold.

43. In the event that the Lessee wishes to pursue sponsorship opportunities, including naming rights, for the Leased Premises, any improvements or proposed improvements thereon or in any other way related to the Leased Premises, the Lessee is required to comply with the City's Sponsorship Policy.

Assignment or Sub-let:

44. The Lessee is not to assign or sub-lease or part with possession of all or any part of the Leased Premises without the Lessee first obtaining the Director's prior written consent. In such event, the City in its sole discretion may cancel the Lease Agreement and enter into a new Lease Agreement.

45. Upon its making application for such consent by the City, the Lessee shall pay to the City a non-refundable administrative fee of Six Hundred and Forty dollars (640.00) plus G.S.T, or such amount as may from time to time be determined by the City in its sole discretion.

46. Any consent by the City to an assignment shall not relieve the Lessee of its obligation for the payment of rents hereby reserved and the performance of the terms and conditions herein contained.

Conditions:

47. The Lessee takes the Leased Premises on an "as is" basis and acknowledges that the City is under no obligation to improve the Leased Premises or to remedy them in any manner for use or occupation by the Lessee.
48. The Lessee shall not release into the environment, or deposit, discharge, place, or dispose of, at, on, or near the Leased Premises and/or adjoining City land, any dangerous goods as that term is defined in *The Dangerous Goods Handling and Transportation Act*, CCSM c. D12, as amended, replaced, or substituted from time to time.

49. The Lessee shall not affect the Leased Premises in any undesirable environmental manner. If the Lessee causes the Leased Premises to become contaminated, as determined by the City, the City may require the Lessee to immediately restore

the land to its original condition at the Lessee's sole cost and expense. The City shall not be responsible for contamination caused by the Lessee and the Lessee shall indemnify the City from and against same.

50. The City shall have the right, but not the duty, to enter upon the Leased Premises from time-to-time to inspect the Leased Premises for environmental contamination and in the course thereof to conduct soil and ground water testing. The City may enter the Leased Premises during regular business hours of the Lessee without prior notice, and may enter the Leased Premises during periods other than regular business hours either with prior written consent of the Lessee or without if the City reasonably believes that an emergency exists on the Leased Premises. The City shall conduct any such inspections or testing so as to minimize interference with the Lessee's business operations. The City's entry on to the Leased Premises shall not relieve the Lessee's obligation to pay rent under the Lease.

51. The Lessee shall not at any time use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Leased Premises or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling and the Lessee shall not do, omit or suffer or permit to be done or omitted in, on or upon the Leased Premises or any part thereof, anything whatsoever which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the City or the owners or occupiers of neighbouring properties.

52. The Lessee agrees that its operation shall not negatively impact the adjoining areas, and any such impact shall constitute a breach of the Agreement.

53. The Lessee agrees that any misuse of the Leased Premises may result in termination of the lease agreement.

54. The Lessee agrees that if at any time during the Term of this Agreement the City's use or requirements for the Leased Premises reasonably necessitate the relocation and/or modification and/or removal of the Lessee's property from the

Leased Premises, the Lessee shall be responsible for doing all things necessary to relocate and/or modify and/or remove its property as required by the City and to pay all costs and expenses associated therewith.

55. The Lessee shall not file any caveat or other encumbrance against the Leased Premises. For greater certainty, the Lessee shall not enter into any easement agreements with public utilities with respect to the Leased Premises.

56. The Lessee shall maintain books and records regarding the proper financial management of the Leased Premises which includes but is not limited to a record of all revenues and their application and a record of all expenditures together with supporting documentation (i.e. invoices, payroll records and bank records including canceled cheques ).

57. The Lessee is to comply with all laws, by-laws and regulations of any federal, provincial or municipal or other applicable authority, pertaining to the use, development and occupancy of the Leased Premises, and shall obtain all necessary permits and variance orders in that regard at its sole cost and expense.

58. The Lessee shall be responsible for the evacuation of its volunteers, staff, and invitees during an emergency and must follow guidelines provided by the City of Winnipeg.

59. The Lessee acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, conditions or suitability of the Leased Premises for any use or purpose, nor as to any environmental conditions which may exist.

60. The Lessee acknowledges and agrees that it will not be entitled to an abatement or reduction in Rent as a result of any nuisance, disruption to or interference with the Lessee's use and enjoyment of the Leased Premises where such nuisance, disruption to or interference is caused by the construction by the City or others of improvements, alterations, additions or repairs to the Leased Lands. The Lessee further agrees not to make any claim against the City for such nuisance, disruption to or interference with the use of the Leased Premises

61. The Lessee shall release and indemnify and save the City harmless from and against any and all claims for damages or injuries, including death, which may arise from the use of the Leased Premises by the Lessee. This provision shall survive any termination or expiration of this Agreement.

62. Notwithstanding anything to the contrary contained in the Lease Agreement, if either party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of a force majeure event including, but not limited to: strikes; walkouts; labor troubles; industrial disturbances; inability to procure materials or services; failures, fluctuations governmental laws, regulations or controls; riots; civil commotions; insurrections; sabotage; terrorism; invasion; rebellion; military or usurped power; war or warlike operations; blockades; epidemics; pandemics; washouts; nuclear and radiation activity or fallout; explosions; natural disasters; acts of God; or other reason whether of a similar nature or not which is not the fault of the party delayed in performing Work or doing acts required under the terms of the Lease Agreement, then performance of such term, covenant or act shall be excused for the period of the delay and the party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay. This provision shall not operate to excuse Lessee from the payment of Rent/Fees in the amounts and at the times specified in the Lease Agreement nor shall they apply so as to extend the period of time for the Lessee to complete Lessee's work or to extend the fixturing period, if any, nor shall they entitle the Lessee to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

63. The Lessee shall provide, if requested, a schedule of proposed activities, programs and events prior to May 1st of each year in the Term of this Agreement for and subject to the approval of the Director.

64. The Facility Supervisor will issue keys, access cards and alarm codes to approved users that physically work within the Building, to a maximum of Ten. Additional keys are not

permitted to be cut by the Lessee at any time. The Lessee shall provide annually, a list of approved key/card access holders, identifying each individual's contact information, their function within the Lessee's organization, and which access card number they have been issued. Users are held responsible for keys and costs for replacement, and must return keys when no longer utilizing the Property. Failure to return keys will result in the Lessee being charged for the full re-keying of exterior doors. Failure to return access cards will result in the Lessee being charged for the full cost for replacement cards and re-programming fees.

65. The Lessee shall provide information on incidents associated with disturbances, including but not limited to violence, damage to property, crimes against people, or situations involving citizens who present an increased level of risk to others, including names and descriptions of those causing the disturbances. Any incidents must be forwarded to the Facility Supervisor.

66. The Lessee shall make the facility available to the City for the hosting of international, national and local sporting events upon the receipt of 180 days' written notice. During such special events, the Lessee will be unable to use the Leased Premises and will not be compensated for this loss of use, nor will the lease term be extended in any way. The City will be responsible for any repairs or damages caused by such use. The City will act in good faith to accommodate the Lessee's scheduled events with the understanding that the City will incur no additional costs to do so.

City's Rights and Responsibilities

67. The City will be responsible for structural repairs to any building located on the Leased Premises. Structural repairs include repairs to structural elements such as the roof and the walls, but does not include: roof cover, curtain walls, beams, columns, heating, plumbing, and electrical systems.

68. The City shall have the right of access to the Leased Premises at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or without equipment for any purpose whatsoever, including, but not limited to, those purposes related to viewing the state of repair, safety, protection, preservation or improvement of the

Leased Lands, and for doing any work to maintain, operate, repair, inspect or rehabilitate its existing water mains, sewer lines, and appurtenances, in or near to the Leased Premises, without being responsible for any damage occasioned thereby.

69. The City reserves the right for BellMTS Inc. and The Manitoba Hydro-Electric Board and Water and Waste Department or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Leased Premises at any time without notice to the Lessee for maintenance, repair or installation of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby. Any removal or relocation of existing facilities as a result of the proposed Lease will be at the expense of the Lessee.

70. The Lessee shall notify the Utility Companies, Manitoba Hydro, Bell MTS, and Water and Waste Department of any proposed improvements and constructions on the Leased Premises to verify any existing plant or facilities for the utility companies located within the Leased Premises.

71. The Lessee shall submit re-development plans for the review by the Water and Waste Department. In the event that a land drainage sewer is required to adequately service the site re-development on the Leased Premises, the Lessee will undertake at their sole cost and expense the installation of the required works to the satisfaction of Water and Waste Department. The Lessee shall submit a servicing report for approval before commencing any Land Drainage works.

Other:

72. The Lessee shall enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the Director of Legal Services deems necessary and, in a form, satisfactory to the Director of Legal Services within six (6) months from the date following approval from the City's Standing Committees and Council, or its delegated authority, or such other date as mutually agreed upon and approved by the City's Director of Planning, Property & Development.

73. All terms and conditions contained herein, are subject to the approval of the City’s Standing Committees and Council, or its

delegated authority, and are not binding until such time as that approval is obtained.

**St. James Seals Swim Club Inc.,** hereby agree(s) to enter into a Lease Agreement with the City of Winnipeg for the use of the property identified as "**Leased Area"** on the attached Misc. Plan No. 15614/3 and in accordance with the terms and conditions as outlined herein.

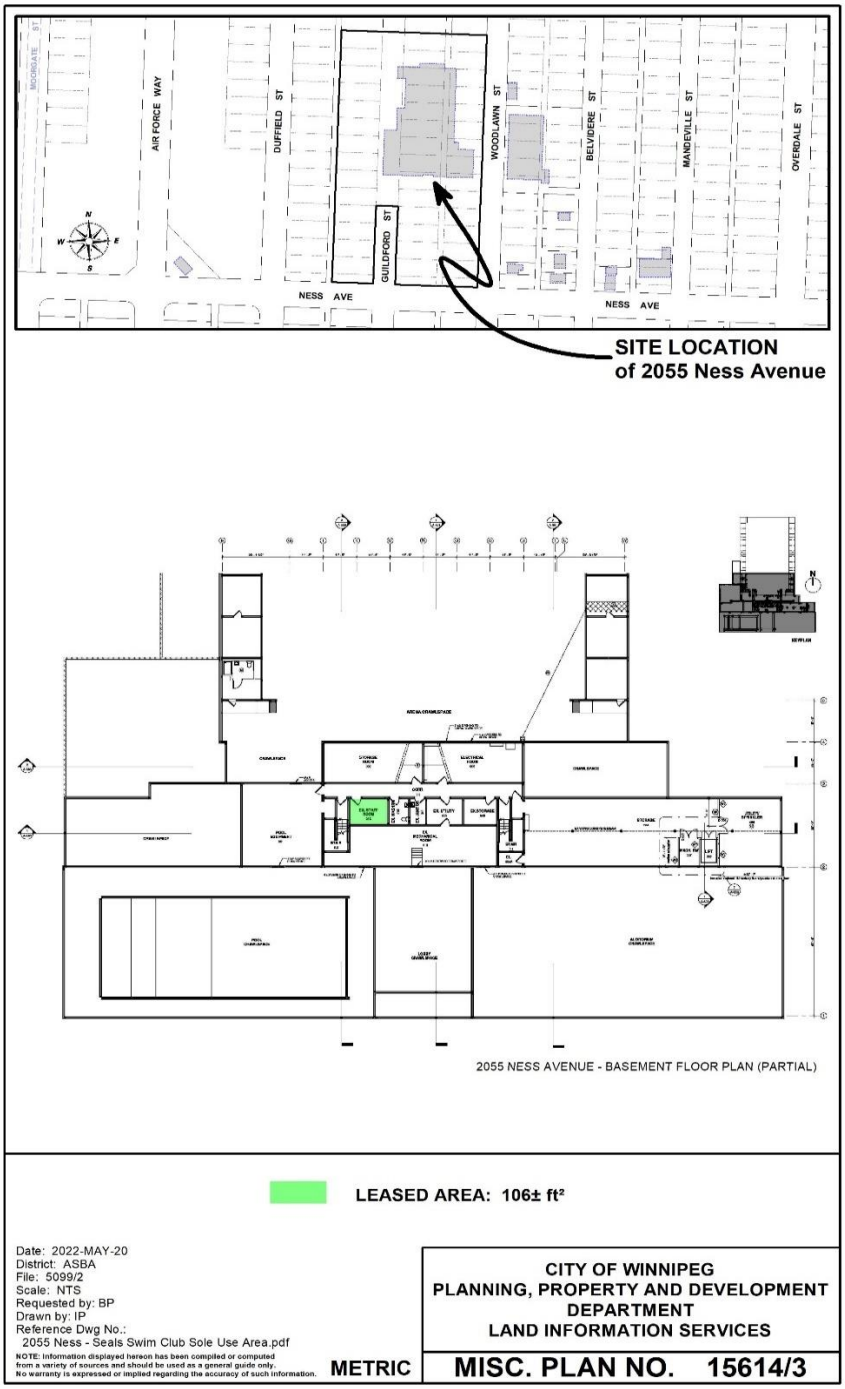
Signed in the City of Winnipeg, in the Province of Manitoba, this 6th Day of February, 2023

***Original documents signed by the Tenant***

Per: _____

**Name: Josh Koldon, Head Coach, St. James Seals**

## MISCELLANEOUS. PLAN



## SCHEDULE C

**Eligibility Criteria for Below Market Lease/Licence to Non-Profit Organizations**

| | Criteria | Meets Criteria | Does NOT Meet Criteria | Notes |
|---|---|---|---|---|
| **i.** | The Organization is a registered Non-Profit Organization. | **√** | | |
| **ii.** | The Organization provides activities/ programs that are compatible with the City's provision of services/programs, or addresses an identified gap in service to the community as determined by Stakeholders. | **√** | | |
| **iii.** | The Organization provides a service for which there is a current and projected need in that location, as determined by Stakeholders, operating for a minimum prescribed number of operating hours. | **√** | | |
| **iv.** | If the Organization requires a building, the Lease or Licence must be for a Designated Non-Profit Building. | **√** | | Subject to Recommendation 1 |
| **v.** | The Organization agrees to pay proportionate Operating costs associated with the Lease or Licence (a requirement for improved and unimproved City property). | **√** | | |
| **vi.** | The Organization agrees to provide their annual financial statements to the City prior to June 1 in each calendar year for the duration of the Lease or Licence. | **√** | | |
| **General Remarks:** | | | | |

**Written by:** **Bridget Peterson** **Date:** **November 28, 2022**