

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (“Lease”) is made as of the \_\_\_\_\_ of \_\_\_\_\_, 2020, between the City of West St. Paul, a municipal corporation of the State of Minnesota, (“Landlord”) and Sibley Area Youth Hockey Association (“Tenant”), a Minnesota Nonprofit corporation, each of the foregoing being sometimes referred to individually as “party” or collectively as “parties.”

WHEREAS, Landlord owns real property legally described on Exhibit A, attached hereto, (“Leased Premises”) upon which the John V. Hoene Ice Arena (“Ice Arena”) is located; and

WHEREAS, the Ice Arena serves the purpose of providing students and adult skating and hockey needs for Henry Sibley High School and other youth hockey programs; and

WHEREAS, there is a need for dry floor space and locker rooms at the Ice Arena; and

WHEREAS, Tenant desires to lease the Leased Premises and provide youth hockey programs, lease the Ice Arena to other organizations for skating and hockey purposes, operate and manage the Ice Arena, and construct a dry floor space and locker rooms; and

WHEREAS, Landlord finds that it is in the public interest to allow Tenant to lease the Leased Premises under the terms and conditions contained herein.

**IN CONSIDERATION OF** the mutual agreements herein expressed and for valuable consideration, the parties agree as follows:

**SECTION 1**  
**LEASE**

- 1.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises, together with buildings and improvements located on the Leased Premises.
- 1.2 Tenant agrees that Tenant is leasing the Leased Premises on an “as-is,” “where is” and “with all faults” basis, based upon Tenant’s own judgment, and Tenant disclaims any reliance upon any statement or representation whatsoever made by Landlord regarding the Leased Premises. Landlord makes no warranty with respect to the Leased Premises, either express or implied. Landlord specifically disclaims any warranty of merchantability or fitness for any particular purpose and liability for any consequential damages arising out of the use or the inability to use the Leased Premises, or any part thereof.

**SECTION 2**  
**LEASE TERM & RENEWAL**

- 2.1 **Initial Term.** The Initial Term of this Lease (“Initial Term”) shall be ten (10) years commencing on \_\_\_\_\_, 2020 (“Commencement Date”), and terminating on \_\_\_\_\_, 2030, unless earlier terminated as provided in this Lease.
- 2.2 **Renewal Terms.** Tenant shall have the option to extend the initial Term of this Lease for an additional term of five (5) years (“First Extended Term”) from and after the expiration of the Initial Term of this Lease, by giving written notice of the exercise of this option to Landlord not less than 180 days prior to the expiration of the Initial Term of this Lease. Tenant shall have an option to extend the First Extended Term of this Lease for an additional term of five (5) years (“Second Extended Term”) from and after the expiration of the First Extended Term of this Lease, by giving written notice of the exercise of this option to Landlord not less than 180 days prior to the expiration of the First Extended Term of this Lease. Each option to renew and each extended term is subject to the following terms and conditions:
- (a) No default exists in the performance by Tenant of any of the terms of this Lease;
  - (b) Each extended term shall be on the terms, covenants and conditions of the then current lease terms for the same type of tenants (noncommercial, commercial with direct access to public road, or commercial without direct access to public road) and at the highest rental rate for the particular type of tenancy;
  - (c) With respect to the Second Extended Term that the option for the First Extended Term has been exercised; and
  - (d) Successful negotiation of Rent for the First and Second Extended Terms.

**SECTION 3**  
**TERMINATION**

- 3.1 **Early Termination With Cause.** Either party may terminate this Lease for failing to perform a term, condition or requirement of this Lease by giving advanced written notice to the defaulting party. After receipt of such notice, the defaulting party shall have 10 days to cure the default.
- 3.2 **Immediate Termination.** If either party is in default and the default is such that it poses a threat to the health, safety or welfare of the public, as reasonably determined by the non-defaulting party, the non-defaulting party may take any immediate steps it determines are necessary to cure the default, including closing the Ice Arena. In this event, this Lease shall terminate immediately upon notice to the defaulting party. The defaulting party shall

pay all costs and expenses incurred by the non-defaulting for taking any corrective action.

- 3.3 **Actions Following Termination.** Upon any termination of this Lease for any reason whatsoever, Tenant shall, for a period of thirty (30) days following such termination, assist and cooperate with Landlord to the extent deemed necessary by Landlord to ensure an orderly and efficient transfer of the Ice Arena operations. This covenant of Tenant contained herein shall survive and remain in full force and effect following any such termination of this Lease.

#### **SECTION 4** **RENT**

- 4.1 During Initial Term of this Lease, Tenant shall pay the sum of one dollar (\$1.00) per year as rent ("Rent"), due and payable in full upon execution of this Lease by Tenant.
- 4.2 For the First and Second Extended Terms, Rent shall be negotiated by the parties and mutually agreed to in writing prior to the commencement of the then Extended Term. Failure to successfully negotiate Rent shall automatically terminate this Lease upon the end of the then existing Term.
- 4.3 In addition to being an event of default entitling Landlord to terminate this Lease, failure to pay Rent when due shall result in a late fee equal to \$50 or five percent (5%) of the Rent due, whichever is greater, per month for each month that the Rent is late. Nothing in this paragraph shall be interpreted as a waiver of any of the Landlord's rights on the Tenant's default pursuant to any other provision of this Lease.

#### **SECTION 5** **USE OF LEASED PREMISES**

- 5.1 The Leased Premises and the building(s) presently thereon shall be used solely for purposes of skating and hockey, as well as ancillary uses thereto. Tenant shall be allowed to use the Leased Premises and sublease the Leased Premises to other entities, organizations and individuals for uses allowed herein. Landlord is not responsible for Tenant's operating losses and does not benefit from Tenant's profits related to Tenant's use of the Leased Premises.
- 5.2 Tenant shall allow Landlord to use the Leased Premises for the public's skating needs, as reasonably requested by Landlord, the times and dates for which shall be mutually agreed upon by the parties.
- 5.3 Use of the Leased Premises for any purpose not expressly provided for in this Section shall constitute a default under this Lease unless Landlord provides written approval for such use prior to commencement of the use.

**SECTION 6**  
**CONDUCT OF OPERATIONS**

- 6.1 **Standards of Performance; Fiduciary Duty.** Tenant acknowledges that there is a relationship of trust and confidence between Tenant and Landlord, and that Tenant has a fiduciary duty to Landlord pursuant to this Lease. Tenant shall use Tenant's best skill and judgment in performing its duties and obligations hereunder, and shall at all times provide such management and operation services in a manner that maintains the good name of Landlord, perform its duties and obligations under this Lease in an efficient, expeditious, prudent and economical manner, consistent with the best interest of Landlord, in accordance with generally approved practices and standards followed by similarly-situated public Ice Arenas in Minnesota.

**SECTION 7**  
**TENANT'S IMPROVEMENTS OF THE LEASED PREMISES**

- 7.1 Tenant agrees that any improvements constructed by Tenant upon the Leased Premises shall be constructed at no cost to Landlord.
- 7.2 The construction of all improvements on the Leased Premises and the improvements themselves must be built pursuant to the construction plans attached as Exhibit B, which is attached hereto and incorporated herein.
- 7.3 Before commencing any erection, rebuilding, enlargement, extension or any other improvement of a building, and before commencing any repair or alteration costing in excess of One Thousand Dollars (\$1,000), Tenant shall furnish to Landlord for Landlord's approval:
- (a) The plans for such work;
  - (b) The estimated cost of completing the work;
  - (c) Unless waived in writing by Landlord, a bond or other security in amount, form and with surety satisfactory to Landlord, conditioned for the commencement and completion and payment for such work, and against loss or damage by reason of mechanics liens; and
  - (d) An insurance policy issued by an insurance company approved by Landlord and in an amount satisfactory to Landlord naming Landlord as an additional insured and protecting Landlord from all liability to persons or property for damages arising out of the contemplated work.

- 7.4 Tenant shall only proceed with the construction of an improvement to a building upon the Leased Premises after receipt of written approval from Landlord for the plans for the building.
- 7.5 Regardless of whether or not the foregoing bonds, security and insurance are waived by Landlord, Tenant shall:
- (a) Prior to the commencement of any construction, repair or alteration, procure from the necessary authorities any building or other permits that may be required;
  - (b) Do or cause the work to be done in a good and workmanlike manner and to be completed within the required time and in conformity with such building codes, zoning ordinances and regulations and orders of any lawful authority applicable to the City;
  - (c) Keep the Leased Premises and every building, structure and improvement on the Leased Premises free and clear from all liens for labor performed and materials furnished therefore;
  - (d) Defend, at Tenant's own cost and expense, each and every lien asserted or filed against any portion of the Leased Premises, or against the building, structure or improvement thereon and pay each and every judgment made or given against any portion of the Leased Premises, or against the building, structure or improvement thereon; and
  - (e) Indemnify and hold Landlord harmless from each and every claim, demand, action and cause of action arising out of or in connection with any act or omission of Tenant, or of any agent, employee or Tenant of Tenant, with respect to the removal, erection, alteration, enlargement or extension of any building, structure or improvement on the Leased Premises, or arising out of or in connection with the assertion or filing of any lien on said land or against any building, structure or improvement thereon.

**SECTION 8**  
**BUILDING MAINTENANCE & USE OF LANDLORD'S EMPLOYEES**

- 8.1 **OBLIGATIONS OF TENANT.** Tenant, at Tenant's own cost and expense, shall take good care of the Leased Premises and shall repair, replace and maintain the interior of the buildings, structures and improvements located thereon and shall keep and maintain the same in good order and repair and in a clean and neat condition. Tenant shall not suffer or permit any waste or nuisance on the Leased Premises or anything thereon. Tenant shall be responsible for ice refrigeration plant/coolant replacement, maintenance, removal and

replacement of the ice, minor maintenance of the furnace, water heaters, dehumidification system, and air conditioning system. Tenant shall be responsible for maintenance of all portions of any new building, exterior and interior, related to the dry floor space, locker rooms or structures associated therewith. Tenant shall be responsible for mowing, landscaping, and snow plowing the parking lot and sidewalks.

- 8.2 **OBLIGATIONS OF LANDLORD.** Landlord shall be responsible for replacement and major repairs of the roof, HVAC, dehumidification, and potable water heater systems. Landlord shall replace, reconstruct or overlay the parking lot within 12 months of completion of Tenant's construction improvements for dry floor space, locker rooms and related construction activity.
- 8.3 **LANDLORD'S EMPLOYEES.** Tenant agrees to utilize Landlord's current full-time employees for maintenance of the Leased Premises. Costs for such employees, such as wages, benefits, worker's compensation, unemployment, retirement and related costs, shall be paid by Tenant within 30 days of receipt of an invoice from Landlord. Any additional employees needed to maintain the Leased Premises pursuant to this Lease shall be at the sole expense of Tenant.

## **SECTION 9** **INSURANCE**

- 9.1 At all times during the Term of this Lease, Tenant shall keep all buildings on the Leased Premises insured against fire, vandalism, malicious mischief, and windstorm loss or damage for an aggregate amount equal to one hundred percent (100%) of the fair market value of the buildings or the insurable value, whichever is greater, and any money received from said insurance as a result of any loss or damage to the building shall be divided between Tenant and Landlord as their interest may appear. The policies shall be in a form satisfactory to Landlord, and copies of the insurance policies or certificates thereof evidencing such coverage and that such insurance is payable to Landlord and Tenant shall be furnished to Landlord. Upon the occurrence of loss of or damage to the building, Tenant shall within thirty (30) days repair, rebuild, replace or remove the building, unless Landlord consents in writing to an extended time, which consent shall not be unreasonably withheld or delayed.
- 9.2 Tenant shall, at Tenant's sole cost and expense, maintain in effect at all times during the Term of this Lease a "Commercial General Liability Insurance" policy on an "occurrence" rather than on a "claims made" basis, with a total combined policy limit of not less than the limitation of liability of Landlord under Minnesota Statutes Chapter 466, or any successor statute, which policy shall include, but not be limited to, coverages for Bodily Injury, Property Damage, Personal Injury and Contractual Liability (applying to this Lease), or an equivalent form (or forms), so long as such equivalent form (or forms) affords coverage which is at least as broad as the above. Such policy shall name Landlord as an

additional insured. Policies for such liability coverage shall be in a form and issued by an insurer reasonably acceptable to Landlord and shall require at least thirty (30) days prior written notice to Landlord of termination or material alteration. Tenant's liability insurance shall be primary with respect to Landlord and its agents and not participating with any other available insurance. Tenant shall deliver to Landlord on the Commencement Date of this Lease and on each year thereafter, if requested, insurer-certified copies of such policies, certificates or other evidence reasonably satisfactory to Landlord confirming the terms of such insurance, confirming that premiums thereon have been paid at least one (1) year in advance and confirming that the policies are in full force and effect.

- 9.3 Tenant shall carry owners-tenants combined single limit coverage for bodily injury, property damage and all damages for any one incident of at least One Million Five Hundred Thousand Dollars (\$1,500,000).
- 9.4 Tenant shall carry Workers' Compensation and Employer's Liability Insurance for all of Tenant's officer's, agents, and employees, as required by law.
- 9.5 Each party hereto waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance, subject to the limitation that this waiver shall apply only when permitted by the applicable policy of insurance. The parties agree to use good faith efforts to have any and all fire, extended coverage or any and all material damage insurance which may be carried endorsed with the following subrogation clause: "This insurance shall not be invalidated should the insured waive any writing prior to a loss, any or all right of recovery against any party for loss occurring to the property described therein."

**SECTION 10**  
**INDEMNIFICATION**

- 10.1 Tenant agrees to indemnify and hold Landlord harmless from any and all loss, damage, claims, judgments, litigation expenses and costs for any injury to persons or damage to property from any act or omission of Tenant, its employees, agents, subsidiaries, licensees and sublesees while on or about the Leased Premises, and Landlord shall not be liable to any extent for, nor will Tenant make any claim against Landlord for or on account of any injury, loss or damage to the Leased Premises, the buildings or structures thereon, the personal property and facilities located therein, or to any person or property at any time on the Leased Premises whether occasioned by fire, water, smoke, steam, gas, electricity or other agency or instrumentality which may come or be on the Leased Premises or occasioned by any other cause. The Tenant's indemnity obligation is not limited by the insurance required in Section 9.
- 10.2 Nothing in this Lease shall cause Landlord in any way to be construed as partner, joint

venturer or associated in any way with Tenant in the operation of the Leased Premises, or subject Landlord to any obligation, loss, charge or expense connected with or arising from the operation or use of the Leased Premises or any part thereof.

**SECTION 11**  
**PAYMENT OF TAXES AND OTHER CHARGES**

- 11.1 Tenant shall pay all taxes, assessments, license fees or other charges that may be levied or assessed during the Term of this Lease upon or against the Leased Premises, any improvements or equipment on the Leased Premises, or on account of the transacting of business thereon by Tenant, including but not limited to all real and personal property taxes. If Tenant shall fail to pay any of the taxes, assessments, license fees or other charges when the same become due, Landlord may pay the same, together with any cost or penalty which may accrue thereon, and collect the entire amount so paid from Tenant and Tenant agrees to pay the entire amount to Landlord upon demand. Tenant recognizes and agrees that the word “taxes” as used in this Section includes any tax which may be imposed and required to be collected pursuant to Minnesota Statutes Section 272.01, subd. 2, or similar successor statute, for the privilege of using and possessing the Leased Premises, which are tax exempt, in the same amount and to the same extent as though Tenant were the owner of the Leased Premises.

**SECTION 12**  
**SERVICES AND UTILITIES**

- 12.1 Tenant agrees to promptly pay all utilities or other services supplied to or consumed by Tenant on the Leased Premises, including, without limitation, security systems, gas, electricity, water, telephone, internet, cable, music systems, government fees, trash collection, storm water utility and all similar services for Tenant’s use of the Leased Premises.
- 12.2 Tenant shall be responsible for any repairs to utilities or utility connections on the Leased Premises. If Tenant fails to make required repairs to any utilities or utility connections within ten (10) days after Landlord has sent written notice to Tenant that the repairs need to be made, Landlord may make such required repairs and Tenant shall pay to Landlord the cost of performing such repair within five (5) days after receipt of a bill for the repair charges.

**SECTION 13**  
**RIGHT TO REMOVE BUILDING(S) AT END OF LEASE TERM**

- 13.1 Upon termination of this Lease, whether on account of default or by lapse of time, if Tenant shall have paid all taxes, assessments, Rent and other charges payable by Tenant under the terms of this Lease, and shall have kept and performed all the terms and conditions of this

Lease, Tenant shall have the privilege of removing from the Leased Premises all buildings or property thereon belonging to Tenant and shall restore the Leased Premises to as good condition as they were in when they were entered upon by Tenant, reasonable wear and tear excepted, provided Tenant does so within sixty (60) days after the termination of this Lease. If said buildings or property are not so removed within said sixty (60) day period, Tenant hereby conveys and transfers the same to Landlord and the title thereto shall vest in Landlord without further act or conveyance.

- 13.2 At Landlord's sole discretion, Tenant may be required to remove any and all buildings from the Leased Premises at the end of the Lease Term, regardless of whether the requirements of Section 13.1 have been met. Landlord shall inform Tenant in writing no less than ninety (90) days prior to the end of the Lease Term or Extension Term if Landlord will require Tenant to remove the building(s) from the Leased Premises. Tenant's failure to remove the building(s) at Landlord's direction shall result in Landlord removing the building(s) at Tenant's sole expense.

#### **SECTION 14** **TENANT'S RIGHT TO ASSIGN**

- 14.1 Assignment. Tenant may not, voluntarily or by operation of law, assign, mortgage, pledge or otherwise transfer this Lease without the prior written consent of Landlord. If Tenant is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any change in ownership of the shares of voting stock so as to result in a change of the present effective voting control of Tenant shall constitute an assignment of this Lease, and as such, shall require the prior written consent of Landlord.
- 14.2 Landlord's written consent to any proposed assignment or transfer shall not be withheld or delayed if, in the sole discretion of the Landlord, all of the following conditions are satisfied:
- (a) The proposed assignee or sublessee has a net worth at least equal to Tenant's net worth as of the date of the signing of this Lease, or the date of the proposed assignment, whichever is greater;
  - (b) The proposed assignee or sublease is creditworthy considering the obligations to be assumed under the Lease;
  - (c) The proposed assignee or sublessee has experience in operations similar to that being conducted on the Leased Premises;
  - (d) The use of the Leased Premises will comply with all the requirements of this Lease;
  - (e) Tenant and Tenant's guarantor(s) (if any) and the proposed assignee or sublessee

agree to a written amendment to the Lease, in form and substance acceptable to Landlord, that the Rent as of the effective date of such assignment shall be equal to the highest per square foot rent charged for a similar lease; and

- (f) The proposed assignee or sublessee will continue to use the Leased Premises for the same purpose as the Tenant or for a similar purpose as determined and approved by Landlord at Landlord's sole discretion;
  - (g) Tenant pays a lease transfer fee to the Landlord in the amount of \$1,000.
- 14.3 If Tenant desires to assign the Lease, it shall so notify Landlord in writing at least thirty (30) days prior to the proposed effective date of the assignment. Tenant shall provide Landlord with a copy of the proposed assignment and any other relevant information requested by Landlord.

#### **SECTION 15** **QUIET ENJOYMENT**

- 15.1 Landlord covenants and agrees with Tenant that upon Tenant's paying said Rent and keeping, paying and performing all the terms, covenants and conditions of this Lease on Tenant's part to be kept, paid and performed, Tenant may, except for reasons beyond the control of Landlord, peaceably and quietly have and hold the Leased Premises for the Term of this Lease.
- 15.2 Notwithstanding the above, Landlord and its agents or representatives shall have the right to enter the Leased Premises and buildings thereon, to inspect the same for operations conducted from and on the Leased Premises and for the purpose of making repairs or improvements and to install through or upon the Leased Premises such pipes, wires and appurtenances as it may deem necessary or useful to the operation of the Ice Arena, but the making of such repairs, improvements, or installations shall be done in such manner as will not interfere materially with the use and enjoyment of the Leased Premises by Tenant, except in cases of emergency.

#### **SECTION 16** **DEFAULT BY TENANT**

- 16.1 The following shall constitute a default by Tenant:
- (a) Tenant fails to pay Rent and such failure to pay shall is not cured within five (5) days from the due date of the payment;
  - (b) Tenant fails to pay all taxes, assessments, license fees or other charges that may be levied or assessed during the Term of this Lease upon or against the Leased

Premises, any improvements or equipment on the Leased Premises, or on account of the transacting of business thereon by Tenant, including but not limited to all real and personal property taxes and such default shall continue for thirty (30) days after notice of said failure to pay is given to Tenant by the Landlord or Dakota County.

- (c) Tenant fails to observe or perform any of the non-monetary terms, covenants or conditions of this Lease, and such default shall continue for ten (10) days after notice of default is given by the Landlord or Tenant shall have failed to commence the cure of such default within ten (10) days after such notice;
- (d) Notwithstanding the requirement contained in Section 3.1 relating to giving the Tenant a ten (10) day period to cure a non-monetary default, in the event of an emergency as determined by the Landlord, the Landlord may perform the work or improvement to be performed by the Tenant without giving any notice to the Tenant and without giving the Tenant the ten(10) day period to cure the default. In such case, the Tenant shall within thirty (30) days after written billing by the Landlord reimburse the Landlord for any and all costs incurred by the Landlord.
- (e) A petition to reorganize Tenant or for an arrangement of its unsecured debts is filed;
- (f) Tenant is adjudicated bankrupt;
- (g) A receiver or trustee of Tenant's property is appointed by any Court;
- (h) Tenant makes a general assignment for the benefit of creditors;
- (i) The entirety of Tenant's interest in Tenant's property shall be taken by garnishment, attachment, execution or other process of law; or
- (j) The Leased Premises is abandoned for a period of thirty (30) days.

16.2 In the event of any default, in addition to any other remedies available to Landlord at law or equity, Landlord shall have the following rights:

- (a) Immediately, or at any time thereafter, without further notice to Tenant, to re-enter into or upon the Leased Premises, or any part thereof, and take possession of the same fully and absolutely without such re-entry working a forfeiture of the Rents or other charges to be paid and of the covenants, terms and conditions to be performed by Tenant for the full Term of this Lease, and in the event of such re-entry Landlord may seek the collection of the Rents or other charges to be paid under this Lease or for the properly measured damages and for the collection of its reasonable attorneys fees; and

- (b) Landlord shall further have all other rights and remedies including injunctive relief, ejectment or summary proceedings in unlawful detainer, and any or all legal remedies, actions and proceedings, and all such shall be cumulative Landlord shall be entitled to its reasonable attorneys' fees arising from or attributable to any such breach.

16.3 In the event of any default, in addition to any other remedies available to Landlord at law or in equity, including those set forth in Paragraph 18.2, Landlord shall have the immediate right and option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall so terminate this Lease as a result of Tenant's default, Landlord may:

- (a) Retain any payment(s) made by Tenant as provided in Section 4 [*for Rent*] prior to the termination of this Lease.
- (b) Recover from Tenant the amount of any unpaid Rent which had been earned at the time of such termination;
- (c) Recover from Tenant all expenses incurred by Landlord in terminating, repossessing and reletting the Leased Premises including but not limited to costs of repairs, brokerage and legal fees, and the collection of Rent;
- (d) Recover from Tenant any deficiency between the Rent for the remainder of the Term and the payments, if any, received by Landlord from any reletting of the Leased Premises, or, if elected by Landlord as liquidated and final damages for lost Rent, in addition to the deficiencies accruing through the date of such election, a lump sum equal to the present value (calculated by discounting at the stated rate of interest payable under any first mortgage or deed of trust on the Property or one (1) percent per annum over the discount rate of the Federal Reserve Bank of Minneapolis, whichever is less) as of the date of such election of the amount by which Rent for the remainder of the Term exceeds the then reasonable rental value of the Leased Premises over the remainder of the Term; and
- (e) Recover from Tenant any reasonable attorneys' fees incurred by Landlord in enforcing its rights hereunder.

**SECTION 17**  
**WAIVER**

17.1 Landlord's waiver of any of the rights remedies, terms or conditions of this Lease on any occasion shall not constitute a waiver of any rights, remedies, terms or conditions with respect to any subsequent breach or default under the terms of this Lease.

**SECTION 18**  
**LEGAL COSTS**

- 18.1 If Landlord incurs any costs to collect or recover any amount due or to become due under this Lease or to recover possession of the Leased Premises or files suit upon Tenant for the collection of any amount due or to become due or the recovery of possession of the Leased Premises or the enforcement of any of Tenant's covenants hereunder, Landlord will be entitled to reimbursement of its reasonable attorneys' fees and costs where Landlord is successful in its efforts for the collection of any amounts due or the recovery of possession of the Leased Premises.

**SECTION 19**  
**CONDEMNATION**

- 19.1 If a condemning authority takes all or any part of the Leased Premises as part of a taking or condemnation action, this Lease will automatically terminate as of the day of the taking or condemnation. Tenant waives any and all claim to any portion of a condemnation award awarded to Landlord.

**SECTION 20**  
**DESTRUCTION OF LEASED PREMISES**

- 20.1 If the buildings on the Leased Premises are partially or completely destroyed, either Landlord or Tenant shall have the right to terminate this Lease upon thirty (30) days written notice to the other party.

**SECTION 21**  
**LEASE AMENDMENTS**

- 21.1 Any of the terms of this Lease may be amended upon the mutual agreement, in writing, of Landlord and Tenant, which must be executed with the same formalities as this instrument.
- 21.2 This Lease is subject to the approval of federal and state agencies. The parties agree to modify this Lease as may be necessary to obtain approval by any federal or state agencies, provided, however, that such modification does not substantially change the Term, Rent or area leased. If the modification would substantially change the Term, Rent or area leased, either party may terminate this Lease by written notice to the other party.

**SECTION 22**  
**BINDING ON SUCCESSORS**

- 22.1 Except as herein otherwise provided, all the terms, covenants and conditions of this Lease

shall be binding upon and inure to the benefit of the legal representatives, successors, assigns and subsidiaries of both Landlord and Tenant.

**SECTION 23**  
**SIGNS**

- 23.1 Tenant may sell and erect suitable advertising signs on the Leased Premises, provided that the form, type, size and method of installation shall first be approved by Landlord.

**SECTION 24**  
**HAZARDOUS SUBSTANCES**

- 24.1 Tenant shall take no act or allow any act to be taken that will subject the Leased Premises to “superfund” type liens or claims by regulatory agencies or other entities arising from the actual or threatened release, deposit or existence of hazardous substances (defined below) in, on or about the Leased Premises. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all claims, penalties, forfeitures, suits or liabilities of any type or nature (including cost of defense, settlement and reasonable attorneys’ fees) incurred by Landlord hereafter or for which Landlord shall become responsible for or pay as a result of any or all of the following:

- (a) Death or bodily injury to any person;
- (b) Structural damage to any property;
- (c) Contamination of or detrimental effect upon the environment; or
- (d) Violation of governmental laws, orders or regulations

as a result of or due to the actual or threatened release of hazardous substances claimed or alleged to have been deposited, stored, disposed of, placed or otherwise located in, on or about the Leased Premises.

- 24.2 Tenant shall not store or possess any hazardous substances on the Leased Premises unless the same are stored or possessed in a manner that complies with all applicable laws, and in no event shall Tenant dispose of any hazardous substances on the Leased Premises without the express prior written consent of Landlord, which consent may be withheld at Landlord’s sole discretion.

- 24.3 As used in this Lease, the term “hazardous substances” is defined to include any substances, wastes, contaminants or pollutants that are now or hereafter shall be included within the definition of such term or similar replacement term, under any federal, state or local statute, ordinance, code or regulation now existing or hereafter enacted or amended,

including but not limited to the Minnesota Environmental Response and Liability Act, Minnesota Statutes Chapter 115B; Minnesota Petroleum Tank Release Clean-Up Act, Minnesota Statutes Chapter 115C as amended by Superfund Amendments and Reauthorization Act of 1986; the Asbestos Abatement Act, Minnesota Statutes Sections 326.70 through 326.81; and the State Environmental Lien Statute, Minn. Stat. §514.672, et. Seq.

- 24.4 Tenant shall promptly provide Landlord with copies of all notices or reports received or submitted by it to or from any governmental agency or other third party with respect to the storage, processing, disposal, release or threatened release of hazardous substances into or onto the Leased Premises or any adjacent property.

## **SECTION 25** **GENERAL PROVISIONS**

- 25.1 **Warranties and Representations.** Tenant hereby represents and warrants that in entering into this Agreement, Tenant has not relied on any statements from City or any representative thereof and has conducted such due diligence and investigations as Tenant deems appropriate before entering into this Agreement.
- 25.2 **Non-Waiver.** The waiver by either City or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Agreement shall be deemed to have been waived by City or Tenant, unless such waiver is in writing signed by the party against whom such waiver is asserted.
- 25.3 **Entire Agreement.** This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between City and Tenant, oral or written, relating to the subject matter of this Agreement. City has made no representations, warranties or promises not expressly contained herein. No subsequent alterations, amendments, changes or additions to this Agreement shall be binding upon City or Tenant unless reduced to writing and signed by both of them.
- 25.4 **Notices.** Except as otherwise specifically provided in this Agreement, any notice, statement, report or other communications to be given under the terms of this Agreement shall be delivered in a timely fashion, as provided herein, and shall be in writing and delivered personally or sent by mail, by placing first class postage thereon, addressed as follows:

TO CITY:

City of West St. Paul  
City Manager  
1616 Humboldt Ave.

West St. Paul, MN 55118

TO TENANT:

Sibley Area Youth Hockey Association  
1670 South Robert Street  
Box 291  
West St. Paul, MN 55118

or at such other address as from time to time designated by the party receiving the notice, in accordance with this paragraph. The date of service of such notice shall be the date such notice is delivered to the party to whom the notice is given.

- 25.5 **Captions and Paragraph Numbers**. Captions, paragraph numbers and article numbers appearing in this Agreement are inserted only as a matter of convenience, and in no way define, limit, construe or decide the scope or intent of such section or article, nor in any way affect this Agreement.
- 25.6 **Construction of Agreement**. The language in all parts of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either City or Tenant.
- 25.7 **Applicable Law**. This Agreement and all provisions hereof, irrespective of the place of execution or performance, shall be construed and enforced in accordance with the laws of the State of Minnesota. The sole and exclusive venue for any legal action under this Agreement or in any way related to the Sports Dome shall be the Dakota County District Court.
- 25.8 **Savings Clause**. Any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, or substantially increase the burden on any party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.
- 25.9 **Approval by City**. In any provision of this Agreement where City's approval or consent is required, City shall, except to the extent specifically stated to the contrary in such provision, have the right to withhold or refuse its approval or consent, in City's sole and absolute discretion.
- 25.10 **Counterparts**. This Agreement may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all such counterparts together shall constitute one and the same agreement.
- 25.11 **Nondiscrimination in Employment**. Tenant, Tenant's successors in interest and

permitted assigns, as a part of the consideration hereof, do covenant and agree to the following as covenants running with the land:

- (a) That no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the facilities on the Leased Premises on the grounds of race, sex, color, creed or national origin;
- (b) That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination on the grounds of race, sex, color, creed or national origin; and
- (c) That Tenant shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federal-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and said Regulations as may be amended. In the event of a breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease and to re-enter and repossess the Leased Premises, and hold the same as if said Lease had never been made or issued.

25.12 **Time.** Time is of the essence of this Agreement and each provision hereof of which time is an element.

25.13 **Data Practices.** Information supplied by Tenant to Landlord is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (the "Act"). Such information shall become public unless it falls into one of the exceptions of the Act. Tenant shall notify Landlord in writing of any data Tenant believes is classified as non-public.

25.14 **Conflict of Interest.** Tenant represents and warrants that no official, officer, or employee of Landlord has or will have any interest, direct or indirect, in this Lease or the transactions contemplated by it.

25.15 **Compliance with Laws and Regulations.** Tenant shall comply with all laws of the United States the State of Minnesota and with all ordinances, rules, regulations and orders of any of the foregoing, and of any department thereof. Tenant shall comply with all ordinances, rules and regulations of Landlord relating to the Leased Premises.

25.16 **FORCE MAJEURE.** The time within which any of the parties hereto shall be required to perform any act or acts under this Lease, except for payment of monies, shall be extended to the extent that the performance of such act or acts shall be delayed by acts of God, fire, windstorm, flood, explosion, collapse of structures, riot, war, labor and/or legal disputes, delays or restrictions by government bodies, inability to obtain or use necessary materials, or

any cause beyond the reasonable control of such party (any such delay being called “unavoidable delay” in this Lease), provided however, that the party entitled to such extension hereunder shall give prompt notice to the other party of the occurrence causing such delay.

**IN WITNESS WHEREOF**, the parties have executed this Lease, or caused it to be executed by their or its duly authorized representative(s), as of the day and year first above written.

**[remainder of page intentionally blank]**

**LANDLORD  
CITY OF WEST ST. PAUL**

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Mayor David J. Napier

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City Manager Ryan Schroeder

**TENANT**  
**SIBLEY AREA YOUTH HOCKEY ASSOCIATION**

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By:  
Its:

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**  
**CONSTRUCTION PLANS**