

LEASE OF PORTIONS OF MUELLNER BUILDING

This Lease of Portions of the Muellner Building (hereafter "Lease") is made between the City of Wauwatosa, a municipal corporation of the State of Wisconsin (hereafter "City"), and Tosa Curl, Inc. dba Wauwatosa Curling Club, a non-profit corporation whose address is 7300 West Chestnut Street, Wauwatosa, WI 53213 (hereafter "Club").

Recitals

WHEREAS, the City owns certain real property known as the Muellner Building (hereafter "Building"); and

WHEREAS, the Club wishes to continue its relationship with the City as the Club invests money to make certain improvements thereto; and

WHEREAS, the City wishes to make the Building available to the Club consistent with its obligations to other organizations and responsibility to the citizens of Wauwatosa;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Premises Leased

- a. Upon the terms and conditions of this Lease, the City has granted and the Club has accepted a right for the Club to use and occupy portions of the Building as set forth in more particular detail on Exhibit A ("Premises") during the period indicated on said Exhibit and subject to the terms and conditions set forth therein.
- b. This Lease is made with the understanding that the Club shall have quiet enjoyment of the Premises, including reasonable rights of and ingress and egress through the halls, passageways, lobbies and corridors of the Building and access to its public restrooms and parking area around the Building subject to the terms and conditions of this Lease, however, the Club shall acquire no other rights in any portion of the Building other than in the portions described above.

2. Purpose of Lease

The Club represents that the Premises described above are to be used by the Club exclusively for the sport of curling and associated activities. The Club may use the Premises to teach and practice curling, to hold tournaments and events involving competitive curling, to serve the Club's membership, to promote the sport of curling, and to educate the public of the advantages of participating in curling.

3. Consideration/Rental

a. Initial Improvement Contribution.

- i. The City and Club have worked in collaboration to design certain initial improvements to the Muellner Building that benefit the Club and the City as shown on the final approved construction plans prepared by Kahler Slater (bid opening date of 2/14/24) and Garland/DBS (bid opening date of 1/30/24).
- ii. The Club will contribute \$1,500,000 to the initial improvements via cash payments to the City and a loan from the City to the Club which will be approved via a separate Loan Agreement.
- iii. The City's Tourism Commission will contribute \$500,000 toward the initial improvements. In recognition of this contribution the Club agrees to actively pursue and host, when possible, significant Curling events/tournaments in Wauwatosa.
- iv. The City will contribute \$2,600,000 toward the initial improvements.
- v. Should the total project costs (soft and hard costs) exceed \$4.6M (total contributions of the Club, Tourism Commission, and City), the City and Club will negotiate coverage of the overage or reduction in project scope in good faith based on all available information at the time of cost overruns.

b. As consideration, the Club agrees to pay to the City as rent for the above-described Premises the following amounts:

- i. The cost of labor expenses incurred during the previous Season, as defined in Exhibit A, by the City in connection with cleaning and maintenance activities as a result of the Club's use. The labor rate shall include the hourly rate paid to the employees as shown in the City's Consolidated Fee Schedule which is updated from time to time by the City's Common Council.
- ii. The cost of utility expenses incurred during the previous Season by the City, attributable to the Club's use of the Premises.

iii. Annual rental fee for use of Premises described in Exhibit A is established as follows:

1. No rent will be required to be paid by the Club until all payments have been made to the City under the terms of the Loan Agreement or the Club is declared in default of the loan.
 - a. Annual Rent owed by the Club will be based on a proportionate share of a Reserve Fund which will be utilized for improvements/replacements/maintenance as outlined in a Reserve Study which will be completed by a

consultant secured by the City, in consultation with the Club, at the City's expense. The Reserve Fund will be held by the City and utilized for improvements/replacements/maintenance of the Muellner Building. The following percentages will be utilized to calculate an annual rent cost based on the Reserve Study. These percentages are based on the Season described in Exhibit A and will be modified accordingly should the length of Season change:

- i. Lower Level (not building mechanicals)-100%
- ii. Tosa Room Interior and Exterior (including roof) - 50%
- iii. Building Envelope - 10%
- iv. Firefly Room, Interior and HVAC - 25%
- v. 1st Floor Restrooms - 10%
- vi. Elevator - 15%
- vii. Building Systems- 10%

2. The City will also contribute to the Reserve Fund, at a minimum, the following annual contributions:

- a. Following completion of year end accounting for all Muellner Building rental revenue in 2025 and continuing so long as this lease is in force, the City will contribute annually 50% of any rental revenue in excess of budgeted revenue or budgetary increases beyond 2023 budgets.
- b. When the Club begins contributing to the Reserve Fund the City will match the contribution made.
- c. Should an emergency repair or significant revenue loss occur (such as a pandemic) the City and the Club reserve the right to reduce the contribution for that year/s.

3. Improvements made utilizing the Reserve Fund will be guided by the Reserve Study. In cases where replacements/repairs are necessary in advance of the timeline described in the Reserve Study the parties shall negotiate in good faith to determine a course of action. While the City reserves final decision-making authority, input from the Club will be weighted more heavily for areas of the building that they use more frequently as indicated by the percentages in section 3.b.iii.1.a.

iv. Use of any other space not covered by Exhibit A shall be subject to normal park rental policies and fees.

- c. The City shall invoice the Club in advance and no earlier than October 1. Payment shall be made within 30 days of receipt of invoice.

4. Term

- a. The term of this Lease shall be for a thirty-year period, beginning on April 1, 2024 and ending on March 30, 2054, unless sooner ended as provided herein.
- b. Provided that the Club is not in default under this Lease, the Club shall have the option to seek renewal and extension of this Lease for four additional periods of 5 years each (hereafter "Option Periods"), upon City approval of such extension.""). To exercise such an option, the Club must deliver to the City written notice of its election to exercise renewal for the Option Period at least 90 days prior to the last day of the then-current term of the Lease. Upon City's receipt of each such notice, the City shall seek approval of the Common Council for such renewal, within 30 days of receipt if possible, and provided the Common Council approves the extension, the Lease shall be extended for the Option Period on the same terms and conditions as set forth herein.

5. Taxes

The Club shall pay any and all taxes levied and assessed upon any property, furniture, equipment, inventory and other Improvements belonging to the Club and located upon the Premises, and all leasehold and possessory interest taxes levied or assessed by any proper taxing authority.

6. Community Events During the Season

- a. The Club hosts curling events open to the public throughout the Season, including one community tournament (known in curling as a bonspiel).
- b. The community bonspiel will take place on one day during the holiday break (approx. late December). Exact date will be posted when the Club calendar is created during the month of July that precedes the start of a Season annually.
- c. The Club will be responsible for organizing and staffing the community bonspiel.
- d. The Club will also host a minimum of three (3) other events open to the public over the course of the Season. A minimum of one (1) of the three events will be held in the second half of the Season. The Club will be responsible for organizing and staffing the events.

7. Repairs and Maintenance

- a. The Club represents that the Club has inspected and examined the Premises and accepts them in their present condition and agrees to keep the Premises safe and in good order and condition at all times during the term, and upon expiration of this Lease, or at any sooner termination, the Club will quit and surrender

possession of the Premises peaceably and in as good order and condition as the Premises were at the commencement of the term other than ordinary wear and tear.

- b. The City shall not be responsible for cost of insurance, maintenance or replacement of the Club's ice-making equipment, dehumidification equipment, or any club-owned equipment.
- c. Areas of the Building not regularly and customarily leased for exclusive use of tenants, including, but not limited to, any entranceways and vestibules, common hallways and stairs, parking areas, driveways, walks and landscaped areas adjacent to and accessing the Building shall be used by the Club in common with the City and other tenants (hereafter "Common Areas"). The Club, its employees, customers and invitees, shall have a reasonable, non-exclusive right to use, in common with the City and the other tenants and occupants of the Building, and their respective employees, customers and invitees, and all others to whom City has or may hereafter grant rights to use the same, the public portion of the Common Areas as may from time to time exist. The City shall be responsible for maintaining and repairing all rooms and Common Areas of the Building and Premises, including their exterior walls, roof and foundation, and the mechanical, electrical and plumbing equipment therein other than the Club's ice-making and dehumidification equipment.
- d. In addition, the City will maintain all parking areas and sidewalks around the Building including snow plowing and salting during normal Park hours.
- e. Repairs of the Lower Level Club Room, Tosa Room and Firefly Room Improvements installed by the Club shall be the responsibility of the Club.
- f. Damage to equipment done by city employees due to incorrect operation misuse will be the responsibility of the City.

8. Improvements by the Club

- a. Any fixtures or other real property improvements made by the Club to the Building ("Improvements") shall be at the Club's sole cost and expense. Improvements shall only be made after receiving written permission from the City provided that:
 - i. All work shall be completed in a neat and workmanlike manner in accordance with sound engineering practices, applicable rules, regulations and laws.

- ii. All work shall be performed either by the Club or by a fully qualified independent contractor who carries all insurance required under Paragraph 11 and who has been approved in writing by the City before such contractor has done any work on the Premises. Certificates of all insurance coverages required under this Lease shall be provided to the City by the Club prior to the commencement of any work upon the Premises.
 - iii. Work identified in Exhibit B of this Lease is hereby approved by the City.
- b. Any damage done to the Premises or Building during construction of Improvements shall be immediately repaired by Club at Club's expense and returned to prior condition to City's satisfaction. Club shall promptly remove any claim or lien to be placed against any part of the Premises or Building that arises out of work, labor, material or supplies provided or supplied to Club, its contractors or subcontractors.
- c. Upon termination of the Lease, the Improvements shall become property of the City without any cost to the City except the Club's personal property or Improvements removable without damage from the Premises shall be removed at the end of the Lease term.

9. Club Sponsorship

- a. To support curling activities, the Club may from time to time solicit sponsorship by various individuals, groups, associations and businesses. In recognition of said sponsors the Club may place acknowledgements of sponsorship in the Lower Level Club room, on the ice rink floor, removable signage on the walls of the Tosa Room. These acknowledgements of sponsorship may remain during the entire curling season or may be changed by the Club from time to time throughout the season.

10. Management

- a. In renting the Premises, the City does not relinquish the right to control the management of the Premises, and to enforce all necessary and proper rules for the management and operation of same, and the City through its Public Works Director, police officers, firefighters, building and health inspectors and other designated representatives, shall have the right upon reasonable notice to enter the Lower Level Club Room for the purpose of ensuring compliance with this Lease or laws related to its use and occupancy. Reasonable notice shall consist of attempting to make telephonic or email contact via tosa@wauwatosacurlingclub.com with the Club's designated representative. The entire Building, including the Premises expressly covered by this Lease, shall at all times be under the charge and control of the City, provided this shall not authorize or empower the City to direct the activities of the Club or to assume liability of the Club. Notice shall not be required in the event of an emergency.

- b. Nothing contained in this Lease shall limit or interfere with, or be construed to limit or interfere with, any of City's rights or powers, including City's authority in enforcement of its municipal ordinances, including its zoning code. The City hereby acknowledges and agrees that the Club's use of the Building and Premises as set forth in this Lease shall be a permitted zoning use, or shall be an approved nonconforming use, throughout the term of this Lease.

11. Liability and Indemnity

- a. The Club shall save the City harmless from any loss, cost or damage that may arise in connection with this Lease or the Club's use of the Premises by the Club, or their agents, members, guests, or employees, or any other person using the Premises with the Club's consent or authorization. The Club agrees to indemnify and defend the City, its authorized agents and representatives, from any claims or liability for damages to any person, or personal injury and/or death of any person, or Loss or damaged property occasioned by or in connection with the use of the Premises rented, character, acts and conduct of all persons admitted to the Premises, or by or with the consent of the Club's members or employees or any person acting for the Club, and the Club agrees to have on hand at all times a responsible adult member, acceptable to the City's Superintendent, to maintain order and protect persons and property at the Premises.
- b. The City assumes no responsibility for any personal property or Improvements placed in the Premises, and the City is expressly released and discharged from any liability for any loss, injury or damage to persons or property that may be sustained by reason of the occupancy under this Lease. Specifically, the Club understands that the Premises has not been floodproofed, and assumes responsibility for any damage to its property or operations due to flooding or other natural disasters which may occur during its occupancy.
- c. All indemnification obligations of Club under this Lease shall survive the expiration or earlier termination of this Lease.
- d. No provision of this Lease is intended, or shall be construed, to be a waiver for any purpose by City of the provision of Section 893.80 of the Wisconsin Statutes or other applicable limits on municipal liability.

12. Default

The Club shall be deemed in default hereunder upon occurrence of any of the following events:

- a. Club defaults in the payment of rent or any other sums under this Lease to City when due, and does not cure that default within thirty (30) days after written

notice.

- b. Club defaults in the performance of any other term of this Lease and does not cure that default within sixty (60) days, or such longer time as may reasonably be necessary to effectuate the Club's performance given the nature of the breach to be cured, after written notice thereof by City.
- c. Club abandons or vacates the Building.
- d. Club files for relief under federal bankruptcy laws or makes any assignment for the benefit of creditors.
- e. Club becomes insolvent as determined by a court having jurisdiction of such a determination.

13. Insurance

a. General Liability Insurance

- i. The Club's insurance coverage must include, but are not limited to, the following:

- 1. *"Occurrence" Coverage Form*: must be as broad as 1988 "Commercial General Liability" (form CG 00 01) and include the following:

- a. Premises and Operations
- b. Products and Completed Operations, applicable for at least three years following completion of the construction phase of the Lease
- c. Personal Injury, with Employment Exclusion deleted
- d. Unlicensed Mobile Equipment
- e. Explosion, Collapse and Underground Hazard Coverages
- f. Blanket Contractual (Independent Contractor's Protective)
- g. Broad Form Property Damage
- h. Cross Suits Coverage (claims litigated by co-defendants or co-plaintiffs against one another and not the opposite side)

2. Minimum Limits of Liability: 1988 Comprehensive General Liability/Occurrence Form. Combined Single Limit Bodily Injury and Property Damage Liability

- a. Per Occurrence Limit: \$2,000,000
- b. Products/Completed Operations Aggregate Limit: \$2,000,000
- c. Personal Injury Limit: \$1,000,000
- d. Fire Damage Limit: \$500,000
- e. Medical Expense Limit: \$5,000
- f. \$1,000,000 Commercial Umbrella

b. Umbrella Liability policies must include schedule which shows form-following coverage in effect, in excess of all commercial general policies and limits, up to \$1,000,000, Combined Single Limit Bodily Injury and Property Damage Liability.

c. Other Insurance Provisions

- i. The policies are to contain, or be endorsed to maintain, the following provisions:

1. Commercial General Liability Coverages

- a. The City, its officers, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

d. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-VII. Said carriers are to be licensed with the State of Wisconsin.

e. Verification of Coverage

The Contractor shall furnish the City with certificates of insurance, and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms or approved by the City. For Workers'

Compensation-related risks, only forms approved by the State of Wisconsin Insurance Commissioner are to be used. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

14. Termination

This Lease shall terminate upon the earlier of the following events:

- a. Default by the Club not cured within the applicable grace period.
- b. Expiration of the term of the Lease and any extensions thereto.
- c. Failure of the ice-making equipment to function properly, provided the Club does not give written notice to the City of its election to choose to repair or replace said equipment at its own prorated expense within 120 days after written notification by the City of such failure.
- d. Damage to the Premises or Building including, but not limited to, damage caused by fire, flood, water back-up, wind, earth movement which renders the Premises or Building uninhabitable, provided the City elects not to rebuild the Building within 1 year of such casualty.

15. Waiver

Waiver by either party of any default in performance by the other of any of the terms, covenants, or conditions contained herein shall not be deemed a continuing waiver of that default or any subsequent default.

16. Conformance with the Law / Non-discrimination.

- a. The Club agrees that every member, guest, employee or agent connected with the purposes for which these Premises are rented shall comply with all laws of the United States and the State of Wisconsin, all the ordinances of the City and the rules and regulations of the Wauwatosa Board of Park & Forestry Commissioners for the governance and management of the Building, together with all rules and requirements of the police and fire departments of the City, as those rules, regulations and laws now read or may later be changed or amended in the future, and will not do, nor suffer to be done, anything on the Premises during the term of this Lease, in violation of any such rules, laws or ordinances, and if the attention of the Club is called to such violation, the Club will immediately desist from and correct such violation.
- b. The Club agrees not to discriminate in its membership or use of the Premises on account of race, religion, national origin, disability, gender or age, or any other

basis prohibited by state or federal law.

17. No Nuisances

The Club shall not knowingly perform any acts or carry on any practices upon the Premises which may endanger or injure the Premises, Building or surrounding areas or any person or be a nuisance or menace to adjoining property owners and shall keep the Premises free and clear of debris, rubbish, junk and garbage.

18. Environmental

- a. Club represents and warrants that its use of Premises will not generate any hazardous substances, that it will not unlawfully store or dispose on the Premises or unlawfully transport to or over the Premises any hazardous substances and that its Facility does not constitute or unlawfully contain and will not generate any hazardous substance. "Hazardous substance" shall mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments applicable to the Premises. Club shall defend, indemnify and hold the City harmless from and against any and all liability, loss, cost, damage, and expense, including reasonable attorneys' fees arising out of the release, threatened release, storage or disposal of any such hazardous substance on, under or adjacent to the Property, as a result of activities of the Club.
- b. Likewise, the City represents and warrants that its use of Building will not generate any hazardous substances, that it will not unlawfully store or dispose at the Building or unlawfully transport to or over the Premises any hazardous substances and that its Facility does not constitute or unlawfully contain and will not generate any hazardous substance. "Hazardous substance" shall mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments applicable to the Building. City shall defend, indemnify and hold the Club harmless from and against any and all liability, loss, cost, damage, and expense, including reasonable attorneys' fees' arising out of the release, threatened release, storage or disposal of any such hazardous substance on, under or adjacent to the Property, as a result of activities of the City.

19. No Assignment

The Club may not assign this Lease to any other entity without the consent of City. No assignment shall relieve Club of any obligations hereunder, except if expressly approved in writing by the City.

20. Notice

- a. Any notice required to be sent shall be in writing and shall be either personally delivered or mailed to the respective parties by posting it in the United States mail at the following addresses:

As to the City: City Clerk, Wauwatosa City Hall
7725 W. North Avenue,
Wauwatosa, WI 53213

With a copy to its Director of Public Works at the same time.

As to the Club: Wauwatosa Curling Club
7300 Chestnut Street
Wauwatosa, WI 53213

With a copy to its President at the same time.

- b. Either party may change the address for notice by sending notice of change of address to the other. Notwithstanding the foregoing, any notice mailed under Paragraph 11 must be sent Certified mail, return receipt requested, and shall be deemed effective 3 days after mailing.
- c. The Club shall designate to the City, via email, an individual who may be contacted by the City in the event of an emergency or for purposes of Paragraph 10 of this Lease, which individual has authority to act on behalf of the Club.

21. Applicable Law and Severability

This Lease and any interpretation thereof shall be interpreted under the laws and in the courts of the State of Wisconsin. If one or more of the terms hereof are found to be void or invalid, those terms shall be deemed inoperative and null and void, and shall be deemed modified to conform to such rule of law, all without invalidating any of the remaining provisions of this Lease or the enforceability thereof, which shall continue in full force and effect.

22. Entire Agreement

This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations, and other terms of any kind. There are no representations or understandings of any kind affecting this Lease not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties. Club and City represent that each has full right, power and authority to sign and be bound by this Lease.

This Lease and all provisions shall be binding and inure to the benefit of the heirs, executors, administrators, successors, and assigns of both parties.

Executed this _____ day of _____, 2024.

Wauwatosa Curling Club, Inc.

By: _____
Its President, Rachel Koebel

Attest: _____
Its Secretary, Thomas Havas

City of Wauwatosa

By: _____
Mayor Dennis McBride

Attest: _____
Steve Braatz, City Clerk

Approved as to form

Alan Kesner, City Attorney

Exhibit A

Access to the Premises will be made available via an electronic key system furnished by the City. The Club will be allowed to request individual electronic key fobs provided by the City, each with a separate identification number for the Club's respective members. The Club shall follow the City's electronic access policy and pay actual costs incurred by the City for each fob provided.

Lower Level Club Room

The Club will have exclusive use of this area 365 days per year, except in the event of an emergency in which case the City may direct members of the public to seek shelter in the lower level club room. The room may be used during normal business days and hours at Hart Park which are established by the City and may vary from time to time. The room may also be used in excess of normal business hours without City approval, however, the Club shall be responsible to secure the facility during such times and the City will not provide any services to the Club such as janitorial needs.

Tosa Room (Curling Rink)

From September 26 through April 6 (the "Season"), the Club will have exclusive use of this area. These dates may be modified with City staff approval from time to time. The room may be used during normal days and business hours at Hart Park, which are established by the City and may vary from time to time. The room may also be used outside of normal business hours without City approval, however, the Club shall be responsible to secure the facility during such times and the City will not provide any services to the Club such as janitorial needs.

Firefly Room

From September 26 through March 30, the Club will have exclusive access and usage of this room Monday-Friday, 4pm-10pm; Saturday and Sunday, 7am-10pm except on those days that the park is closed and election days (if necessary). Should the Club need to extend their use of this room until April 6th they will be allowed to do so but must give the City notice of that need at the beginning of their Season. Other dates/times may also be modified with City staff approval from time to time. The room may also be used from 10pm to 2am daily without City approval, however, the Club shall be responsible to secure the facility during such times and the City will not provide any services to the Club such as janitorial needs. The room may be used for Club access and usage outside of these times upon approval from the City, which shall not be unreasonably withheld, provided a written request is submitted 30 days or more in advance of the date in question. As the room is a shared space with the Senior Center, the Club and City will work in good faith to accommodate the needs of all users wherever it is reasonable. The City will make all reasonable attempts to ensure that the Room is clean and set in the Club's standard configuration for the Club's use beginning September 26 at 4 pm. and each day thereafter during the period the Club uses this Room. If there is sufficient space

and it does not disrupt the Senior Center's use, Club members may occupy this Room before 4 pm daily.

Riverview Room

1. The Club will be allowed to use this room one Thursday night each year for its Opening Banquet (approx. mid-October) and one Thursday night each year for its Annual Meeting (approx. mid-March) free of charge. Exact dates are to be noted in Schedule. The Tosa Room may be used as an alternate site for these annual events at the request of the Club.
2. The Club will be allowed up to six additional uses of this room per Season at half of the normal rental rate then-charged by the City. Any rentals beyond this will be charged at the normal rental rate.

Exhibit B

Approved Improvements

The following Improvements are hereby agreed to and accepted by the City:

Lower Level Club Room:

- Locker room expansion
- Floors, walls, and ceilings cosmetic updates
- Kitchen updates and equipment
- Restroom updates
- Painting

Tosa Room:

Details as shown on the final approved construction plans prepared by Kahler Slater (bid opening date of 2/14/24) and Garland/DBS (bid opening date of 1/30/24).
Cameras reinstall

Vacuum reinstall

Note: Scoreboards, flags, ads, etc. are non-permanent

Firefly Room:

Details as shown on the final approved construction plans prepared by Kahler Slater (bid opening date of 2/14/24) and Garland/DBS (bid opening date of 1/30/24).

Certain décor provided by the Club.