

LEASE AGREEMENT

THIS LEASE AGREEMENT MADE as of the 28 Day of April, 2009.

BETWEEN:

**THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE**

("the City")

and

THE YELLOWKNIFE COMMUNITY GARDEN COLLECTIVE

(the "Lessee")

WITNESSETH:

WHEREAS the City is the owner of Lot 13, Block 78, Plan 4059;

AND WHEREAS the Lessee has requested of the City a lease agreement for that parcel of land more particularly described as:

Portion of Lot 13, Block 78, Plan 4059,
Yellowknife, NT, as shown outlined on the sketch
attached hereto as Schedule "A" and forming part of this lease
(hereinafter, the "Lands");

AND WHEREAS the Council of the City adopted By-law No. 4497, authorizing the City to enter into a lease agreement for the Lands;

AND WHEREAS the Council of the City adopted By-law No. 4503, a by-law to amend By-law No. 4497, by replacing Schedule 1 of By-law No. 4497;

NOW THEREFORE, in consideration of the rents, covenants and conditions herein reserved and contained, to be respectively paid, observed, and performed by the Lessee, the City hereby leases the Lands to the Lessee, for the period of **TEN (10) YEARS** from the 1st day of **April, 2009** to the 31st day of **March, 2019**, (the "Term") at an annual rental of ONE HUNDRED (\$100.00) DOLLARS, plus G.S.T., payable annually in advance, on the following terms and conditions:

1. The Lessee will use the said lands for a community garden only.
2. The Lessee agrees to pay the rent as follows:
 - a. ONE HUNDRED (\$100.00) Dollars, plus any applicable Goods and Services Tax (G.S.T), the receipt of which is hereby acknowledged, representing the rental fees payable for the period commencing April 1, 2009 and ending March 31, 2010 ; and
 - b. ONE HUNDRED (\$100.00) Dollars per annum, plus the applicable G.S.T., payable

in advance of the 1st day of April of each year remaining in the Term of this lease.

- c. Notwithstanding the rental fees stipulated in Paragraph 2.b., the City may, not less than Three (3) months before the expiration of the first Five (5) year period of the Term or of any subsequent Five (5) year period or lease, notify the Lessee in writing of an amended annual rental, the said amended rental to be based upon:
 - i) Such amount as may be directed by Council of the City of Yellowknife from time to time; or
 - ii) Such other amount as may apply to leases of municipal lands to not-for-profit organizations and societies under any bylaw, policy or guideline of the City then in force.
3. Where any portion of the rental herein is unpaid for more than Thirty (30) days after it is due and payable, or if any of the Lessee's covenants shall not be performed or observed, or if the Lessee shall become bankrupt or enter into any composition with creditors or suffer any distress or execution to be levied upon any of their goods, or being a company, shall go into liquidation, except for the purpose of amalgamation, then the City, may at any time thereafter re-enter upon the Lands as agent for the Lessee and sublet the Lands or any part thereof and receive the rent for such subletting and as agent for the Lessee may take possession of any property on the Lands belonging to the Lessee and sell it at a public or private sale without notice, but according to law, any proceeds of such sale and any rent from such subletting to be applied on account of the rent due under this lease and the Lessee shall remain liable to the City for any deficiency.
4. Unless a waiver is given in writing by the City, the City will not be deemed to have waived any breach by the Lessee and a waiver relates only the specific breach to which it refers.
5. No implied covenant or implied liability on the part of the City is created by use of the word "lease" herein.
6. The Lessee shall not sublet the Lands or assign this lease to a third party. Nothing herein however shall prohibit the Lessee from designating individual garden plots on the Lands for the use of its members for such fees and at such rates as permitted under its by-laws and policies. The Lessee shall be solely responsible for the fair distribution of the plot designations in accordance with its by-laws and policies.
7. The Lessee hereby acknowledges and accepts the condition of the Lands and the existing improvements "as-is." For greater certainty, the Lessee agrees and covenants with the City to

- undertake, at the Lessee's own expense, all maintenance of and repairs to the Lands and to existing and future improvements as may be necessary to ensure public safety on the Lands, and further covenants to indemnify and save harmless the City in respect of all matters arising from the use of said lands and improvements.
8. The parties agree that upon termination of this lease the Lessee shall be entitled to remove any new structures and improvements that may be constructed or placed on the Lands by or on behalf of the Lessee during the Term of this lease. Notwithstanding the Lessee's right to remove any new improvements, the Lessee hereby covenants and agrees to provide, at its own expense, positive drainage for the site and to otherwise restore the Lands to its original condition to the satisfaction of the City.
 9. The Lessee further covenants to conform, at all times, to all applicable Federal, Territorial and Local legislation.
 10. The Lessee shall not undertake or permit to be undertaken any construction, excavation, or other development on the Lands without first obtaining the written approval of the City, as landlord, and building and development permits if such is required pursuant to the City's building and zoning by-laws. For greater certainty, cribbing and fencing of less than one (1) meter in height and the import or removal of gardening soils for the individual member plots shall not be deemed to be construction or development under this clause, however, the Lessee is cautioned not to dig or permit to be dug any holes for the placement of fence posts or other purposes without first consulting with the City on the precise location of the City's buried infrastructure. The Lessee shall be responsible for all costs, as provided for in Paragraph 18 herein, for damages to municipal infrastructure arising from the Lessee's use and operations on the Lands.
 11. The Lessee shall not construct any additional improvements or develop gardens in closer proximity to the City's infrastructure than shown on the lease sketch unless the Lessee has first received written approval from the City.
 12. The Lessee covenants to keep the Lands clean and in good and tenantable repair and free from any environmental contamination and, further, to attend promptly to any unsightly damages caused by vandalism or other cause. The Lessee further covenants to provide garbage containers and garbage pick-up services as necessary to ensure that waste paper, garbage or waste of any kind does not accumulate on the Lands.
 13. The lessee hereby agrees to pay all charges for utilities, including water, gas, electrical power or energy used on or in respect of the Lands and the Lessee's operations thereon and for fittings, machines, apparatus, meters or other things leased in respect thereof, and for all work or services performed by any corporation or commission in connection with such

utilities.

14. The Lessee shall pay and discharge all rates, duties and assessments which may become a charge or encumbrance upon or levied or collected upon or in respect of the Lands or any part thereof, as they become due, whether charged by a municipal, parliamentary or other body during the Term.
15. The Lessee shall not discharge or deposit any refuse substances or other waste materials into any drainage course, lake, river, stream, or creek, or the banks thereof or cause any erosion of the banks which will, in the opinion of the City, impair the qualities of the City's infrastructure or the natural environment.
16. The Lessee shall not remove any trees from the Lands without the prior written approval of the City.
17. The Lessee shall not be entitled to compensation by reason of the said Lands or any portion thereof being submerged, damaged by erosion, or otherwise affected by flooding.
18. The Lessee shall not bring upon the Lands, or the remainder of Lot 13, Block 78, Plan 4059, or adjacent municipal lands any machinery, equipment, article or thing that by reason of its weight, size or use might damage the Lands, the surrounding property or the City's infrastructure located thereon and thereunder. If any damage is caused to the Lands, the surrounding property, or the City's infrastructure by any act, neglect, or misuse on the part of the Lessee or any of its servants, agents, members or employees or any person having business with the Lessee, the Lessee shall forthwith repair or pay the City the costs of making good such damage. The City's infrastructure located within the Lands and adjacent properties is shown on the lease sketch attached hereto as Schedule "A".
19. The Lessee covenants to permit persons authorized by the City, at all reasonable times, to enter and examine the condition of the Lands and upon notice by the City, to repair in accordance with such notice.
20. The Lessee covenants and agrees to provide the City with Six (6) months written notice in the event that the Lessee wishes to terminate this agreement at any time prior to the expiry date of the term as provided in Paragraph 2.a. herein.
21. The Lessee further agrees to clean-up and restore the Lands to the condition existing at the time and date of the Lessee's occupancy of the Lands or parts thereof, and to undertake at its own expense any environmental assessments and remediation programs deemed necessary by the City, in its sole discretion, to ensure that the Lands are free of environmental contaminations resulting from the Lessee's use and occupancy thereof.

22. The City may, where it deems it necessary and in the public interest, establish easements through, under, or over any portion of the said Lands for any public utility purposes, but said easement shall not unreasonably interfere with the rights granted to the Lessee hereunder, or with any improvements made by the Lessee on the said Lands.
23. **The Lessee agrees to keep and properly maintain a separate set of financial records respecting the operation of the community garden and without limiting the generality of the foregoing, to keep records of gross revenues and all expenses incurred in the said operations and further shall produce for the inspection of the City all such records and accounts within ninety (90) days immediately following the end of the operating year.**
24. The Lessee will at all times indemnify and save harmless the City from and against all action, claims, demands, costs and damages whatsoever that may be brought, made or sustained against the City by reason of anything done, or omitted to be done by the Lessee, its agents, employees, guests, invitees, members, servants or workmen arising out of or connected with the granting of this lease.
25. The Lessee shall at all times during the term of this lease maintain in force a policy of insurance providing for third party liability coverage, naming the City as a party insured, in the minimum amount of \$2,000,000.00. The Lessee must submit to the City proof of said policy at the time of entering into this agreement and the policy shall not be amendable or allowed to expire unless the City is given Sixty (60) days prior notice.
26. This lease may be renewed for an additional term at the sole discretion of the City provided that the City does not require the Lands for municipal purposes and the Lessee remains in good standing under the *Societies Act* of the NWT and the provisions of this agreement.
27. Notwithstanding any of the foregoing, the City reserves the right to cancel this Lease at any time should the Lands be required for municipal purposes or if the City deems cancellation of the sublease to be in the public interest. If the City wishes to cancel this agreement, the City shall provide not less than twenty-four (24) months' written notice to the Lessee via registered mail or personal service. Within ninety (90) days from the date of the receipt or service of the written notice, the Lessee shall submit to the City a timetable for vacating and restoration of the lands in accordance with Paragraph 21 herein.
28. This agreement may be amended only upon the written consent of both parties, such consent not to be unreasonably withheld.
29. This agreement and everything herein contained shall extend to, bind and enure to the benefit of the successors, heirs and assigns of each of the parties hereto. All covenants herein

contained shall be deemed joint and several and all rights and powers reserved to the City may be exercised by the City, its agents, or representatives.

30. Any notice given pursuant to this agreement shall be in writing and shall be either hand delivered or sent by mail to the following addresses:

If to the City:

City of Yellowknife
Department of Planning & Development
Box 580
YELLOWKNIFE, NT X1A 2N4
Fax: 867-920-5649

If to the Lessee:

The Yellowknife Community Garden Collective
P.O. BOX 21
Station Main
YELLOWKNIFE, NT X1A 2N1

31. A written notice or communication sent by mail shall be deemed to have been received ten (10) days after the date of posting. Whenever a notice or communication is sent by facsimile transmission, acknowledgement from the receiving party must be given to the other party that the notice or communication has in fact been received for it to be effective
32. This Agreement shall be governed by and construed in accordance with the laws in force in the Northwest Territories.
33. In the event that any of the provisions contained herein shall be held unenforceable or declared invalid for any reason whatsoever by a court of competent jurisdiction, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions of this Agreement and such unenforceable or invalid portion shall be severable from the remainder of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

**THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE**



MAYOR



CITY ADMINISTRATOR

(seal)

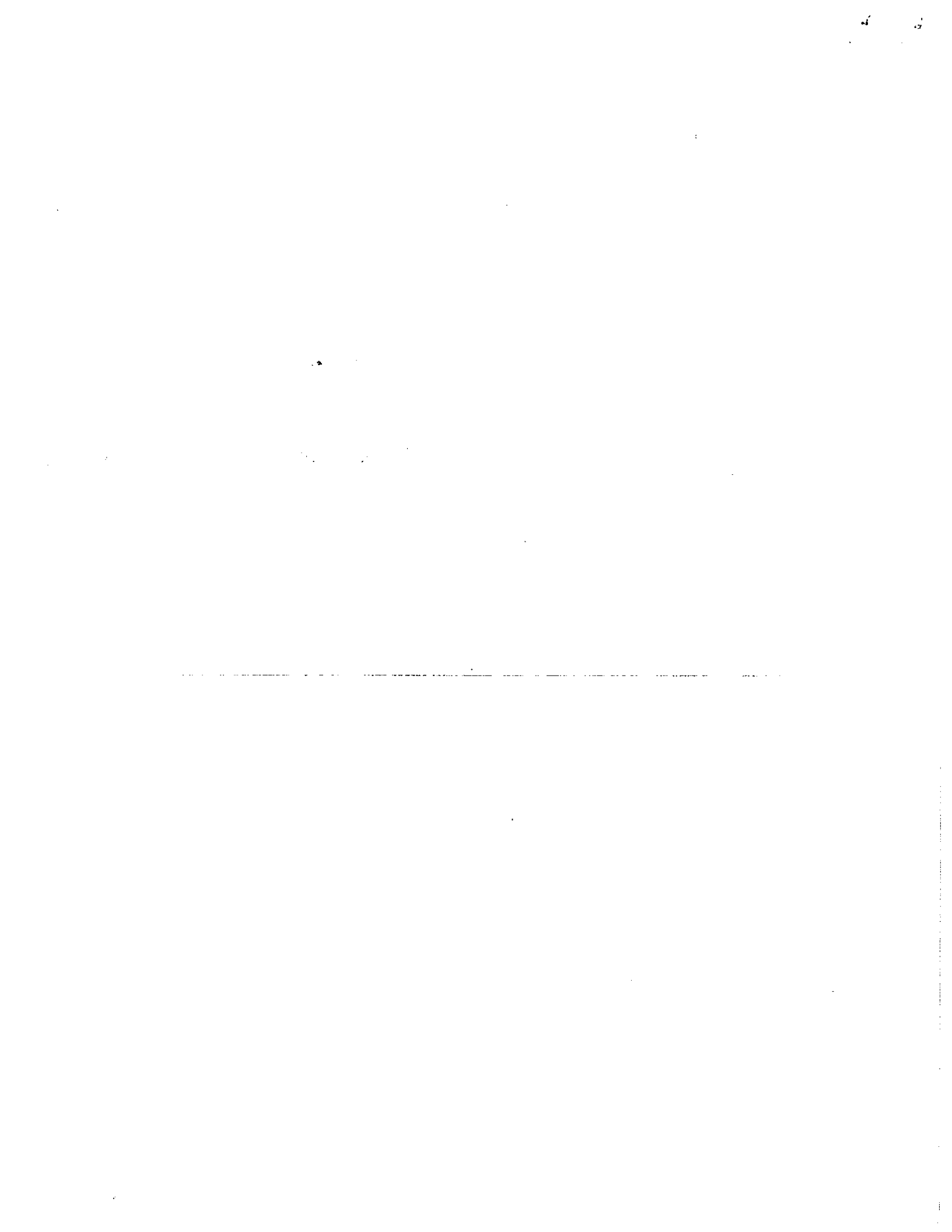
**THE YELLOWKNIFE COMMUNITY
GARDEN COLLECTIVE**



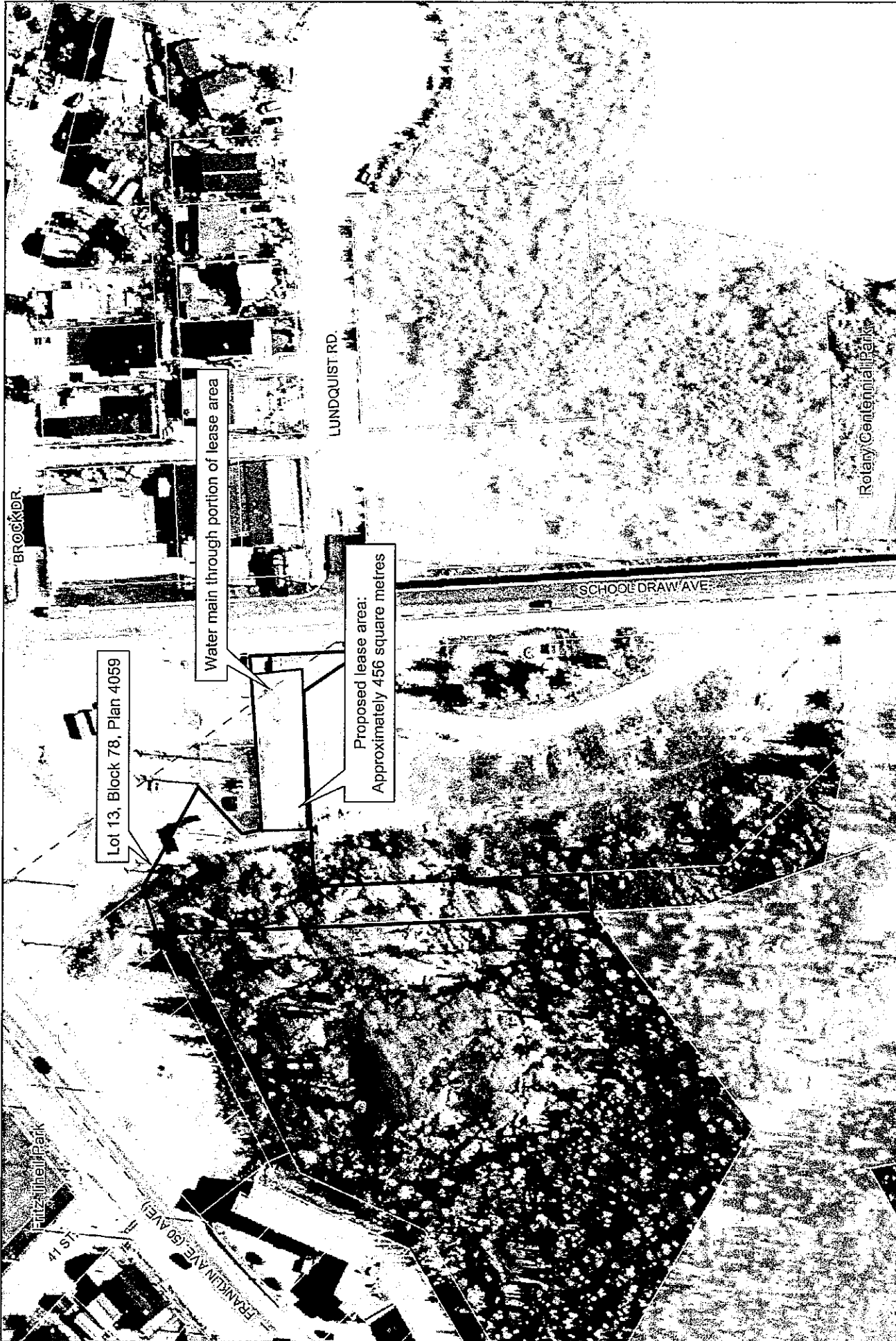
Chair -



Treasurer -



Schedule "A"



SCALE:
1:1,306

CREATED BY:
KMFische

FILE:
City of Yellowknife Web Map

DATE:
23-Oct-2008

PROJECT:
Yellowknife Community Garden Collective Expansion

TITLE:
Schedule 1: By-law No. 4503

City of Yellowknife





**CITY OF YELLOWKNIFE
BY-LAW NO. 4503**

A BY-LAW of the Council of the Municipal Corporation of the City of Yellowknife to amend disposal By-law No. 4497 by replacing Schedule 1 contained therein.

PURSUANT to Sections 53 of the *Cities, Towns and Villages Act*, S.N.W.T., 2003, c. 22;

WHEREAS the Municipal Corporation of the City of Yellowknife has enacted By-law No. 4497;

AND WHEREAS the Municipal Corporation of the City of Yellowknife is desirous of amending By-law No. 4497;

NOW, THEREFORE, THE COUNCIL OF THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE, in regular session duly assembled, hereby enacts as follows:

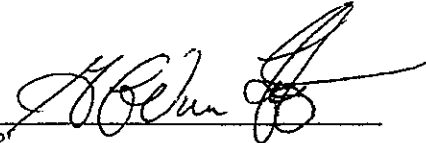
APPLICATION

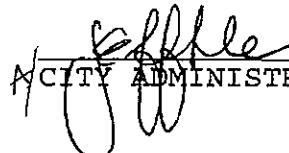
1. THAT By-law No. 4497, authorizing the City of Yellowknife to dispose of a leasehold interest in land, is hereby amended by replacing Schedule 1, attached thereto with Schedule 1, attached hereto and forming part of this by-law.
2. THAT the Mayor and City Administrator of the Municipal Corporation of the City of Yellowknife, or lawful deputy of either of them, are hereby authorized in the name and on the behalf of the Municipal Corporation of the City of Yellowknife, to execute all such forms of application, deeds, indentures, and other documents as may be necessary to give effect to this by-law and to affix thereto the corporate seal of the Municipal Corporation of the City of Yellowknife as the act and deed thereof, subscribing their names in attestation of such execution.

EFFECT

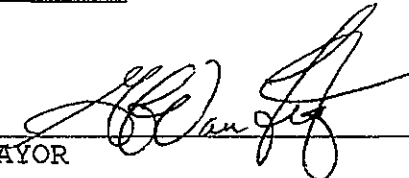
3. THIS by-law shall come into effect upon receiving Third Reading and otherwise meets the requirements of Section 75 of the *Cities, Towns and Villages Act*.

READ a First time this 27 day of OCTOBER A.D., 2008.


MAYOR


CITY ADMINISTRATOR

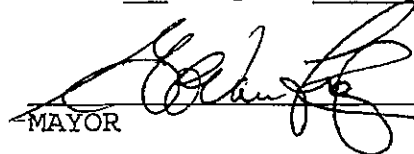
READ a Second time this 27 day of OCTOBER A.D., 2008.


MAYOR


CITY ADMINISTRATOR

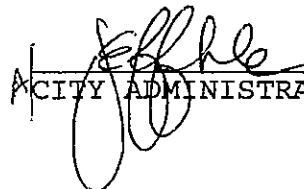
The unanimous consent of all members voting in attendance having been obtained.

READ a Third time and Finally Passed this 27 day of OCTOBER A.D., 2008.


MAYOR


CITY ADMINISTRATOR

I hereby certify that this by-law has been made in accordance with the requirements of the *Cities, Towns and Villages Act* and the by-laws of the Municipal Corporation of the City of Yellowknife.


CITY ADMINISTRATOR



