

NO: R250

COUNCIL DATE: **DECEMBER 16, 2013**

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **December 9, 2013**

FROM: **General Manager, Parks, Recreation and Culture
City Solicitor** FILE: **2240-01**

SUBJECT: **Tennis Centre Partnering Agreement and Lease**

RECOMMENDATION

The Parks, Recreation and Culture Department and the City Solicitor recommend that Council:

1. receive this report as information;
2. approve, subject to compliance with the public notice provisions of the *Community Charter* and satisfaction of the condition subsequent in the Partnering Agreement, the execution by the appropriate City officials of the Partnering Agreement between the City of Surrey (the "City") and 0956338 B.C. LTD., 0956338 B.C. LTD. d/b/a Laurus Coaching Solutions, and Lawrence Jurovich (together referred to as "LCS"), a copy of which is attached to this report as Schedule A and is generally described in this report; and
3. approve, subject to execution of the Partnering Agreement, the execution of a Lease Agreement between LCS and the City substantially in the form attached to this report as Schedule B and as approved by the City Solicitor, all as generally described in this report.

INTENT

The purpose of this report is to obtain approval to execute a Partnering Agreement between the City and LCS that outlines the forms of assistance the City may provide LCS (the "Partnering Agreement") and approval to execute a lease (the "Lease Agreement") subject to execution in advance of the Partnering Agreement, both of which are in relation to the planning, development and operation of a Tennis Training Centre on City-owned lands in Newton (the "Tennis Centre").

BACKGROUND

The results of a Request for Expressions of Interest ("RFEOI") for the development of a Tennis Centre in the City were documented in Corporate Report No. Ro64:2012, which was considered by Council at its Regular Council meeting on April 2, 2012. A copy of that report is attached to this report as Schedule C. The report noted that a proposal had been submitted by LCS to develop a

Tennis Centre on lands located at 5891 and 5855 - 144th Street. The proposal cited the increasing demand for tennis lessons in Surrey and the benefits of tennis as a healthy, positive activity for all ages. LCS's proposal envisioned that the Tennis Centre would appeal to a wide range of Surrey residents by providing lessons and court time for those new to the sport as well as offering enhanced training with professional staff for those who are aspiring to a higher level of competition. The proposal from LCS was deemed to have merit.

Representatives of the City (including from Parks and Recreation Services, Legal Services, Realty Services and Finance) worked with LCS to establish the elements of a memorandum of understanding that would guide development of the Tennis Centre (the "MOU").

The MOU was forwarded for consideration by Council at its Regular meeting on June 25, 2012. Council approved the execution of the MOU and authorized staff to proceed with preparing a Partnering Agreement. A copy of the MOU is attached as Schedule D to this report.

The MOU anticipated that a rezoning and subdivision process would be necessary to prepare the subject land for development of the proposed Tennis Centre. LCS has, at their sole cost, engaged an appropriate consulting team to prepare the required reports and drawings in support a development application and related approval process. LCS conducted a public open house on October 30, 2013 to provide residents in the area with an opportunity to comment on and provide feedback regarding the proposed development.

LCS is now in a position to proceed with the project through the Development Approval processes. The site will need to be rezoned, which will include a Public Hearing where the public will have an opportunity to provide formal input in relation to the project. Approval of the Lease Agreement and the Partnering Agreement by Council are pre-requisites for LCS to proceed with the development. Despite the execution of the subject agreements, Council will retain its full discretion in relation to the outcome of the rezoning and development application approval process as would be typical of any development application.

DISCUSSION

The City-owned land that is proposed for use by the Tennis Centre is illustrated on Appendix I attached to this report as Schedule A.

Community Value

The essence of the partnership is that the City provides the land (in the form of a long term lease at a nominal rate) and the private partner (LCS) builds and operates the Tennis Centre while guaranteeing that a range of access opportunities will be provided for the community. The business plan prepared by LCS anticipates that LCS can cover the cost of the development loan and the cost to operate the Tennis Centre and pay annual property taxes to the City. The City gains a recreation service for the public without incurring the capital cost of approximately \$2 million and with no ongoing operating costs associated with the Tennis Centre. LCS is able to build the Tennis Centre and operate a business of providing tennis services without incurring the cost associated with land acquisition. The Lease Agreement will contain provisions ensuring community access at reasonable rates and will require that LCS establish a Leisure Access Program so that cost is not a barrier to participation in the Tennis Centre's programs.

59th Avenue runs along the north boundary of the land that is proposed for use by the Tennis Centre. Staff has agreed to support the deferral of works and services in 59th Avenue to the second phase of development of the site since the first phase fronts on and can have temporary access from 144 Street. The deferral of the works and services will be subject to approval by Council of a development variance permit.

The Partnering Agreement

The Partnering Agreement as drafted, a copy of which is attached as Schedule A to this report, authorizes the City to provide "assistance" to a business under s. 21 of the *Community Charter*. Assistance is broadly defined in the *Community Charter* as "assistance within the meaning of section 25(1)". Section 25(1) states:

- “25(1) Unless expressly authorized by or under this or another Act, a council must not provide a grant, benefit, advantage or other form of assistance to a business, including:
- a. Any form of assistance referred to in section 24 (1) [*publication of intention to provide certain kinds of assistance*], or
 - b. An exemption from a tax or fee.”

The forms of assistance to which Section 24(1) refers are as follows:

- “24(1) A council must give notice in accordance with section 94 [*public notice*] of its intention to provide any of the following forms of assistance to a person or organization:
- a. Disposing of land or improvements, or any interest or right in or with respect to them, for less than market value;
 - b. Lending money;
 - c. Guaranteeing repayment of borrowing or providing security for borrowing;
 - d. Assistance under a partnering agreement.”

The proposed Partnering Agreement with LCS includes the following potential types of assistance:

1. A rezoning and development permit to permit the Tennis Centre;
2. A subdivision to create a single lot that will host the Tennis Centre;
3. A development variance permit to defer the works and services requirements for 59th Avenue fronting the land on which the Tennis Centre is contemplated;
4. Leasing of the land that will host the Tennis Centre for less than market value;
5. Facilitation of the development of the Tennis Centre; and
6. Secondment of City staff time to work with LCS regarding the development of LCS tennis programs to ensure community access in accordance with the Partnering Agreement.

If the Partnering Agreement is approved by Council, public notice of the City's intention to provide assistance under the Partnering Agreement (and of a proposed property disposition) must be provided in accordance with sections 24 and 26 of the *Community Charter*.

Lease Agreement

The Lease Agreement outlines the terms and conditions associated with the lease of the subject City lands to LCS for a nominal rate. The Lease Agreement will govern the terms and conditions associated with the use of the city land upon which the Tennis Centre is built and will also ensure that the Tennis Centre is operated in a manner that is acceptable to the City. It contains clauses which ensure that the Tennis Centre is constructed as indicated in the plans and drawings and complies with all permit requirements. It also protects the City from liability during the life of the operation of the Tennis Centre.

The Lease Agreement requires LCS to pay annual property taxes (business class).

The Lease Agreement is for a term of 10 years with an option in favour of LCS to renew the lease for two additional 10-year terms. This term of lease with renewals is necessary for LCS to secure bank financing for the project.

Attached as a Schedule to the Lease Agreement is the Tennis Centre Operating Terms (the "Operating Terms") which outline the manner in which LCS must operate and maintain the Tennis Centre. The Operating Terms require that all costs associated with obtaining approvals for and constructing and operating the project, including but not limited to rezoning costs, servicing costs, design costs, permit fees and construction, maintenance, operation and repair costs over the term of the Lease Agreement and any renewals thereof, are the responsibility of LCS.

The Operating Terms also contain several provisions to ensure that the Tennis Centre is available for use by Surrey residents. Tennis programs are to be offered during approximately 70% of the available court time while general play (court bookings on a fee-to-play basis) will occur in relation to 30% of the court time. Court rental rates are to be no more than the market rate at other public tennis facilities in the lower mainland, unless otherwise agreed by the City; the purpose being to enable reasonable public access to the proposed Tennis Centre for Surrey residents. Further, to ensure that cost is not a barrier, LCS must establish a Leisure Access Program (i.e., offer discounted rates to those that are at lower income levels, similar to the City's Leisure Access Program). LCS is also responsible to engage in a school outreach program, to offer community event days at the Tennis Centre and to participate in at least two Community Festivals each year. LCS must also establish a Program Advisory Committee (with City representation on the Committee) and provide access to their program data so that City staff can monitor that community access is being provided each year to the level stipulated in the Operating Terms.

Centre of Tennis Excellence

The Tennis Centre will assist in developing tennis players at all levels. Given the level of coaching instruction, training and competition that will be available at the Tennis Centre, it will be a "Centre of Tennis Excellence" in British Columbia. Lawrence Jurovich is an international coaching consultant specializing in tennis coach, player and program development. He has worked with many international level competitive players and National Governing Bodies. A number of junior national level athletes will be training at the Tennis Centre while they are completing their high school academics in Surrey.

Sport Tourism Strategy

The Tennis Training Centre will provide another venue to advance the City's Sport Tourism Strategy. LCS plans to host a number of professional, National qualifying, and annual Provincial tennis events. Surrey Tourism and Sport Surrey strongly support the proposed Tennis Centre. Surrey Tourism anticipates positive sport tourism economic development opportunities related to the sport hosting activity planned for the Tennis Centre.

Business Plan

The business plan for the Tennis Centre anticipates that the annual revenues generated by the project will cover operating and maintenance expenses and property taxes but will not generate a profit in the first few years. Once the business is established the Tennis Centre is expected to generate a modest net revenue stream for the operator.

Next Steps

LCS has made application for a Rezoning, a Development Permit and a Development Variance Permit for the subject land to support the development of the Tennis Centre. A Planning report related to the subject application is expected to be forwarded for Council consideration as part of the agenda of the Regular Council Land Use meeting on December 16, 2013.

Subject to Council approval of the Partnering and Lease Agreements, respectively, and development application approval, LCS will apply for a Building Permit. Upon the issuance of a building permit by the City, LCS will proceed with project construction immediately. It is expected that the Tennis Centre will be open for play by September, 2014.

SUSTAINABILITY CONSIDERATIONS

The development of a Tennis Centre, as outlined in this report, will assist in achieving the objectives of the Sustainability Charter; more particularly:

- Goal No. 1: Providing a range of accessible and affordable recreation, cultural and library services that respond to the needs and interests of the City's diverse population, including children, youth, seniors, multi-cultural groups, families and those with special needs; and
- Action item SC7 (2): Increasing opportunities for access to leisure for children, youth, seniors and those with special needs.

CONCLUSION

Based on the above discussion, it is recommended that Council approve:

- approve, subject to compliance with the public notice provisions of the *Community Charter* and satisfaction of the condition subsequent in the Partnering Agreement, the execution by the appropriate City officials of the Partnering Agreement between the City of Surrey (the "City") and 0956338 B.C. LTD., 0956338 B.C. LTD. d/b/a Laurus Coaching

Solutions, and Lawrence Jurovich (together referred to as "LCS"), a copy of which is attached to this report as Schedule A and is generally described in this report; and

- approve, subject to execution of the Partnering Agreement, the execution of a Lease Agreement between LCS and the City substantially in the form attached to this report as Schedule B and as approved by the City Solicitor, all as generally described in this report.

Laurie Cavan
General Manager
Parks, Recreation and Culture

Craig MacFarlane
City Solicitor

Attachments:

Schedule A: Tennis Centre Partnering Agreement

Schedule B: Tennis Centre Lease Agreement

Schedule C: Corporate Report No. Ro64:2012 entitled "Proposed Tennis Training Facility"

Schedule D: Memorandum of Understanding (MOU) between the City and Laurus Coaching Solutions

**TENNIS CENTRE
PARTNERING AGREEMENT**

THIS AGREEMENT dated for reference the 25th day of November, 2013.

BETWEEN:

**CITY OF SURREY
14245 – 56 Avenue,
Surrey, British Columbia V3X 3A2**

("City")

AND:

**0956338 B.C. LTD.
#400 –8621 – 201 Street
Langley, British Columbia V2Y 0G9**

AND:

**0956338 B.C. LTD.
d/b/a LAURUS COACHING SOLUTIONS
#400 –8621 – 201 Street
Langley, British Columbia V2Y 0G9**

AND:

**LAWRENCE JUROVICH
2911 Kidd Road
Surrey, British Columbia V4A 3H6**

(collectively referred to as "LCS")

WHEREAS:

- A. The *Community Charter* authorizes the City to enter into a partnering agreement with a person pursuant to which the person agrees to undertake or provide services, including an activity, work or facility, on behalf of the City;
- B. The City wishes to contract with LCS to provide on behalf of the City a tennis centre and tennis training and program services for the benefit of the City, its residents and businesses and LCS wishes to construct such a tennis centre and provide such services and activities on behalf of the City;
- C. The City and LCS executed a memorandum of understanding dated June 28, 2012 (the "MOU") which set out their respective obligations and responsibilities with respect to the planning, development and operation of the aforementioned tennis centre.

NOW THEREFORE in consideration of \$1.00 paid by the City to LCS and other good and valuable consideration, the receipt and sufficiency of which LCS acknowledges, the parties agree as follows:

1. In this Partnering Agreement,
 - (a) **"Assistance"** has the same meaning as in the *Community Charter*, S.B.C. 2003, c. 26;
 - (b) **"Lease Agreement"** means a separate agreement on terms acceptable to the City, in its sole and absolute discretion, to be entered into between the City and LCS, dated for reference the 16th day of December, 2013, which outlines the terms and conditions associated with the construction and use of the Tennis Centre by LCS on the Tennis Lot;
 - (c) **"Tennis Centre"** means the improvements constructed by LCS on the Tennis Lot which include both indoor and outdoor tennis courts, access road and parking area, a support building that contains washrooms, administrative space and sundry activity spaces associated with the provision of tennis training, instruction and play, as shown on the drawings and plans prepared by LCS.
 - (d) **"Tennis Lot"** means lands, located within the City of Surrey, with the legal and civic address as follows:

Parcel Identifier: 003-199-703
Lot 86 Except: Parcel C (By-law Plan NWP87473) Section 9 Township 2
New Westminster District Plan 62830

5891 – 144 Street

A portion of:
Parcel Identifier: 017-234-662
Lot 1 Section 9 Township 2 New Westminster District Plan LMP21
Except Plans BCP42048 and BCP 46372

A portion of:
5855 – 144 Street

as shown attached as Appendix 1.

2. This Partnering Agreement is effective on November 26, 2013 and shall continue in effect unless sooner terminated as provided herein, throughout the term of the Lease Agreement. This Partnering Agreement may be terminated on thirty (30) days notice by the City.
3. The obligations and duties of the parties as contemplated in this Partnering Agreement are subject to the following condition:
 - (a) on or before January 31, 2014, final approval of the Lease Agreement by both parties and the City's Municipal Council.

This condition is for the sole benefit of the City. Unless it is waived or declared fulfilled by written notice given by the City to LCS on or before the date specified, this Partnering

Agreement will be at an end and neither party shall have any further obligation to the other.

4. The MOU shall be replaced in its entirety by this Partnering Agreement and has no force or effect. For clarity, this Partnering Agreement relates only to the Tennis Lot and no other lands.
5. All costs in relation to the Tennis Centre shall be paid by LCS. These costs shall include, but not be limited to: rezoning costs, servicing costs, construction costs, maintenance, operation, management and repair costs. LCS agrees that it assumes sole responsibility for performing its due diligence with respect to determining its costs in relation to the Tennis Centre.
6. The City has no intention to make any monetary contribution to the Tennis Centre and no part of this Partnering Agreement or the Lease Agreement shall have the effect of placing a monetary obligation on the City.
7. LCS agrees to provide services in accordance with the conditions and requirements of the Lease Agreement and, without limitation, to undertake or provide the following services, activities and work on behalf of the City:
 - (a) assume full responsibility for:
 - (I) construction of the Tennis Centre according to City standards and in a manner that complies with the City's development approval and building permitting procedures and requirements;
 - (II) construction, installation and servicing of all services and utilities reasonably required for the development and/or operation of the Tennis Centre, including without limitation construction and installation of:
 - (i) all roads, waterworks, sewage works and drainage works and other municipal infrastructure as directed by the City and to City standards,
 - (ii) all works for carrying and distribution of gas, electricity, telephone and other telecommunications signals, either by private or public utilities, and
 - (iii) other public amenities as directed by the City;
 - (III) operation and maintenance of the Tennis Centre;
 - (IV) provision of tennis training and instruction services at the Tennis Centre;
 - (V) maintenance and repair of the dwelling unit on the Tennis Lot;
 - (b) LCS will comply with all City directives with respect to any matter set out in this Section 7.

8. The City may, as and when it considers it appropriate to do so, and subject to all applicable statutory restrictions, provide any type of Assistance whatsoever to LCS in connection with any activity of LCS under this Partnering Agreement or otherwise in connection with the provision of tennis training and program services and the management and operation of the Tennis Centre including, without limitation, any one or more of the following:
 - (a) a rezoning and development permit to permit the Tennis Centre;
 - (b) a subdivision to create the Tennis Lot, which will host the Tennis Centre;
 - (c) a development variance permit to defer the works and services requirements for 59th Avenue;
 - (d) leasing of the Tennis Lot for less than market value;
 - (e) facilitation of the development of the Tennis Centre; and
 - (f) provision or secondment of City employees or employee time to work with LCS on the development of tennis programs and coordinate the delivery of said programs with other City services and programs.

9. LCS covenants and agrees that it will, at all times during the currency of this Partnering Agreement:
 - (a) perform promptly and safely all of its obligations under this Partnering Agreement and perform promptly and safely all of its obligations under every other agreement between LCS and any other party in respect of the Tennis Centre, the breach of which will materially adversely affect LCS's ability to carry out the terms of this Partnering Agreement;
 - (b) be just and faithful in the performance of its obligations under this Partnering Agreement and in its dealings with the City under this Partnering Agreement and other agreements entered into between LCS and the City or any other person in respect of the Tennis Centre. Without limiting the generality of the foregoing, LCS shall make full, frank and immediate disclosure to the City of all matters coming to the attention of LCS or any of its officers, directors employees, agents, servants or consultants in relation to the services under this Partnering Agreement;
 - (c) perform its obligations itself or through such reputable and competent agents or independent contractors as it may engage from time to time;
 - (d) perform its obligations under this Partnering Agreement in a lawful and orderly manner in full compliance with all applicable federal, provincial, municipal and other laws, bylaws (including by-laws of the City of Surrey), regulations and statutes;
 - (e) perform its obligations under this Partnering Agreement and exercise all of its rights in respect of the Tennis Centre so that no act or thing whatsoever may be

done, permitted or omitted to be done which may be or may become a nuisance, damage, or unlawful disturbance to the City, or to the owners or occupiers of any neighbouring properties;

- (f) not do or suffer or permit to be done any act, activity or thing which may render void or voidable, or which may conflict with the requirements of, any policy or policies of insurance in respect of the Tennis Centre of which LCS is aware;
 - (g) not release, compromise, assign or transfer any claim, right or benefit of the City;
 - (h) not dispose of any interest in the Tennis Centre or enter into any agreement for the disposition of any interest in the Tennis Centre without the specific approval of the City.
10. The City will not be liable or responsible in any way for any loss or injury that may be sustained by LCS or any loss or injury sustained by any employee, agent or independent contractor of LCS or any other person who may be upon the lands that host the Tennis Centre, or for any loss of or damage or injury to property belonging to or in the possession of LCS or any employee, agent or independent contractor of LCS or any other person.
11. LCS will indemnify and save harmless the City, its elected and appointed officials, officers, employees, servants, agents and those for whom they are in law responsible, from and against any and all liabilities, damages losses, costs, expenses, (including lawyer's fees and litigation expenses) actions, causes of actions, claims, suits and judgments which the City may incur or suffer or be put to by reason of or in connection with or arising from:
- (a) any breach of any obligation set forth in this Partnering Agreement to be observed or performed by LCS;
 - (b) any act, omission, or negligence of LCS, its members, officers, directors, employees, agents, contractors, subcontractors, subtenants, licensees, invitees or others for whom it is responsible;
 - (c) any damage to property occasioned by LCS's use and occupation of the lands that host the Tennis Centre or any injury to person or persons, including death, resulting at any time from LCS's use and operation of the Tennis Centre; or
 - (d) any and all liability for loss, injury or damage caused by any of the perils against which LCS shall have insured or pursuant to the terms of this Partnering Agreement is obligated to insure the Tennis Centre or any part or parts thereof.

Should the City be made a party to any litigation commenced by or against LCS, then LCS will protect, indemnify and hold the City harmless and will promptly pay all costs, expenses and legal fees (on a solicitor and own client basis) incurred or paid by the City in connection with such litigation upon demand. LCS will also promptly pay upon demand all costs, expenses and legal fees (on a solicitor and own client basis) that may be incurred or paid by the City in enforcing the terms, covenants and conditions in this Partnering Agreement.

12. LCS's obligations under Section 11 will survive any expiration or termination of this Partnering Agreement.
13. Without limiting LCS's obligations and liabilities under this Partnering Agreement, LCS will provide and maintain, at its own expense, insurances in forms and amounts that are acceptable to the City as outlined in the Lease Agreement.

14. The City and LCS disclaim any intention to create a partnership or joint ventureship or to constitute either of them the agent of the other and nothing contained in this Agreement shall be construed to constitute the City or LCS a partner, joint venturer, agent or legal representative of or with the other. Neither the City nor LCS shall have, or represent that it has the authority or power to act for or to undertake or create any obligations or responsibilities, express or implied, on behalf of, or in the name of the other.

As evidence of their agreement to be bound by the terms of this Partnering Agreement, the parties have executed this Partnering Agreement as follows:

Date: November ____, 2013

CITY OF SURREY

by its authorized signatories:

Dianne L. Watts
Mayor

Jane Sullivan
City Clerk

Date: November ____, 2013

0956338 B.C. LTD.

by its authorized signatory:

Director

Date: November ____, 2013

LAWRENCE JUROVICH

Lawrence Jurovich

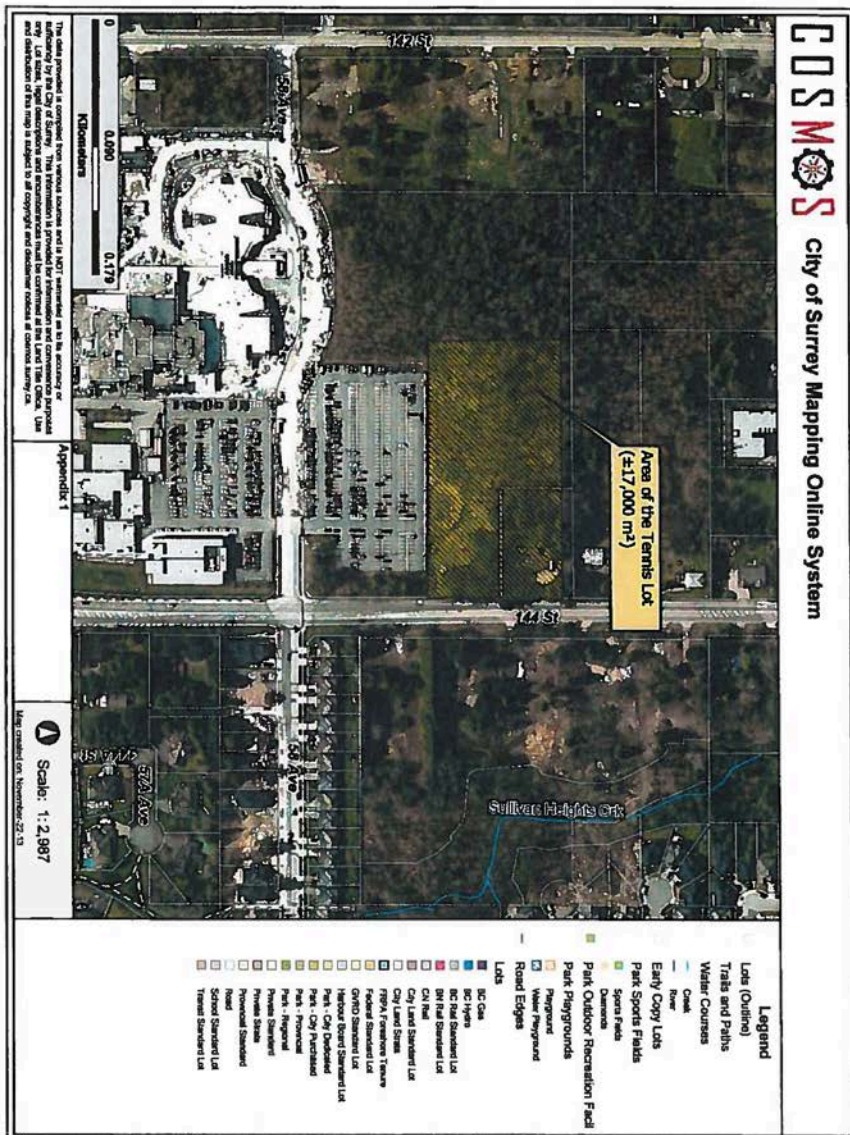
Date: November ____, 2013

0956338 B.C. LTD.
d/b/a LAURUS COACHING SOLUTIONS

by its authorized signatory:

Director

APPENDIX 1



**TENNIS CENTRE
LEASE AGREEMENT
TERMS OF INSTRUMENT - PART 2**

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THIS LEASE AGREEMENT dated for reference the 16th day of December, 2013.

BETWEEN:

CITY OF SURREY
14245 - 56 Avenue,
Surrey, British Columbia V3X 3A2

(the "Landlord")

OF THE FIRST PART

AND:

0956338 B.C. LTD.
#400 – 8621 – 201 Street
Langley, British Columbia V2Y 0G9

AND:

0956338 B.C. LTD.
d/b/a LAURUS COACHING SOLUTIONS
#400 – 8621 – 201 Street
Langley, British Columbia V2Y 0G9

AND:

LAWRENCE JUROVICH
2911 Kidd Road
Surrey, British Columbia V4A 3H6

(collectively, the "Tenant")

OF THE SECOND PART

WITNESSES THAT WHEREAS:

- A. The Landlord is the registered owner of the Premises as hereinafter defined;
- B. The Tenant agrees to lease the Premises for the purposes of constructing, maintaining and operating a Tennis Centre in accordance with this Lease.

NOW THEREFORE in consideration of the Rent, grants, covenants and agreements hereinafter reserved and contained, the parties hereto grant, covenant and agree as follows:

1. DEFINITIONS AND SCHEDULES

1.1 DEFINITIONS

In this Lease, including the recitals hereof and the Schedules attached hereto, the following words and expressions have the following meanings:

- a. "Architect" means a qualified architect duly accredited to practice in the Province of British Columbia and not on the staff of or employed full time by the Tenant.
- b. "Business Day" means any day which is not a Saturday, Sunday or statutory holiday in the Province of British Columbia.
- c. "City" means the City of Surrey, British Columbia, in its capacity as the municipality having jurisdiction over the Premises and any successor in function to the City of Surrey.
- d. "Community Access Principles" has the meaning set out in Article 2 of the Tennis Centre Operating Terms.
- e. "Community Use" has the meaning set out in Article 1 of the Tennis Centre Operating Terms.
- f. "Community Users" means members of the public who are users of the Tennis Centre.
- g. "Construction Schedule" has the meaning as defined in Section 10.1 of this Lease.
- h. "Improvements" encompasses the Tennis Centre and means any buildings, parking areas, driveways, access routes, erections, alterations, structures, all electrical, plumbing, heating, ventilating and air conditioning systems and computer systems used in the operation of any such systems, and other fixtures (excluding trade fixtures belonging to the Tenant which can be removed from the Tennis Centre without material damage thereto), facilities, landscaping, and all other appurtenances at any time in, upon or serving the Tennis Centre. For greater clarity, if an inflatable dome is erected by the Tenant to provide shelter for one or more tennis courts, said inflatable dome will not be included as part of the Improvements.
- i. "Initial Term" has the meaning set out in Section 2.3 herein.
- j. "Landlord" means the City of Surrey and its successors and assigns as landlord under this Lease. In Sections that contain a release or other exculpatory provision in favour of the Landlord, "Landlord" includes the councillors, officers, employees and agents of the Landlord.

- k. "Laws" shall mean all applicable federal, provincial, regional and municipal laws, statutes, regulations, orders, directives or by-laws, including without limitation, all applicable laws, statutes, regulations, orders, directives and by-laws relating to the environment, land use, occupational safety or health.
- l. "Lease" means this Lease Agreement executed by the Landlord and the Tenant, as amended from time to time.
- m. "Lease Commencement Date" means the date on which the building permit for the Premises is issued by the City.
- n. "Lease Year" means a period of one (1) year commencing on the 1st day of January in each year during the Term, provided that the first Lease Year shall commence on the Rent Commencement Date and end on the 31st day of December next ensuing; the period from the Lease Commencement Date to the Rent Commencement Date is not a Lease Year.
- o. "Leasehold Mortgage" means a bona fide mortgage, indenture, deed of trust or similar security in respect of the Tenant's interest in the Premises and this Lease which has been executed by the Tenant and entered into in accordance with Article 7 and which has not been discharged.
- p. "Leasehold Mortgagee" means the holder of any Leasehold Mortgage.
- q. "Notice to Proceed" has the meaning set out in Section 10.3(2) herein.
- r. "Operating Costs" has the meaning set out in Article 4 of this Lease.
- s. "Partnering Agreement" is a separate agreement between the City and the Tenant, dated for reference the 25th day of November, 2013.
- t. "Penalty Rate" means the Prime Rate plus three (3%) percent.
- u. "Permitted Encumbrances" means any liens, charges, encumbrances, instruments or interests in the Lands or Improvements granted by or at the request of the Tenant or approved by the Tenant through or otherwise permitted pursuant to this Lease.
- v. "Person" means any individual, partnership, corporation, trust, unincorporated organization, corporation without share capital, municipality, government, or governmental agency or any combination thereof.
- w. "Plans and Specifications" means the plans and specifications for the Improvements as required for municipal building permit approval and as

approved by the Landlord in writing and, once delivered pursuant to Section 10.3, includes the "as built" plans and specifications.

- x. "Premises" means that portion of the lands owned by the Landlord currently legally described as follows:

Parcel Identifier: _____
**LOT 1 SECTION 9 TOWNSHIP 2 NEW WESTMINSTER DISTRICT
PLAN EPP31096**

- y. "Prime Rate" means the annual rate of interest established from time to time by the Canadian Imperial Bank of Commerce (or its successor) and declared by the main branch of such bank at Vancouver B.C. from time to time as being that bank's reference rate of interest for commercial Canadian dollar loans made by it in Canada and commonly referred to by it as its Canadian "prime rate". If the Canadian Imperial Bank of Commerce (or its successor) no longer exists or no longer declares such a "prime rate", then the Prime Rate shall be as the parties may in writing agree, both acting reasonably, or failing agreement as determined by arbitration in accordance with this Lease.
- z. "Program Advisory Committee" has the meaning set out in Article 1 of the Tennis Centre Operating Terms;
- aa. "Rent" has the meaning set out in Section 3.1 herein.
- bb. "Rent Commencement Date" means the opening of any part of the Tennis Centre for regular business.
- cc. "Renewal Term" has the meaning set out in Section 2.3 herein.
- dd. "Replacement Cost" means for insurance purposes the entire cost of repairing or replacing any items of insurable property or Improvements with materials of like kind and quality without deduction for depreciation.
- ee. "Site Plan" means the site plan attached hereto as Schedule A, prepared by the Tenant, and approved by the Landlord, showing the Premises and the location of the Improvements and Tennis Centre thereon.
- ff. "Taxes" means all taxes, rates, duties, levies, assessments, including school taxes, local improvement rates and other charges which now are or shall or may be levied, imposed, assessed or charged against the Premises or any part thereof or the Improvements or any structures, machinery, equipment, facilities and other property of any nature whatsoever thereon or therein, whether municipal, regional, provincial or federal, whether or not in existence at the Rent Commencement Date, and including all costs and expenses (including legal and other professional fees and costs and interest on deferred

payments) incurred in contesting in good faith any of the foregoing but not including income or capital taxes, if any, levied in respect of the Landlord's income or capital.

- gg. "Tennis Centre" includes the Improvements constructed by the Tenant on the Premises as well as both indoor and outdoor tennis courts; an access road; parking area; and a support building containing washrooms, administrative space and activity spaces associated with the provision of tennis training, instruction and play, all as shown on the Site Plan as approved by the Landlord in writing.
- hh. "Tennis Centre Operating Terms" means the terms and conditions associated with public access, uses, the services provided, the standard of care and the operational principles associated with the Tennis Centre and the duties and responsibilities of the City and the Tenant regarding the operation and maintenance of the Tennis Centre, attached hereto as Schedule B.
- ii. "Term" means the Initial Term and, subject to the parties agreeing to renew this Lease in accordance with Section 2.3, the Renewal Term(s).

1.2 SCHEDULES

The following schedules are attached to this Lease and form a part hereof:

Schedule A – Site Plan

Schedule B – Tennis Centre Operating Terms

2. DEMISE, TERM, USE AND SURRENDER

2.1 DEMISE

In consideration of and subject to the Rent, covenants, conditions and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord hereby demises and leases the Premises to the Tenant and the Tenant hereby leases the Premises from the Landlord for the Initial Term commencing on the Lease Commencement Date.

2.2 USE AND NAME

1. The Tenant shall use the Premises and the Improvements for the purpose of operating the Tennis Centre to provide instruction, coaching, training and athlete development programs and as a facility where tennis (as well as indoor soccer, badminton, squash and other sports as approved by the Landlord) is played. The Tenant may engage in uses that are incidental to tennis play and instruction but shall not use nor allow or permit the Premises, the Improvements or any part thereof to be used for any other purpose or use,

without the prior written approval of the Landlord, which consent may not be unreasonably withheld.

2. The operation, and use of the Tennis Centre shall comply with the Tennis Centre Operating Terms.
3. The Tennis Centre shall be available generally to all citizens of the City and other members of the public without exclusion.
4. The Tenant will have the right to name the Premises and the Improvements and to change such name from time to time provided that:
 - a. the name may include a corporate name as part of the name, but will not include the name or trade name, trade mark or brand name of any business which manufactures or sells alcoholic beverages or tobacco or sexual material;
 - b. the name will reflect that the Premises and the Improvements are to be used as a Tennis Centre; and
 - c. the Tenant will advise the Landlord in advance of its proposed name and any proposed change of name and will give consideration to any reasonable concerns of the Landlord that the proposed name is inappropriate for a facility constructed on City-owned land.

2.3 TERM AND RENEWALS

1. The Initial Term of this Lease shall be for ten (10) years, commencing on the Lease Commencement Date.
2. The Tenant may renew this Lease for one (1) additional ten (10) year term (the first "Renewal Term") provided that:
 - a. during the Initial Term, the Tenant has not been in default of any of the conditions of this Lease or the Partnering Agreement (unless such default has been waived in writing by the Landlord); and
 - b. the Tenant provides notice to the Landlord at least six (6) months, but not more than nine (9) months, prior to the expiry of the Initial Term, in accordance with Article 17 of this Lease.
3. The terms and conditions of this Lease and the Partnering Agreement shall apply in their entirety during the first Renewal Term, including the Tenant's option to renew, subject to providing notice as required by Article 17 of this Lease, for an additional ten (10) year term (the second "Renewal Term").

4. At the expiration of the second Renewal Term, the Tenant shall have no further right of renewal.
5. Notwithstanding this Article, the Landlord and the Tenant may, by mutual consent, choose to extend the Lease for an additional period of time after the expiry of the second Renewal Term.

2.4 SURRENDER BY THE TENANT AT EXPIRY OF TERM

1. If at least six (6) months, and no greater than nine (9) months, prior to expiry of the Term the Landlord has given written notice to the Tenant to demolish the Improvements, the Tenant will, no later than four (4) months prior to the expiry of the Term, provide such evidence as the Landlord reasonably requires that the Tenant has made suitable arrangements to carry out and pay for the demolition of the Improvements as hereinafter provided.
2. At the expiry of the Term or the earlier termination of this Lease, the Tenant shall:
 - a. deliver to the Landlord copies of all available surveys and construction, engineering and design drawings, maintenance logs, operating manuals, reports and records in the possession or control of the Tenant which pertain to the Improvements, the Premises or the operation of the Tennis Centre.
3. At the expiry of the Term, the Tenant shall surrender the Premises without any payment to the Tenant either, at the Landlord's option:
 - a. with the Improvements left thereon in the state of repair required to be maintained under this Lease; or
 - b. with the Improvements demolished and removed and the Premises returned to a graded and clean vacant state within one hundred eighty (180) days after the expiry of the Term.
4. The Tenant covenants that it will upon such expiry or earlier termination leave the Premises and, if not demolished, the Improvements in a clean and tidy condition.
5. Notwithstanding the termination of this Lease, whether at the expiry of the Term or earlier, the Tenant shall remain liable to the Landlord for any default by the Tenant during the Term.

2.5 ASSIGNMENT OF RENTS

To ensure the orderly continuance of operation of the Tennis Centre by the Landlord or its assignees, subject to the provisions of Article 17 in favour of any

Leasehold Mortgagee, the Tenant shall at the option of the Landlord perform for no consideration (except as contemplated by Section 2.5(4)) the following at the expiry of the Term or the earlier termination of this Lease:

1. assign to the Landlord or as the Landlord may direct, to the extent assignable, all of the Tenant's interest in the Premises and the Improvements together with the benefit of all Subleases, license agreements, guarantees, warranties and other agreements and rights benefiting the Premises or the Improvements or the Tenant's interest in the Premises or the Improvements or pertaining to the operation of the Tennis Centre;
2. deliver to the Landlord or as the Landlord may direct executed copies of all such available agreements;
3. deliver to the Landlord or as the Landlord may direct copies of all available books and records with respect to the Premises and the Improvements for the two (2) year period preceding the expiry of the Term or termination of this Lease; and
4. assign, sell and transfer to the Landlord or as the Landlord may direct all of the Tenant's right, title and interest in such items stored or located on the Premises as the Landlord may wish to acquire, including the Tenant's interest in any lease of any item stored or located on the Premises, at a price for each item equal to the fair market value of such item, as agreed between the parties or, failing agreement, as determined by arbitration as provided in this Lease. The Landlord may set off any amounts owing by the Tenant to it against any amount due to the Tenant under this Section 2.5(4).

3. RENT

3.1 RENT

The Tenant covenants with the Landlord to pay Rent of \$10 per annum for each Lease Year of the Initial Term and for each Lease Year of every subsequent Renewal Term, payable in advance on the first day of each and every Lease Year;

3.2 COMMENCEMENT OF RENT

The Tenant's obligation for payment of Rent shall commence on the Rent Commencement Date.

3.3 TAXES ON RENT

The Tenant shall pay any goods and services taxes, sales taxes or other taxes now or hereafter assessed, levied or imposed, whether on the Landlord or the Tenant, in respect of the Rent or the leasing of the Premises by the Landlord to the

Tenant, but not including the income or capital taxes, if any, levied in respect of the Landlord's income or capital.

3.4 NET LEASE

The Tenant acknowledges and agrees that it is intended that this Lease shall be a completely carefree net lease for the Landlord except as shall be otherwise provided in the specific provisions contained in this Lease, and that the Landlord shall not be responsible during the Term of this Lease for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises, the Improvements, or the contents thereof, excepting only income and capital taxes, if any, levied in respect of the Landlord's income and capital and the Tenant, except as shall be otherwise provided in the specific provisions contained in this Lease, shall pay all charges, impositions and costs of every nature and kind relating to the Premises and the Improvements and the Tenant covenants with the Landlord accordingly.

4. ENVIRONMENTAL CONCERNS

4.1 DEFINITIONS

For the purposes of this Article:

1. "Contaminants" means any pollutants, contaminants, deleterious substances, underground or aboveground tanks, asbestos materials, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
2. "Environmental Laws" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any governmental authority having jurisdiction over the Premises now or hereafter in force relating in any way to the environment, health, occupational health and safety or transportation of dangerous goods, including the principles of common law and equity;
3. "Existing Contaminants" means the Contaminants, if any, existing in or on the Premises as of the Lease Commencement Date; and
4. "Premises" includes Improvements.

4.2 TENANT'S COVENANTS AND INDEMNITY

The Tenant covenants and agrees as follows:

1. not to install, store, use and dispose of any Contaminants except any Contaminants that are necessary for the normal operation of the Tennis Centre, and to install, store, use and dispose of all such Contaminants strictly in accordance with applicable Environmental Laws;
2. to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises;
3. to promptly provide to the Landlord a copy of any environmental site assessment, audit or report and any environmental testing results relating to the Premises conducted by or for the Tenant at any time;
4. not more than nine (9) months and not less than six (6) months prior to the expiry of the Term, or within ninety (90) days after any earlier termination of this Lease unless a Leasehold Mortgagee or its Nominee takes a new lease pursuant to Article 7, to obtain from an independent environmental consultant approved by the Landlord and deliver to the Landlord an environmental site assessment of the Premises and an environmental audit of the operations of the Tennis Centre, including any additional investigations as the environmental consultant may recommend;
5. to promptly notify the Landlord in writing of any release of a Contaminant or any other occurrence or condition at the Premises which could contaminate the Premises or subject the Landlord or the Tenant to any fines, penalties, orders, investigations or proceedings under Environmental Laws;
6. on the expiry or earlier termination of this Lease or at any time if required by any governmental authority pursuant to Environmental Laws, to remove from the Premises all Contaminants except Existing Contaminants, if any, and to remediate any contamination of the Premises resulting from Contaminants, in either case brought onto, used at or released from the Premises by the Tenant or any person for whom it is in law responsible. The Tenant shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants, except Existing Contaminants, if any, shall remain the property of the Tenant, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding the degree of their affixation to the Premises; and
7. to indemnify the Landlord and its councillors, officers, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs, fines, penalties and expenses whatsoever (including all legal and consultants' fees and expenses and the cost of remediation of the Premises) arising from or in connection with:

- a. any breach of or non-compliance with the provisions of this Article 4 by the Tenant; or
- b. any release or alleged release of any Contaminants at or from the Premises related to or as a result of the use and occupation of the Premises or any act or omission of the Tenant or any person for whom it is in law responsible.

4.3 SURVIVAL

The obligations of the Tenant under Article 4 shall survive the expiry or earlier termination of this Lease.

4.4 ENVIRONMENTAL SITE ASSESSMENT BY THE LANDLORD

1. At least sixty (60) days prior to the Lease Commencement Date, the Landlord, at the sole cost of the Tenant, will cause an independent environmental consultant approved by the Tenant to carry out a "Phase I Environmental Site Assessment" of the Premises in accordance with Canadian Standards Association Standard Z768-94 (the "Assessment") and deliver a copy to the Tenant. If such Assessment does not recommend further investigations be undertaken, the Landlord and the Tenant will accept such Assessment and no further action will be taken.
2. If such Assessment recommends that further investigations are warranted to determine whether there are Contaminants on the Premises at a level which would preclude development or use of the Premises as a Tennis Centre, then the Tenant may, at its option, undertake such further investigations or terminate this Lease by notice in writing to the Landlord.
3. If the report of the environmental consultant on the further investigations indicates that there are Contaminants present on the Premises at a level which would preclude development or use of the Premises as a Tennis Centre, then the Tenant may, at its option, undertake such removal or remediation or terminate this Lease by notice in writing to the Landlord.

4.5 INSPECTION BY TENANT

The Landlord will give the Tenant a complete opportunity of at least sixty (60) days prior to the Lease Commencement Date to examine the Premises in order to conduct a soils inspection. If the condition precedent set out in Section 4.4 is satisfied or waived by the Tenant, and if the Landlord completes any remedial work required pursuant to Section 4.4, then the Tenant will be deemed to have accepted the Premises with any and all defects, including latent defects therein, except Existing Contaminants, if any, and to have confirmed that the Premises were in good order and satisfactory condition. No promise of the Landlord to do any work in respect of the Premises and no representation respecting the condition

of the Premises has been made by the Landlord other than as expressly set forth in this Lease.

4.6 HEALTH, SAFETY AND ENVIRONMENTAL COMPLIANCE

1. The Tenant shall ensure that all cleaning products and all other supplies are stored and used in a manner in compliance with workers' compensation and waste management regulations and all other relevant labour, health, safety and environmental legislation.
2. The Tenant shall select its own site(s) for disposal of debris, trash and unsuitable materials collected under the provisions of this Lease. In no case shall debris, trash, and unsuitable materials be disposed of at the Tennis Centre or on any properties adjacent thereto. The Tenant is responsible for any and all damages done or regulations violated in the disposal of waste material and for any other actions which the Tenant performs.
3. The Tenant warrants that after the commissioning of the Tennis Centre, it will not produce, release or discharge (or allow to be released or discharged) in any manner or form, directly or indirectly, chemicals or toxic substances into the environment and that all vehicles and equipment used by the Tenant will not pose a hazard to, or harm, or adversely affect anyone coming into contact with them and covenants and agrees to provide the City with an environmental plan (where applicable), acceptable to the City, which shall outline the procedures to be followed by the Tenant to prevent the production, release or discharge of chemicals or toxic substances into the environment and the actions to be taken should such release or discharge occur. Pre-existing conditions from commission that the Tenant does not or could not know about would be rectified, but not at the Tenant's expense.
4. The Tenant shall be responsible to take all necessary measures to comply with the requirements of the federal and provincial environmental protection agencies, City by-laws, the *Waste Management Act* and any other applicable acts and regulations. Pre-existing conditions from commission that the Tenant does not or could not know about would be rectified, but not at the Tenant's expense.
5. The Tenant shall ensure compliance with and conform to all health and safety laws, by-laws or regulations of the Province of British Columbia, including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Tenant, install such devices or rectify any conditions creating an immediate hazard existing that would be likely to result in injury to any person. However, in no case shall the City be responsible for ascertaining or discovering, through inspections or review of the operations of the Tenant or otherwise, such deficiency or immediate hazard.

6. Without limiting the generality of any other indemnities granted by the Tenant herein, the Tenant shall indemnify and save harmless the City, its elected and appointed officials, employees and agents from and against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Tenant, its agents or employees, or any subcontractors of the Tenant, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations.
 7. The Tenant shall fulfill all its duties, obligations and responsibilities in such a manner that it ensures the safety of the public and, in accordance with the safety regulations of the Workers' Compensation Board (the "WCB"), shall install signs and barriers as required in order to ensure the safety of the public and of The Tenant's employees in the use and operation of the Tennis Centre.
 8. The Tenant understands and undertakes to comply with all the WCB Industrial Health and Safety Regulations for hazardous materials and substances, and in particular with the *Workplace Hazardous Materials Information Systems* Regulation.
 9. The Tenant agrees that it shall procure and carry or cause to be procured and carried and paid for, full WCB coverage for itself and all workers, employees, servants and others hired by, engaged in or upon any work or service which is the subject of this Lease.
 10. The Tenant agrees that it is the principal contractor for the purposes of the WCB Industrial Health and Safety Regulations for the Province of British Columbia. The Tenant shall have a safety program acceptable to the WCB and shall ensure that all WCB safety rules and regulations are observed during performance of this Lease, not only by the Tenant, but by all subcontractors, workers, material men and others engaged by the Tenant in the performance of this Lease.
 11. Prior to the City having any obligations to pay monies under this Lease, the Tenant shall deliver to the City:
 - a. the Tenant's WCB registration number; and
 - b. a letter from the WCB confirming that the Tenant is registered in good standing with the WCB and that all assessments have been paid to the date thereof.
- The Tenant will maintain good standing with the WCB throughout the Term of this Lease.
12. Nothing in this Lease shall be construed as to constitute a partnership between the City and the Tenant. The duties to be performed and the obligations

assumed by the Tenant under this Lease shall be performed and assumed by it as an independent contractor and not as agent or in any other way as representative of the City. In no circumstances shall the Tenant have any authority to represent or contract on behalf of or otherwise bind the City.

13. The Tenant is and shall at all times during the performance of this Lease be an independent contractor and at no time shall the Tenant be considered an agent, servant, or partner of the City; all persons employed by the Tenant to perform its obligations under this Lease shall be its employees, servants or agents and not the employees, servants, or agents of the City.

5. LANDLORD'S REPRESENTATIONS AND COVENANTS

5.1 TITLE

The Landlord represents and warrants that as of the Lease Commencement Date it is the registered owner of the Premises, free and clear of all liens, charges and encumbrances other than Permitted Encumbrances.

5.2 QUIET ENJOYMENT

The Landlord hereby covenants with the Tenant that the Tenant, paying the Rent hereby reserved and observing and performing the covenants and conditions contained in this Lease on the Tenant's part to be observed and performed, shall and may peaceably possess and enjoy the Premises for the Term hereby granted without any interruption or disturbance from the Landlord or any other person lawfully claiming by, from or under the Landlord, upon and subject to the terms and conditions of this Lease.

5.3 LANDLORD'S REPAIRS AND OBLIGATIONS

The Landlord shall not be responsible, during the Term, to repair, maintain, alter or improve or furnish any services or facilities to the Premises or the Improvements in any manner whatsoever and shall have no financial obligations whatsoever concerning the design, development, construction, operation repair, maintenance, insurance or financing of the Improvements or the Tennis Centre, save as expressly provided in this Lease.

5.4 OWNERSHIP OF IMPROVEMENTS

As between the Landlord and the Tenant during the Term, any Improvements on the Premises shall be constructed and used by the Tenant but shall be owned by the Landlord subject to and governed by all provisions of this Lease. Upon the expiry of the Term or upon the earlier termination of this Lease, if the Landlord does not elect to have the Tenant demolish and remove the Improvements pursuant to the applicable provisions of this Lease, all Improvements on the Premises shall be the absolute property of the Landlord but without any payment

to the Tenant, free and clear of all liens, charges and encumbrances of any nature. Subject to Section 13.6, the Landlord's absolute right of property in all Improvements on the Premises shall take priority over any other interest in the Improvements or the Premises which may now or hereafter be created by the Tenant, and all dealings by the Landlord with the Improvements or the Premises which in any way affect title thereto shall be subject to this right of the Landlord. At the request of the Landlord the Tenant shall execute and deliver to the Landlord such conveyances and other documents as may be reasonably requested by the Landlord from time to time to give effect to the foregoing.

6. TENANTS' COVENANTS

The Tenant covenants and agrees with the Landlord as follows:

6.1 PAYMENT

The Tenant shall pay to the Landlord as and when required hereunder, without any deduction, abatement or set off of any type or for any reason, all Rent hereby reserved and all other sums to be paid by the Tenant to the Landlord hereunder.

6.2 TENANT'S TAXES

The Tenant shall pay when due the Taxes from and after the Rent Commencement Date and thereafter during the Term.

6.3 REVENUE

The Tenant will be entitled to 100% of the revenue received in connection with the operation of the Tennis Centre, subject to this Lease, provided that the Tennis Centre shall be maintained in good repair and in accordance with this Lease.

6.4 DELINQUENT TAXES

If the Tenant shall in any year during the Term fail to pay the Taxes or payment in lieu of Taxes under Sections 6.2 or 6.3 when due, the Tenant shall pay all penalties and interest at the percentage rate or rates established by the City or any other taxing authority for unpaid real property taxes in the City and, in addition thereto, if such be the case, penalties and interest fixed by the City or any other taxing authority for delinquent taxes, but so that the Tenant shall only be obligated to pay such penalties and interest as would be payable by other taxpayers in the City in like case.

6.5 UTILITY CHARGES AND BUSINESS TAXES

The Tenant agrees to pay when due, at the Tenant's sole expense and for its own account, from and after the Rent Commencement Date and thereafter during the Term

1. all utility charges including, but not limited to water, gas, electricity, fuel and telephone, rates, and assessments which are properly charged, levied or assessed in connection with the Premises, the Improvements or any part thereof;
2. all business taxes, license fees and similar taxes which may be charged, levied or assessed in connection with the Premises, the Improvements or any part thereof or which are levied or assessed against the Tenant, or other person carrying on business therein or therefrom; and
3. all other charges and expenses relating to the Premises or the Improvements which are the responsibility of the Tenant pursuant to this Lease.

6.6 LANDLORD TO PROVIDE NOTICES

The Landlord shall forward to the Tenant all bills and notices with respect to the payments called for in Sections 6.2, 6.3, 6.5 and 6.6 which are received by the Landlord from third parties.

6.7 LANDLORD MAY PAY TAXES, ETC.

If the Tenant fails to pay when due any amounts required to be paid as Taxes, charges or otherwise by the Tenant pursuant to this Lease and which the Tenant is not contesting diligently and in good faith in accordance with Section 14.1, the Landlord shall have the right to pay the same at the expense of the Tenant and the Tenant covenants to pay to the Landlord forthwith upon demand any amounts so paid by the Landlord together with interest thereon at a rate equal to the Penalty Rate from the date of payment by the Landlord to the date of repayment by the Tenant to the Landlord.

6.8 EVIDENCE OF PAYMENT

The Tenant shall produce to the Landlord at the request of the Landlord satisfactory evidence of the due payment by the Tenant of all payments required to be made by the Tenant under this Lease.

6.9 NO NUISANCE

The Tenant shall not at any time during the Term, use or carry on or permit or suffer to be used, exercised or carried on, in or upon the Premises, the Improvements or any part thereof any noxious, noisome or offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the Term be done in or upon the Premises, the Improvements or any part thereof which shall cause an annoyance, be a nuisance to, damage or disturb the adjoining lands and properties. The Landlord acknowledges that the operation of the Tennis Centre, so long as it is operated strictly in accordance with the terms of this Lease, does not and will not constitute a breach of the provisions of this Section 6.9.

6.10 NO OBSTRUCTION

The Tenant shall not permit any vehicles belonging to the Tenant to cause an obstruction on any roads, driveways in the neighbourhood of the Premises, or prevent the ingress and egress to occupants of adjacent properties, and will use its best endeavours to ensure that persons doing business with the Tenant and its servants and workmen shall not permit any vehicles to cause any such obstruction.

6.11 COMPLIANCE WITH LAWS

The Tenant shall comply promptly at its expense with all Laws and all requirements of insurance underwriters, insuring the Premises and the Improvements, in force from time to time during the Term, and all notices in pursuance of any of the foregoing, whether served upon the Landlord or the Tenant, that relate to the condition of the Premises or the Improvements, or to the occupation and use of the Premises or the Improvements, or to the making of any alterations, changes, improvements, repairs, additions or other work in or to the Premises or the Improvements, or to the conduct of any business conducted in or from the Premises or the Improvements.

6.12 BUILDERS' LIENS

The Tenant shall promptly pay all charges payable for any work, materials or services that may be done, supplied or performed in respect of the Premises or the Improvements by or at the request of or on behalf of the Tenant, and shall forthwith discharge any liens in respect of same at any time filed against the Premises and shall keep the Premises free from such liens and in the event that the Tenant fails to do so, the Landlord may, but shall be under no obligation to, pay into court the amount required to obtain a discharge of any such lien in the name of the Landlord or the Tenant and any amount so paid together with all disbursements and costs in respect of such proceedings on a solicitor and client basis shall be forthwith due and payable by the Tenant to the Landlord as Rent. The Tenant shall allow the Landlord to post and keep posted on the Premises or the Improvements any notices that the Landlord may desire to post under the provisions of the *Builders Lien Act*.

6.13 PARKING

As part of the Improvements, the Tenant will construct the number of paved parking stalls determined during the development review process, including related signage, driveways, walkways and access routes as shown on the Site Plan. The Tenant will restripe such parking areas periodically when necessary in the Tenant's reasonable opinion and consistent with its obligations under Section 9.2. Such parking stalls, driveways, walkways and access routes shall be available for use by all members of the public using or visiting the Tennis Centre.

The Tenant will not impose any charge or fee for use of any parking stalls without the prior written consent of the Landlord.

6.14 CONTINUOUS OPERATION

Subject to temporary closure during repair, reconstruction or renovations of the Improvements and subject to Section 20.7, the Tenant shall commence operations in the Improvements on the date the Improvements can reasonably and safely be used and thereafter during the Term shall continuously and diligently carry on or cause to be carried on the operations specified in Section 2.2 on the whole of the Improvements. If operations in any part of the Improvements are temporarily closed or interrupted, the Tenant shall use its best efforts to restore full operations as soon as possible. The Premises and the Improvements shall at all times be operated in an up-to-date, first-class and reputable manner as itemized in this Lease. The Tenant acknowledges that the Landlord is executing this Lease in reliance upon the Tenant's covenant herein contained, and that such covenant is a material element inducing the Landlord to execute this Lease.

7. ASSIGNMENT, SUBLETTING AND DISPOSITIONS

7.1 SUBLETTING BY TENANT - OTHER THAN BY WAY OF MORTGAGE

The Tenant shall not and will not during the Term, other than by way of Leasehold Mortgage as hereinafter provided, sublease the Improvements, the Premises or any part thereof to any Person without the prior written consent of the Landlord.

7.2 ASSIGNMENT BY TENANT - OTHER THAN BY WAY OF MORTGAGE

The Tenant shall not and will not during the Term, other than by way of Leasehold Mortgage as hereinafter provided, assign, transfer or sell or otherwise, by any act or deed, cause the Improvements or this Lease or any interest therein to be assigned, transferred to sold to any Person without the consent in writing of the Landlord.

7.3 TENANT'S RIGHT TO MORTGAGE

The Tenant shall have the right, at any time and from time to time during the Term, to grant one or more Leasehold Mortgages and to extend, modify, renew, or replace any such Leasehold Mortgage, subject to the following:

1. the Landlord shall be given the name and address for service of the Leasehold Mortgagee;
2. the Tenant shall not, at the time of grant, be in default in payment of Rent or the performance or observance of any of the covenants or agreements of the

Tenant under this Lease beyond any period given to the Tenant to cure such default under this Lease;

3. such Leasehold Mortgage shall cover the whole of the Tenant's interest in this Lease (except for the last day of the Term) and provide that any loss under the policies of insurance required to be furnished pursuant thereto shall be disposed of in accordance with the provisions of this Lease; and
4. such Leasehold Mortgagee shall first enter into an agreement with the Landlord incorporating the provisions of Section 7.4 and to the effect that:
 - a. if and when the Leasehold Mortgagee becomes a mortgagee in possession (which term shall include a receiver or receiver and manager appointed by the Leasehold Mortgagee) it will, during such time as it remains a mortgagee in possession, be bound by and use its best efforts to perform all of the obligations of the Tenant contained in this Lease and to remedy any default of the Tenant thereunder arising prior to the time of going into possession to the extent that such default is capable of being remedied;

7.4 RIGHTS OF LEASEHOLD MORTGAGEE

A Leasehold Mortgagee shall have the benefit of the provisions of Section 13.6. Subject to the provisions of Sections 7.3 and 13.6, a Leasehold Mortgagee may upon default by Tenant and according to law enforce its Leasehold Mortgage and acquire title to the Tenant's leasehold estate in any lawful way. Without limitation, the Leasehold Mortgagee may, by its representative or by a receiver as the case may be, take possession of and manage the Premises in accordance with the Facility Operating and Maintenance Agreement. Upon foreclosure of (or without foreclosure upon exercise of any contractual or statutory power of sale under) such Leasehold Mortgage, the Leasehold Mortgagee may assign this Lease to its Nominee with the Landlord's consent, not to be unreasonably withheld, and the Leasehold Mortgagee or its Nominee may sell or assign or sublease the Tenant's leasehold estate, in like manner and subject to the same terms and conditions as govern assignment or subletting by the Tenant except that upon a sale or assignment of the Tenant's leasehold estate consented to by the Landlord in accordance with this Lease, the Leasehold Mortgagee or its Nominee, as the case may be, shall have no further liability in respect of any obligations of the Tenant contained in this Lease to be observed and performed after the effective date of such assignment.

7.5 LANDLORD'S REVERSIONARY INTEREST SUPERIOR

Nothing in this Lease shall in any way bind the Landlord or its successors or assigns to subordinate its reversionary interest in the Premises.

7.6 LANDLORD'S NOTICE TO LEASEHOLD MORTGAGEE

The Landlord agrees to give thirty (30) days' prior notice to a Leasehold Mortgagee and the Tenant regarding any amendment to or surrender of this Lease that would affect this Lease, and the Landlord agrees that no such amendment or surrender shall occur without the written consent of all Leasehold Mortgagees and the Tenant.

7.7 REQUEST BY LEASEHOLD MORTGAGEE

If a Leasehold Mortgagee requires the Tenant to request reasonable amendments to the provisions of this Lease in order to protect the Leasehold Mortgagee in the event of a default by the Tenant, the Landlord agrees to give due consideration, acting reasonably, to such request, and the Tenant shall pay all of the Landlord's costs in fulfilling such a request forthwith on demand.

8. INDEMNITY OF LANDLORD

8.1 NON-LIABILITY OF THE LANDLORD

The Landlord shall have no liability whatsoever with respect to claims or damages of third parties resulting from the use, occupation, management, subleasing or financing of the Improvements or the Premises. Without limiting the generality of the foregoing, the Landlord shall not be liable for any loss, death or injury arising from or out of any occurrence in, upon, at or relating to the Improvements or the Premises or any damage to or loss of the property of the Tenant or of others wherever located, whether or not resulting from the exercise by the Landlord of any of its rights under this Lease. The intent of this Section 8.1 is that the Tenant, except as provided for herein, (and all other Persons having business with the Tenant or other Persons having business with them, as the case may be) is to look solely to its insurers to satisfy any claim which may arise on account of death, injury, loss or damage, irrespective of its cause. This exculpation of the Landlord from liability shall not extend to loss, death or injury arising from or damage to works erected or maintained by the Landlord on or under or adjacent to the Premises. Nothing herein will prevent the Tenant from exercising any remedy at law that they may have as a result of any act or omission by any third party.

8.2 TENANT'S INDEMNITY OF THE LANDLORD

The Tenant covenants to indemnify and defend the Landlord and all those for whom they are at law responsible from any and all claims, liabilities, damages, costs, expenses, suits or actions resulting from:

1. any breach, violation or non-performance by the Tenant or any Person for whom the Tenant is at law responsible of any covenant, obligation or agreement of the Tenant contained in this Lease;

2. any damage to property, either real or personal, howsoever occasioned by the construction, use or occupation of the Premises by anyone on the Premises save and except as noted in Section 8.1 above;
3. any damages or personal or bodily injury to any person or persons, including death resulting at any time therefrom, howsoever occasioned by the construction, use or occupation of the Improvements or the Premises by anyone thereon, save and except as noted in Section 8.1 above;
4. all costs, expenses and legal fees (on a solicitor and client basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions of this Lease if the Tenant admits or is found to be in breach thereof by a court of competent jurisdiction or in an arbitration, and if the Landlord is made a party to any litigation commenced by or against the Tenant, then the Tenant will indemnify and hold the Landlord harmless and pay all expenses and legal fees incurred or paid by the Landlord in connection with the litigation; and
5. without limiting the generality of the foregoing, to indemnify and hold harmless the Landlord and its officers, employees, and members of Council, from and against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever, which may be brought against the Landlord, its officers or employees, or which any of them may pay, sustain, incur, or be liable for, howsoever, as a result of or in connection with the occupancy or use of the Tennis Centre by the Tenant or any of the activities of the Tenant, its employees, agents or contractors.

This Section 8.2 shall survive the termination or expiry of this Lease, any provisions in this Lease to the contrary notwithstanding.

8.3 LANDLORD'S INDEMNITY OF TENANT

The Landlord shall indemnify and hold the Tenant and its directors, officers, and employees harmless from and against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever, which may be brought or made against the Tenant, its directors, officers, or employees or which any of them may pay, sustain or incur as a result of the negligent acts of the City, its officers, employees, agents and contractors.

9. INSURANCE

9.1 BUILDING IN COURSE OF CONSTRUCTION INSURANCE

Prior to the commencement of any demolition or construction on the Premises, the Tenant shall place and keep in force, or cause to be placed and kept in force until completion of such construction, insurance for the full Replacement Cost of

the Improvements being constructed in favour of the Tenant and any other party with an insurable interest in the property insured including but not limited to the Tenant, the Landlord, and any mortgagee, lienholder, lessor or lessee. The course of construction insurance policy shall cover the Premises, Improvements and fixtures, equipment and building materials on the Premises during construction on an "all risks" form to include:

1. the perils of flood and earthquake;
2. a Breach of Conditions Clause, including the following clause: "Notwithstanding anything contained elsewhere in this policy, any breach of a condition of the policy, whether by commission or omission by one of the parties hereby insured shall not prevent recovery by any other party who is innocent of such act or breach"; and
3. coverage for resultant damage from error in design.

9.2 WRAP-UP LIABILITY INSURANCE

The Tenant shall, during any demolition or construction, maintain or cause to be maintained comprehensive general liability insurance commonly called "Wrap-up" coverage, including contractual liability and products and completed operations liability, on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the Premises or Improvements or out of the operations of the Tenant, its contractor and its employees, agent, consultants, subcontractors and subconsultants in, or about the Premises or Improvements, with a limit of not less than five million dollars (\$5,000,000) for any personal or bodily injury, death, property damage or other claims in respect of any one accident or occurrence. Coverage shall include twelve (12) month completed operations coverage.

9.3 ERRORS AND OMISSIONS LIABILITY INSURANCE

Prior to commencing construction of the Improvements, the Tenant's contractor shall provide to the City of Surrey proof of Single Project Professional Liability and Errors and Omissions Insurance to a limit and with a deductible as specified in the City of Surrey Insurance Certificate - Preconstruction and Construction as may be updated from time to time, but in no case shall this limit be less than one million dollars (\$1,000,000). This coverage shall include a twelve (12) month maintenance period to commence when final approval of the construction has been received.

9.4 DEDUCTIBILITY

The Tenant may at its option place the insurance required to be maintained pursuant to Section 9.1 under a policy or policies in the amounts required less a reasonable deductible amount, the loss with respect to which would be required to

be borne by the Tenant, subject to increase from time to time to reflect general increases in inflation.

9.5 CO-INSURANCE

If any policy of insurance required under this Article 9 contains a co-insurance clause, the Tenant shall maintain or cause to be maintained at all times a sufficient amount of insurance to meet the requirements of any such co-insurance clause so as to prevent the Tenant from becoming a co-insurer under the terms of such policy or policies and to permit full recovery of the amount insured in the event of loss (subject to the provisions for a deductible amount set out in Section 9.4).

9.6 EVIDENCE OF INSURANCE AND APPROVAL OF INSURANCE

1. The Tenant shall deliver certificates of all insurance and/or copies of all insurance policies to the Landlord forthwith after obtaining same.
2. Certificates of insurance shall be provided on the City of Surrey Insurance Certificate form, and provide coverages outlined therein.
3. The Landlord, acting reasonably, shall have the right to approve the insurers and the insurance policies required under this Article 9. If the Landlord shall disapprove of the insurers or the insurance policies required under this Article 9, acting reasonably, the Tenant shall forthwith obtain or cause to be obtained new policies from an insurer and in a form satisfactory to the Landlord in accordance with the terms of this Lease.

9.7 NON-CANCELLATION

Each of the policies of insurance provided pursuant to this Article 9 shall contain an agreement by the insurer to the effect that it will not cancel or alter or refuse to renew such policy prior to its expiration, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) days' prior written notice to the Landlord.

9.8 PREMIUMS AND EVIDENCE OF PAYMENT THEREOF

The Tenant shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article 9. The Tenant will produce to the Landlord as soon as reasonably feasible, and in any event no later than thirty (30) days prior to the expiry of any policy of insurance placed pursuant to this Article 9, evidence of the renewal or replacement of such insurance.

9.9 NAMED INSURED

The Tenant shall cause the policy of insurance provided for in Section 9.1 to show the Landlord as an insured party, subject to the rights of any Leasehold Mortgagee.

9.10 LANDLORD'S RIGHT TO INSURE

The Tenant shall advise the Landlord of any cancellation, material alteration or lapse of any policies of insurance required to be provided pursuant to this Article 9. If the Tenant fails to effect and keep or cause to be kept such insurance in force, or if such insurance is in an amount less than the amount required under this Lease, the Landlord shall have the right, upon thirty (30) days notice to the Tenant in a non-emergency situation or forthwith in an emergency situation and without assuming any obligation in connection therewith, to effect such insurance at the cost of the Tenant and all outlays by the Landlord shall be payable by the Tenant to the Landlord forthwith upon demand without prejudice to any other rights and recourse of the Landlord hereunder. No such insurance taken out by the Landlord shall relieve the Tenant of its obligations to insure hereunder and the Landlord shall not be liable for any loss or damage suffered by the Tenant in connection therewith.

9.11 PARTICULAR CLAUSES

All policies of property insurance to be taken out pursuant to Section 9.1 shall contain a waiver of subrogation clause in favour of the Landlord and its councillors, officers, agents and employees. All policies of liability insurance to be taken out pursuant to Section 9.2 shall contain a cross-liability/severability of interests clause so that the policies will protect the Landlord and the Tenant and other insureds as if each were alone insured under such policies.

9.12 OTHER INSURANCE

1. The Tenant shall maintain "all risks" property insurance to the full Replacement Cost of the Tennis Centre with a stated amount co-insurance clause. This stated amount shall not be less than the full Replacement Value of the Tennis Centre including, without limitation, fixtures, equipment and controls. The policy shall include coverage for loss or damage by the perils included in the standard "all risks" policy issued by insurers from time to time and, without limitation, include:
 - a. the perils of flood and earthquake; and
 - b. a Breach of Condition clause, to include the following clause:
"Notwithstanding anything contained elsewhere in this policy, any breach of a condition of the policy, whether by commission or omission, by one

of the parties hereby insured shall not prevent recovery by any other party hereby insured who is innocent of such act or breach";

to the extent available and as would be obtained by a prudent owner of a similar facility, and in any event in an amount sufficient to prevent the City or the Tenant from being deemed to be a co-insurer.

2. Such "all risks" property insurance shall include the City as a named insured, and shall contain a waiver of subrogation against the City, its officers, employees and members of council.
3. The Tenant agrees to ensure that each volunteer worker has medical and hospital insurance adequate to cover the costs of treatment for any injury or disease which may arise out of their volunteer employment at the Tennis Centre. Further, the Tenant agrees that it will require each volunteer worker, prior to commencing his or her volunteer work at the Tennis Centre, to sign a waiver and release of all claims against the City in a form provided by the City.
4. The insurance monies payable under any or all of the policies of insurance referred to in Sections 9.12(1) and 9.12(6) shall, at the City's option, notwithstanding the terms of the policy or policies, be paid to the order of the mortgagee(s), or if there is no mortgagee(s), to the order of named insured as their interests appear. It is agreed that the mortgagee or named insureds (as the case may be) shall use such insurance monies for the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance monies are payable hereunder.
5. The Tenant shall obtain and maintain commercial general liability insurance, insuring against death, bodily injury and property damage suffered by others in connection with the Tennis Centre or arising out of the operations of the Tenant and its contractor in, on or about the Tennis Centre with a minimum per-occurrence limit of five million dollars provided that the minimum per occurrence limit shall be increased from time to time after written notice from the City to the Tenant, such increase to be related to increased risk associated with the Tennis Centre, requirements of applicable laws, general increases in inflation or trends in court judgments. The policy shall include, but not be limited to the following coverages:
 - a. products and completed operations;
 - b. blanket written contractual liability;
 - c. personal injury liability;
 - d. non-owned automobile liability;
 - e. employees as additional insureds;
 - f. broad form property damage;
 - g. cross liability; and

h. contingent employer's liability.

The City shall be added to the policy as an additional insured by endorsement.

6. The Tenant must obtain and maintain comprehensive boiler and machinery insurance on a repair and replacement basis without rights of subrogation or cross claim to a limit of the full Replacement Value of the Tennis Centre and its improvements and contents. The insurance policy shall be in the joint names of the City and the Tenant and shall contain a "joint loss agreement" between the property insurers and the boiler insurers in order to avoid disputes between insurers on matters of coverage.
7. The Tenant may at its option place the insurance required to be maintained pursuant to Sections 9.12(1) or 9.12(6) under a policy or policies in the amounts required less a reasonable deductible amount, the loss with respect to which would be required to be borne by the Tenant, subject to increase from time to time to reflect general increases in inflation.
8. The City, acting reasonably, shall have the right to require that the Tenant increase the amount of insurance coverage referred to in Sections 9.12 (1), 9.12(5) and 9.12(6) to reflect requirements of applicable laws, general increases in inflation or damage awards
9. The Tenant shall obtain and maintain comprehensive crime insurance with respect to all financial risks including employee dishonesty to the limit a prudent business operator would insure.
10. For the "all risks" property insurance and the comprehensive boiler and machinery insurance, the Tenant will provide the City with copies of all insurance policies. All of the insurance policies shall be subject to the approval of the City's Risk Manager and no change in any policy shall be made without the prior written approval of the City's Risk Manager.
11. The Tenant shall provide the City with evidence of all required insurance before commencing operation of the Tennis Centre. For the commercial general liability and comprehensive crime insurance, such evidence shall be a completed City of Surrey Insurance Certificate form. Upon request by the City, the Tenant shall provide certified copies of required insurance policies.
12. The City, acting reasonably, shall have the right to approve the insurers and the insurance policies required under this Article 9. If the City shall disapprove of the insurers or the insurance policies required under this Article 9, acting reasonably, the Tenant shall forthwith obtain or cause to be obtained new policies from an insurer and in a form satisfactory to the City in accordance with the terms of this Lease.

13. All required insurance shall be endorsed to provide the City with thirty (30) days advance written notice of cancellation or material change.
14. The Tenant shall use its best efforts to produce to the City no later than thirty (30) days prior to the expiry of any policy of insurance placed pursuant to this Lease, evidence of the renewal or replacement of such insurance.
15. The Tenant acknowledges that any requirement or advice by the City as to the amount of coverage under any policy of insurance will not constitute a representation by the City that the amount required is adequate and the Tenant acknowledges and agrees that it is solely responsible for obtaining and maintaining policies of insurance in adequate amounts.
16. If any policy of insurance required under this Article 9 contains a co-insurance clause, the Tenant shall maintain or cause to be maintained at all times a sufficient amount of insurance to meet the requirements of any such co-insurance clause so as to prevent the Tenant from becoming a co-insurer under the terms of such policy or policies and to permit full recovery of the amount insured in the event of loss (subject to the provisions for a deductible amount set out in Section 9.12(7)).
17. Each of the policies of insurance provided pursuant to this Article 5 shall contain an agreement by the insurer to the effect that it will not cancel or alter or refuse to renew such policy prior to its expiration, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) days' prior written notice to the City.
18. The Tenant shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article 9. The Tenant will produce to the City as soon as reasonably feasible, and in any event no later than thirty (30) days prior to the expiry of any policy of insurance placed pursuant to this Article 9, evidence of the renewal or replacement of such insurance.
19. The Tenant shall cause the policies of insurance provided for in Sections 9.12(1) and 9.12(6) to show the City as an insured party, and the policies of insurance provided for in Section 9.12(5) to show the City as an additional insured party, all subject to the rights of any Leasehold Mortgagee.
20. The Tenant shall advise the City of any cancellation, material alteration or lapse of any policies of insurance required to be provided pursuant to this Article 9. If the Tenant fails to effect and keep or cause to be kept such insurance in force, or if such insurance is in an amount less than the amount required under this Lease, the City shall have the right, upon thirty (30) days notice to the Tenant in a non-emergency situation or forthwith in an emergency situation and without assuming any obligation in connection

therewith, to effect such insurance at the cost of the Tenant and all outlays by the City shall be payable by the Tenant to the City forthwith upon demand without prejudice to any other rights and recourse of the City hereunder. No such insurance taken out by the City shall relieve the Tenant of its obligations to insure hereunder and the City shall not be liable for any loss or damage suffered by the Tenant in connection therewith.

21. All policies of property insurance to be taken out pursuant to Sections 9.12(1) and 9.12(6) shall contain a waiver of subrogation clause in favour of the City and its councillors, officers, agents and employees. All policies of liability insurance to be taken out pursuant to Section 9.12(5) shall contain a cross-liability/severability of interests clause so that the policies will protect the City and the Tenant and other insureds as if each were alone insured under such policies.

10. CONSTRUCTION

10.1 CONSTRUCTION AND OBSERVANCE OF LAW BY THE TENANT

The Tenant will commence construction of the Improvements on the Premises and any work or landscaping which may be required pursuant to other agreements between the Tenant and the Landlord, in accordance with the Construction Schedule and will pursue construction thereof diligently, continuously and in a good and workmanlike manner to completion in accordance with the approved Site Plan, the approved Plans and Specifications, the Construction Schedule, applicable Laws and such other agreements.

10.2 SECURITY

Upon approval of the Site Plan and Plans and Specifications by the Landlord in accordance with Section 19.1 4 and upon the Tenant entering into the construction contract or contracts in accordance with Section 19.1 3, the Tenant agrees to deposit with the Landlord security (the "Security") by way of a performance bond from a bonding company approved by the Landlord, which bond shall name the Tenant, the Leasehold Mortgagee providing construction financing, as obligees (if possible, and otherwise the benefit of such bond shall be assigned to the Landlord) and shall be on terms acceptable to the Landlord, a cash deposit or an irrevocable letter of credit approved by the Landlord or any combination thereof in the total amount of one hundred percent (100%) of the estimated cost, as approved by the Landlord, of the Improvements contemplated by the Plans and Specifications to be constructed upon the Premises by the Tenant. If required by the Leasehold Mortgagee providing construction financing, the Landlord will postpone its interest in any performance bond to such Leasehold Mortgagee provided such Leasehold Mortgagee enters into an agreement with the Landlord, on terms and conditions acceptable to both the Landlord and the Leasehold Mortgagee, which agreement, if approved, shall ensure that the Leasehold Mortgagee will continue to advance such construction financing as required to

complete construction of the Improvements. If at any time during construction the estimated cost of the completion of the Improvements exceeds the value of the Security held by the Landlord, the Tenant shall provide supplemental Security sufficient to cover the then increased estimated cost of completion, if the Security does not automatically so provide. In the case of abandonment of the Premises or termination of this Lease by reason of the Tenant default, the Landlord shall be entitled to draw such amounts against the Security then held or gain the benefit of the security as is necessary to complete construction of the Improvements. Subject to receipt by the Architect of statutory declarations required by the Architect as to the value of work completed, cost to complete all facilities, payment of all accounts to subcontractors and material suppliers to the Premises and provision for proper statutory holdbacks under the *Builders Lien Act* as amended, the Landlord shall, except in the case of security provided solely by a performance bond, from time to time agree to reduce the amount of the Security to the total of ten percent (10%) of the value of the then completed Improvements plus one hundred percent (100%) of the then current estimated cost of the Improvements remaining to be constructed pursuant to the Plans and Specifications for the Premises as valued solely by the Architect. No request by the Tenant for a reduction of the Security shall be made for any amount less than ten percent (10%) of the original estimated cost of the Improvements.

10.3 INITIAL CONSTRUCTION OF PREMISES

1. Prior to the commencement of any development on the Premises, the Tenant will apply to the City of Surrey for a Development Permit, Servicing Agreement and any other permits necessary to construct the Tennis Centre, and at the same time deliver to the Landlord the Site Plan and the Plans and Specifications of the proposed Improvements for the Landlord's approval, which approval the Landlord agrees not to unreasonably withhold.
2. The Tenant will not commence construction of the Tennis Centre prior to the issuance of a notice to proceed by the Landlord. Said issuance will require the Tenant to provide evidence, satisfactory to the Landlord, that the Tenant has satisfied this Lease's requirements in relation to:
 - (a) Articles 9 and 10 (bonds and securities);
 - (b) Section 19.1(3)(e) (construction schedule);
 - (c) Section 19.1(4)(c) (construction contract); and
 - (d) Section 19.1(4)(d) (construction financing)

(collectively, the "Notice to Proceed").
3. Upon receipt of the Landlord's approval, a building permit, and the Notice to Proceed, the Tenant will construct the Tennis Centre, together with other facilities ancillary to and connected with the Tennis Centre on the Premises, expeditiously and in a good and workmanlike manner and in substantial accordance with the Site Plan and the Plans and Specifications, all upon which

the issuance of the building permits by the City of Surrey are based, in compliance with the Laws.

4. No material change or related series of changes in excess of \$100,000 as determined in the sole opinion of the Architect shall be made from the Site Plan or the Plans and Specifications during the initial construction of the Premises without the prior written consent of the Landlord such consent not to be unreasonably withheld. No change, subject to provisions of Section 20.7, shall be made to the Construction Schedule without the prior written consent of the Landlord, such consent not to be unreasonably withheld.
5. The Tenant shall bear all costs of construction with respect to the Improvements including, without limiting the generality of the foregoing, any and all landscaping, parking, lighting, retention or detention ponds, federal, provincial or other sales taxes, customs and excise duties, freight costs, charges, development cost charges, utility or service connection fees or charges specific to the Premises.
6. The Landlord shall have access to the Improvements for inspection wherever it is in preparation or progress. The Tenant shall cooperate with the Landlord with respect thereto.
7. During the period of the initial construction of the Improvements and during any subsequent period of construction relating to any material alteration, reconstruction or replacement of all or any part of the Improvements, the Tenant shall deliver to the Landlord for each three (3) month period during such construction, a certificate from the Architect to confirm the percentage of the work done to the date of such certificate and the amount of such work as approved by such Architect provided that such three month period shall be reduced to one (1) month in the event the Architect's certificates are issued on a monthly basis during such construction.
8. The Tenant warrants for itself and all contractors and subcontractors that the Improvements, including all labour and materials, is and will be of good professional quality and conform in all respects to the Plans and Specifications, building permits and applicable Laws. Furthermore, Tenant warrants that the Improvements shall be free from defects in workmanship or materials, whether supplied by the Tenant or any contractor, subcontractors or other person providing labour or materials to the Improvements, for a period of one (1) year following the date of completion.
9. The contractor and any subcontractors shall be responsible to the Tenant and nothing contained in the contract documents shall create a contractual relationship between any contractor or subcontractor and the Landlord.

10. If at any time it appears to the Architect or the Landlord that the Improvements will not be completed by the date required by the Construction Schedule, then, without prejudice to any other right or remedies which the Landlord may have under this Lease, subject to Section 20.7, the Landlord may, at its option require the Tenant at the Tenant's expense to place on the job such additional personnel and equipment as will, in the opinion of the Landlord, acting reasonably, be necessary to totally complete the Improvements by such date and the Tenant agrees to do so.
11. Within sixty (60) days after the Improvements have been completed the Tenant, at its own expense, will deliver or cause to be delivered to the Landlord:
 - a. "as built" Plans and Specifications; and
 - b. a certificate from the Architect, addressed to the Landlord, that the Improvements have been constructed in accordance with the Site Plan and the Plans and Specifications.

10.4 SUBSTANTIAL COMPLETION

The Tennis Centre will be deemed to have been Substantially Completed when the Architect or engineer of the Tenant has issued a certificate to the Landlord, signed and sealed by the Architect or engineer, certifying that:

1. the Tennis Centre is substantially complete in all material respects in a proper and workmanlike manner and in accordance with the Site Plan and the Plans and Specifications submitted to and accepted by the Landlord upon which the issuance by the City of Surrey of any development permit and building permits for the Tennis Centre has been based, except for deficiencies the correction of which, in the opinion of the Architect or engineer, is adequately ensured;
2. all building bylaws and regulations of the City of Surrey have been complied with by the Tenant except for deficiencies the correction of which, in the opinion of the Architect or engineer, is adequately ensured;
3. all permits for occupancy that may be required by the City of Surrey have been obtained; and
4. the Tennis Centre is ready for occupancy.

For purposes other than subclause 10.5.2, Substantial Completion may be in respect of portions of the Tennis Centre.

10.5 DEADLINES FOR COMMENCEMENT OF CONSTRUCTION AND SUBSTANTIAL COMPLETION OF BUILDINGS

The Tenant covenants and agrees with the Landlord that, subject always to Article 9.12:

1. Commencement of construction of the Improvements will take place in accordance with the Construction Schedule; and
2. the Improvements will be Substantially Completed in accordance with the requirements of Section 10.4 on or before the day that is 730 days following the commencement of construction.

10.6 TERMINATION WHERE TENANT DEFAULTS IN COMMENCEMENT OF CONSTRUCTION OR SUBSTANTIAL COMPLETION

1. If commencement of construction or Substantial Completion of the Tennis Centre does not occur by the dates specified in Section 10.5, the Landlord will have the right and option to terminate this Lease and the provisions of Section 13.1 will apply.
2. In the event of a dispute between the Landlord and the Tenant as to whether or not the Landlord is entitled to terminate this Lease pursuant to the provisions of this Section 10.6, the Landlord and the Tenant agree to submit such dispute to arbitration in accordance with the provisions of Article 15.
3. In the event that this Lease is terminated pursuant to subclause 10.6.1, the Landlord shall be permitted to assign the Lease to another party, without compensation to the Tenant.

10.7 SUBSEQUENT CONSTRUCTION

The Tenant shall have the right, from time to time:

1. to conduct repairs and cosmetic renovations without the consent of the Landlord in accordance with the Laws; and
2. to undertake major construction, alterations, demolition, reconstruction or replacement of all or any part of the Improvements provided that the consent of the Landlord is first obtained, which consent shall not be unreasonably withheld, and provided that:
 - a. all construction and approval requirements of this Article 10 apply to such construction and are complied with; and

- b. any such construction, reconstruction or replacement is in accordance with plans and specifications including any site plan which the Landlord shall first have approved, such approval not to be unreasonably withheld.
- c. the Tenant observes and complies with all applicable Laws in force which pertain to or affect the construction, use or operation of the Premises, or the making of any repairs, replacements, alterations or additions to Improvements or the Premises; and
- d. the Tenant carries out all modifications, alterations or changes of or to the Premises and the conduct of operations in or use of the Improvements or the Premises which are required by any such authorities as set out above.

10.8 FIRE AND LIABILITY INSURANCE DURING CONSTRUCTION OF BUILDINGS

- 1. The Tenant will effect or will cause its contractor or contractors to effect prior to the commencement of construction of the Improvements, or any part of them, and will maintain and keep in force until the insurance required under Article 9 is effected, insurance:
 - a. protecting both the Tenant and the Landlord and the Landlord's servants and agents (without any rights of cross claim or subrogation against the Landlord) against claims for personal injury, death, or property damage, or other third-party or public liability claims arising from any accident or occurrence upon, in, or about the Premises and from any cause, including the risks occasioned by the construction of the Improvements, and to an amount reasonably satisfactory to the Landlord, for any personal injury, death, property, or other claims in respect of any one accident or occurrence; and
 - b. protecting both the Tenant and the Landlord and the Landlord's servants and agents from loss or damage (without any rights of cross claim or subrogation against the Landlord) to the Improvements and all fixtures, equipment, improvements, and building materials on the Premises from time to time both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Improvements) against fire, earthquake and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Landlord may reasonably require to be insured against to the full insurable value thereof at all times and in any event in the amount sufficient to prevent the Landlord or the Tenant being deemed co-insurer.

2. The proceeds of insurance that may become payable under any policy of insurance effected pursuant to this Section 10.8 will be payable to the Mortgagee and will be available to finance repair and reconstruction.
3. All of the provisions of Article 9 respecting insurance that are of general application will apply to the insurance applying during construction of the Tennis Centre required by this Section 10.8.

11. REPAIRS AND MAINTENANCE

11.1 LANDLORD NOT RESPONSIBLE

The Landlord shall not, during the Term, have any obligations to repair or maintain the Improvements or the Premises. For greater certainty, it is expressly agreed that the responsibility for the Improvements including future replacements shall be the full responsibility of the Tenant.

11.2 TENANT'S OBLIGATION TO REPAIR

The Tenant shall, at its own cost and expense, repair, renovate, replace and maintain the Improvements and the Premises in good order and repair at all times during the Term. Such repair and maintenance shall be in all respects to a standard commensurate with a first class Tennis Centre which would be maintained by a prudent owner of a similar facility and shall be carried out in accordance with Article 10. The Tenant shall promptly provide to the Landlord copies of any liens, work orders or notices or other communications received dealing with the state of repair of the Improvements or the Premises. Upon reasonable advance notice, the Landlord or its agents may inspect the state of repair of the Improvements.

12. DAMAGE OR DESTRUCTION

12.1 CONTINUATION OF RENT

The partial or complete damage to or destruction of the Improvements shall not terminate this Lease (except as set out in Section 12.3) or entitle the Tenant to any abatement of Rent.

12.2 REPAIR AND REPLACEMENT BY THE TENANT

In the event of partial or complete damage to or destruction of the Improvements, the Tenant shall (except as set out in Section 12.3) and at its sole cost and expense either replace or cause to be replaced the Improvements or part of the Improvements damaged or destroyed with new Improvements in accordance with the original approved Plans and Specifications, or such other plans as the Landlord shall approve, or repair or reconstruct such damage or destruction. Any such replacement, repair or reconstruction shall be commenced within a

reasonable period of time, and shall be completed within 24 months after the occurrence of such damage or destruction or such lesser time period as may be provided for in a Leasehold Mortgage for making any such replacement, repair or reconstruction and shall be carried out in accordance with Articles 9, 10 and 11.

12.3 TENANT'S RIGHT TO TERMINATE

Notwithstanding Sections 11.2 and 12.2, in the event of damage to or destruction of the Improvements to the extent of more than fifty percent (50%) of the Replacement Cost of the Improvements as certified by the Architect, the Tenant, at its option exercisable by notice to the Landlord within one hundred and seventy (170) days after such damage or destruction and only with the consent of any Leasehold Mortgagee where such consent is necessary, may decline to replace, repair, or reconstruct the Improvements and instead demolish all Improvements on the Premises and return the Premises to a vacant state in compliance with Section 13.1 all at its sole cost and expense, and terminate this Lease (as well as the Partnering Agreement) and, in such event, all insurance proceeds shall be payable, subject to the rights of any Leasehold Mortgagee under this Lease, firstly to reimburse the Tenant for all costs and expenses necessarily incurred by it in the demolition and restoration of the Premises as aforesaid, secondly the balance to be divided between the Tenant and the Landlord as follows:

1. to the Tenant, in that proportion that the number of days remaining in the Term after the date of such damage or destruction bears to thirty (30) years; and
2. to the Landlord, the balance.

13. REMEDIES OF THE LANDLORD

13.1 DEFAULT AND RIGHT TO RE-ENTER

If and whenever:

1. the Tenant fails to pay any Rent, or other amounts due under the terms of this Lease twenty-one (21) days next after receipt of notice of default in payment of Rent, or other amounts due;
2. the Tenant fails to observe or perform any of the other terms, covenants or conditions of this Lease to be observed or performed by the Tenant (in this Section 13.1 referred to as a "Non-Monetary Default"), provided the Landlord first gives the Tenant sixty (60) days' notice of any such Non-Monetary Default and unless the Tenant remedies the Non-Monetary Default or, if it is not capable of being remedied within that period, the Tenant has commenced to remedy the same within such sixty (60) day period and thereafter proceeds to remedy the same with reasonable diligence;

3. the Tenant shall be wound up, or its existence as a legal entity is terminated; but notwithstanding such provisions, if any Leasehold Mortgagee shall, within thirty (30) days of its being advised in writing by the Landlord of the occurrence of any event of default affecting the Tenant pursuant to the preceding provisions of this Section 13.1, forthwith undertake to remedy and diligently proceed to remedy any actual default in the performance of the obligations of the Tenant under this Lease to the satisfaction of the Landlord, the Landlord shall not exercise the remedies available to it until such time as there shall be an actual default in the performance of the obligations of the Tenant under this Lease which shall not be remedied pursuant to this Section 13.1 3; or
4. the Tenant and Landlord mutually agree to terminate this Lease;

then and in every such case the Landlord in addition to any other rights or remedies it has pursuant to this Lease or by law, may re-enter and repossess the Premises subject to Section 13.6 and such relief as may be available at law or in equity to the Tenant and provided that, notwithstanding the foregoing, the Landlord shall have no right to re-enter or repossess the Premises for any Non-Monetary Default which is minor, immaterial or not reasonably likely to prejudice the Landlord in any material way, without limiting the Landlord's other remedies for such a Non-Monetary Default.

If the Landlord terminates this Lease in accordance with the provisions of Section 13.1(2), the Tenant shall surrender the Tennis Centre to the Landlord in accordance with Section 2.4 of the Lease.

If there is a material default by the Landlord of any of the Landlord's duties or obligations under this Lease, which defect is not remedied within 60 days of notice being provided to the Landlord by the Tenant, the Tenant may terminate this Lease.

13.2 LANDLORD'S RIGHT TO CURE

Notwithstanding the foregoing and without limiting any other remedies the Landlord may have arising out of this Lease or at law, upon the happening of a default by the Tenant under this Lease, and the failure to remedy such default within the time limits set forth in Section 13.1, the Landlord shall have the right, without any re-entry or termination of this Lease, to enter upon the Premises and cure or attempt to cure such default (but this shall not obligate the Landlord to cure or attempt to cure any such default or, after having commenced to cure or attempt to cure such default, to continue to do so).

13.3 TERMINATION, RELETTING AND DAMAGES

In addition to any other rights detailed in Section 13.1 the Landlord may, subject to Section 13.6 elect to re-enter the Premises as provided in Section 13.1, or if it

takes possession pursuant to legal proceedings, it may either terminate this Lease or it may from time to time without terminating this Lease make such alterations and repairs as are necessary in order to relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such Rent and upon such other terms, covenants and conditions as the Landlord in its sole discretion considers advisable.

13.4 LANDLORD EXPENSES

If legal suit is brought for recovery of possession of the Premises, for the recovery of Rent, or any other amounts due under this Lease, or because of the breach of any other terms, covenants or conditions by the Tenant to be kept or performed, and a breach is established, the Tenant shall pay to the Landlord all reasonable expenses incurred therefor, including legal fees (on a solicitor and client basis), unless a court shall otherwise award.

13.5 REMOVAL OF CHATTELS

In case of removal by the Tenant of the goods and chattels of the Tenant from the Premises, the Landlord may follow same for thirty (30) days.

13.6 PROTECTION OF LEASEHOLD MORTGAGEE

The Landlord agrees, for the benefit of any Leasehold Mortgagee of whom notice and an address for service has been given to the Landlord as follows:

1. the Landlord shall not exercise any of its rights or remedies against the Tenant consequent upon any default or non-performance by the Tenant of any of its obligations under this Lease unless, and it shall be a condition precedent to any such exercise that:
 - a. the Landlord shall have given each such Leasehold Mortgagee notice specifying the particulars of such default or non-performance;
 - b. in the case of non-payment of Rent or other money payment, the same shall not have been remedied within a period of twenty-one (21) days after such notice to the Leasehold Mortgagee; and
 - c. in the case of any other breach or non-performance, the same shall not have been remedied within a period after such notice to such Leasehold Mortgagee which is the greater of ninety (90) days and such longer time as would have reasonably sufficed for the remedying of such breach of non-performance if the Leasehold Mortgagee had commenced to remedy the same within such ninety (90) day notice period and thereafter proceeded to remedy the same with reasonable diligence (provided that such Leasehold Mortgagee shall not be entitled to the advantage of such longer time unless it shall have duly commenced to remedy the same

within such period and shall actually have proceeded thereafter to remedy the same with reasonable diligence, and shall have provided to the Landlord reasonable evidence as to the steps being taken by the Leasehold Mortgagee toward remedying the same);

2. if the Landlord shall become entitled to and shall terminate this Lease by re-entry, forfeiture or otherwise, on account of any breach or non-performance by the Tenant, the Landlord shall give written notice to every such Leasehold Mortgagee promptly upon any termination of this Lease being effected accompanied by particulars of the nature and extent of the default which brought about termination. The Landlord agrees that, upon the request of any Leasehold Mortgagee if such request is made in writing within sixty (60) days after the giving of the above-mentioned notice by the Landlord, the Landlord will grant to such Leasehold Mortgagee or an entity which is the nominee of and controlled by such Leasehold Mortgagee (the "Nominee") (or, if more than one such Leasehold Mortgagee shall make such a request, whichever of such Leasehold Mortgagees has priority as between the Leasehold Mortgagees making such request by virtue of having the most senior Leasehold Mortgage) a new lease of the Premises for a term equal in duration to then remaining residue of the Term of this Lease upon all of the same terms, covenants, provisions, agreements and conditions as are contained in this Lease including, for greater certainty, the provisions of Articles 2 and 3 of this Lease, and remain to be fulfilled or complied with subject only to the same conditions of title as existed on the date of termination; provided, however, that the Landlord's obligation to grant such new lease is conditional upon the Landlord being paid all its reasonable expenses in connection with such new lease and all Rent and other monies which would have been lawfully due and owing under or contemplated by this Lease to the date of such new lease other than accelerated rent and any damages which may be payable to the Landlord by the Tenant under this Lease; and
3. the provisions of this Section 13.6 shall be enforceable by every Leasehold Mortgagee intended to be benefited thereby, notwithstanding that it is not a party to this Lease and whenever requested by the Tenant or any Leasehold Mortgagee the Landlord will enter into an agreement directly with such Leasehold Mortgagee containing the terms of this Section 13.6.

13.7 REMEDIES OF LANDLORD CUMULATIVE

The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at law or equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity.

14. CONTESTATION

14.1 CONTESTATION BY THE TENANT

Provided that the Landlord has received prior written notice the Tenant shall have the right, at its sole expense:

1. to contest or apply for a reduction of the amount, legality or mode of payment of all utility charges, Taxes, rates, duties, charges, assessments or fees of any nature whatsoever, to contest any claim for lien levied or charged in respect of the Improvements or the Premises; and
2. to defend and to prosecute any claims and in general to take any appropriate action to protect and enforce any rights or interest it may acquire by virtue of this Lease.

14.2 NO DEFAULT DURING CONTESTATION

During the period of any contest, application or action taken in accordance with Section 14.2 no default shall be deemed to have occurred in the performance of the covenant, obligation or agreement under this Lease which is the subject matter of such contest, application or action; provided, however, that during the period of any such contest, application or action there shall be no abatement of Rent or breach of Article 2 by reason of this Section 14.2.

14.3 NO SALE OR FORFEITURE

No contestation by the Tenant shall be conducted in such manner as to cause or threaten the loss of the Premises through sale or forfeiture. If any loss of the Premises is threatened, the Tenant will take such steps as the Landlord reasonably requires to ensure that such loss does not occur.

15. ARBITRATION

15.1 ARBITRATION

1. Any controversy, dispute or claim between the parties hereto arising out of or relating to this Lease, or the breach, termination, or validity thereof (a "Dispute"), shall be finally settled by arbitration in accordance with the *Commercial Arbitration Act* of British Columbia, effective as of the commencement of the arbitration. The Notice of Intent to Arbitrate shall contain the following:
 - (a) a description of the contract under which the dispute has arisen;
 - (b) a statement of the issue(s) in dispute;

- (c) a request that the dispute be referred to arbitration;
 - (d) a description of the claim being made;
 - (e) a statement of the remedy being sought.
2. The Notice of Intent to Arbitrate and all other notices in an arbitration proceeding shall be served by delivery to the address for notices set out in Section 10.1.
 3. The arbitration shall be held in Surrey unless the parties mutually agree to have the arbitration held elsewhere.
 4. Judgment upon the award made therein may be entered by any court having jurisdiction thereof, provided, however, that nothing contained in this Section shall be construed to limit or preclude a party from bringing any action in any court of competent jurisdiction for injunctive or other provisional relief to compel the other party to comply with its obligations under this Lease.
 5. The arbitrators shall have no power to waive, alter, amend, revoke, or suspend any of the provisions of this Lease, provided, however, that the arbitrators shall have the power to decide all questions with respect to the interpretation and validity of this Article.
 6. An arbitrator may not act as an advocate for the party nominating him or her, and all three arbitrators shall be impartial and unbiased.
 7. A majority vote by them provided, however, that lacking such a majority in the case of questions of amounts of dollar or other quantities, the vote for the greatest amount or quantity shall be deemed to be a vote for the amount or quantity next in magnitude in order to form a majority for such vote.
 8. The arbitrators shall permit discovery in such circumstances, taking into account the needs of the parties and the desirability of making discovery expeditious and cost-effective. Any such discovery shall be limited to information directly relevant to the controversy or claim in arbitration and shall be concluded within thirty (30) days after the appointment of the third arbitrator.
 9. A party may appeal an award to the Court system on a question of law only.
 10. The arbitrators shall award the prevailing party full compensation for all costs and expenses of the arbitrators, cost and fees of the proceedings and solicitor-client costs and expenses.

11. An award shall be made by the arbitrators within 30 days of the arbitration hearing.

16. ESTOPPEL CERTIFICATES

16.1 ESTOPPEL CERTIFICATES

Each of the parties shall, at any time and from time to time during the Term, upon not less than thirty (30) days prior notice by any other party or a Leasehold Mortgagee, execute and deliver to the other party a statement in writing certifying whether or not this Lease is in good standing, unmodified and in full force and effect, or where requested, that the particular terms thereof have been made or satisfied, as the case may be, or if there have been modification whether or not the same are in good standing, in full force and effect as modified, stating the modifications, the dates to which the Rent and other charges, if any, have been paid in advance, the defaults, if any, on the part of the party requesting such statement known to the party from whom such statement is requested and the action taken or proposed to be taken by such last-mentioned party with respect to the same; it being intended that any such statement delivered pursuant to this Article 16 may be relied upon by any prospective purchaser of the Landlord's estate, any mortgagee of the freehold, any assignee or Sublessee of the Tenant's leasehold estate or any Leasehold Mortgagee, as the case may be. This Article 16 is not intended to affect the rights under this Lease as between the Landlord and the Tenant.

17. APPROVALS, NOTICES ETC.

17.1 APPROVALS

Where by a provision of this Lease an approval, consent or agreement of a party (hereinafter called an "Approval") is required, unless the contrary is expressly provided in this Lease:

1. the party whose Approval is required will, within thirty (30) days or such other period of time specified in this Lease after receipt of a request for Approval which request shall contain reasonable detail, and which request shall include a statement incorporating the provisions of Section 17.2, give notice to the requesting party either that it gives its Approval, or that it withholds its Approval, setting forth in reasonable detail its reasons for withholding;
2. if the notification referred to in Section 17.2 is not given within the applicable period of time, the party whose Approval is requested will be deemed conclusively to have given its Approval in writing;

3. unless otherwise provided herein, an Approval may not be unreasonably withheld; and
4. where applicable, a dispute as to whether or not the Approval has been unreasonably withheld will be resolved by arbitration pursuant to Article 15.

17.2 NOTICES

Any notice herein provided for or given hereunder shall be in writing and shall be sufficiently given if mailed in Canada by prepaid registered mail, faxed or personally delivered, in either case to the addresses as follows:

if to the Landlord:
City of Surrey
14245 – 56 Avenue
Surrey, British Columbia
V3X 3A2

Fax No. (604) 599-1613

Attention: Manager, Real Estate

CC: City Solicitor

if to the Tenant:
0956338 B.C. Ltd.
#400 – –8621 – 201 Street
Langley, British Columbia
V2Y 0G9

Fax No. (604) 888-9227

Attention: Lawrence Jurovich

or at such other addresses as the parties shall advise in writing from time to time in the manner aforesaid, and any notice so given shall be deemed to be received by the party to whom it is given, if delivered when delivered on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without effort), and if mailed by prepaid registered post, other than during an actual or threatened postal disruption, on the fifth (5th) Business Day following the day of mailing. Either party hereto may change such party's address for purposes hereof by notice to the other party.

Notice of default referred to in Article 9 shall specify the nature of the alleged breach of this Lease.

18. EXPROPRIATION

18.1 EXPROPRIATION

If during the Term of this Lease title is taken to the whole or any part of the Premises by any competent authority under the power of eminent domain or by expropriation or by any other means and such taking in the reasonable opinion of the Landlord and the Tenant does not leave a sufficient remainder to constitute an

economically viable area, then this Lease shall terminate in accordance with the applicable provisions of the applicable expropriation Laws once the compensation hereinafter referred to has been paid, and the parties shall be entitled to separately advance their claims for compensation for the loss of their respective interests and to receive and retain such compensation as may be awarded to each respectively. The Landlord shall not take expropriation proceedings with respect to the Premises or any part thereof during the Term.

19. CONDITIONS

19.1 CONDITIONS SUBSEQUENT

The Landlord and the Tenant acknowledge and agree that notwithstanding that the Term of the Lease may have then commenced, this Lease will terminate if the following conditions are not waived or satisfied by January 30, 2015:

1. that the Tenant, acting reasonably, is satisfied:
 - a. with the result of its soils inspection conducted pursuant to Section 4.4 and
 - b. that electricity and gas service for the Tennis Centre will be available from the suppliers of such services at a location acceptable to the Tenant;
2. that the Premises have been rezoned to a zoning classification that will permit construction of the Improvements and operation of the Tennis Centre;
3. that the Landlord has approved:
 - a. the Site Plan prepared by the Tenant;
 - b. the Plans and Specifications prepared by the Tenant;
 - c. the specifications for the services to be provided by the City pursuant to Section 10.3;
 - d. any changes to this Lease requested by such Leasehold Mortgagee pursuant to Section 7.7; and
 - e. the Construction Schedule for the development and construction of the Improvements; and
4. that the following has been achieved at the sole cost and expense of the Tenant:
 - a. the City has issued a building permit for the construction of all Improvements on the Premises;

- b. the Tenant has delivered all bonds and insurance policies required under this Lease to the Landlord;
- c. the Tenant has entered into a construction contract or contract to construct all Improvements and all ancillary services or facilities required in connection therewith with a contractor or contractors satisfactory to the Landlord; and
- d. the Tenant has provided evidence satisfactory to the Landlord and that the Tenant has arranged all funds, both equity and loans, necessary to develop and construct the Improvements and that all requirements of the Tenant's Leasehold Mortgagee to fund the Tenant's construction loan have been satisfied.

The conditions set out in Sections 19.1 (1)(a) and 19.1 (1)(b) are for the sole benefit of the Tenant and may be waived by it, by written notice to the Landlord given to the Landlord on or before the date for satisfaction of such conditions. The condition set out in Section 19.1(2) is for the benefit of both parties and may only be waived by written notice with the mutual consent of both parties. The conditions set out in Sections 19.1(3) and 19.1(4) are for the sole benefit of the Landlord. The Landlord may, by written notice to the Tenant, waive any one or more of the conditions referred to in Sections 19.1(3) and 19.1(4) in whole or in part.

19.2 NOTICE OF SATISFACTION

The Tenant agrees to give notice to the Landlord as soon as the conditions set out in Section 19.1(1)(a) have been satisfied or waived, setting forth the date of satisfaction or waiver. The Landlord agrees to give notice to the Tenant as soon as any condition set out in Sections 19.1(3) or 19.1(4) have been satisfied or waived, setting forth the date of satisfaction or waiver.

19.3 NOTICES BY FAX

Without limiting the application of Section 17.2, notices of waiver or satisfaction of any of the conditions precedent pursuant to this Article 19 may be given by written fax, with receipt confirmed by telephone call, given to the following addresses and fax numbers:

to the Landlord:
City of Surrey
Attn.: City Solicitor
Fax: (604) 599-1613
Tel: (604) 591-4124

to the Tenant:
0956338 B.C. Ltd.
Attn.: Lawrence Jurovich
Fax: 604-888-9227
Tel: (604) 356-3732

19.4 TERMINATION

If this Lease is terminated pursuant to Article 19, then notwithstanding anything to the contrary the Tenant at its sole expense shall demolish and remove any Improvements that may have been constructed by it, including all pilings and subsurface structures.

20. GENERAL

20.1 NUMBER AND GENDER

All words contained in this Lease shall be read as the singular or the plural and as the masculine, feminine or neuter gender as may be applicable in the particular context, and shall result in the particular clause being given reasonable interpretation. Words importing Person shall also include a body politic or corporation.

20.2 HEADINGS, INDEX AND CAPTIONS

The headings to the paragraphs, the index and the captions contained in this Lease have been inserted as a matter of convenience and for reference and in no way define, limit or enlarge the scope or meaning of this Lease or any provisions hereof.

20.3 CURRENCY

All dollar amount referred to in this Lease are Canadian dollars.

20.4 GOVERNING LAW AND SEVERABILITY

This Lease shall be construed and governed by the laws of the Province of British Columbia. All of the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof. Should any provisions of this Lease be illegal or not enforceable they shall be considered separate and several from the Lease and its remaining provisions shall remain in force and be binding upon the parties hereto as though the illegal or unenforceable provisions had never been included.

20.5 ACCOUNTING PRINCIPLES

Except as otherwise provided in this Lease, all calculations and financial statements referred to herein shall be made in accordance with generally accepted accounting principles as defined in the Canadian Institute of Chartered Accounts' Handbook and the Canadian Institute of Public Real Estate Companies' Handbook and, in particular, their guidelines for charities, as amended from time to time, consistently applied and practices applicable to the Canadian real estate development industry.

20.6 ENTIRE AGREEMENT

This Lease and any other agreements specifically referred to herein constitute the entire agreement among the parties pertaining to the Lease of the Premises to the Tenant and supersede all prior agreements, understanding, negotiations and discussions, whether oral or written, between the parties.

20.7 FORCE MAJEURE

Notwithstanding anything to the contrary in this Lease if either party shall be bona fide delayed or hindered in or prevented from the performance or observance of any work, term, covenant or act required by this Lease by reason of strikes, labour troubles, inability to procure materials or services, failure of power, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, legal or administrative tribunal proceedings commenced by third parties, or other reason of *force majeure*, then performance of such work term, covenant or act shall be excused for the period of the delay and the period for the performance of any such work term, covenant or act shall be extended for a period equivalent to the period of such delay including reasonable extensions arising as a result of seasonal conditions resulting from such delays. The provisions of this Section 20.7 shall not operate to excuse the Tenant from the prompt payment of Rent or any other payments required by the terms of this Lease.

20.8 AMENDMENTS

No modification, amendment, waiver or termination of this Lease shall be binding unless executed in writing by the Landlord and the Tenant or if applicable by the terms of this Lease, any Leasehold Mortgagee.

20.9 NON-WAIVER

No waiver of any of the provisions of this Lease shall be deemed to be or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.

The failure of either party hereto to enforce, at any time or for any period of time, any provision of this Lease shall not be construed as a waiver of such provision or estoppel nor the right of such party where after to enforce each and every provision.

20.10 CALCULATIONS

Except as otherwise provided in this Lease, all calculations required or permitted shall be made on the basis of sound accounting principles as practiced in the commercial real estate industry applied on a consistent basis.

20.11 TIME OF ESSENCE

Time shall be of the essence of this Lease.

20.12 RELATIONSHIP OF PARTIES

This Lease shall not be deemed to create any relationship between the parties other than that of landlord and tenant as to the Premises. For greater certainty, the parties agree that they are not partners or joint venturers and that the Tenant is not the agent or representative of the Landlord and has no authority to bind the Landlord, and that nothing herein shall derogate from the duties and powers of the City as a municipality.

20.13 CONTINUATION OF CERTAIN OBLIGATIONS

Wherever specifically provided for in this Lease or if it is necessary for the full implementation of any provision of this Lease, the obligations of a party shall survive the expiration of the Term or the earlier termination of this Lease.

20.14 NO VOLUNTARY SURRENDER

The Tenant shall not have the right to surrender this Lease without the prior written consent of the Landlord and, if applicable by the terms of this Lease, any Leasehold Mortgagee.

20.15 REGISTRATION OF LEASE

The Landlord and the Tenant shall execute and deliver this Lease in a form suitable for registration in the appropriate Land Title Office, provided that the Tenant shall pay all costs of obtaining necessary plans of the Premises in form acceptable for such registration and the Tenant shall pay all costs of registering this Lease in the appropriate Land Title Office.

20.16 FURTHER ASSURANCES

Each party agrees to make such further assurances as may be reasonably required from time to time by any other party to more fully implement the true intent and effective function of this Lease.

20.17 STATUTORY RIGHT-OF-WAY

The Landlord hereby reserves the right to grant other dispositions of the Premises, excluding areas occupied by the structure of the Tennis Centre but for greater certainty including all exterior areas, parking areas and access roads, by way of statutory right-of-way for purposes necessary for the installation, operation and maintenance of the City's undertaking, such as, by way of example only, water lines or storm or sanitary drainage, provided any such statutory right-of-way shall not materially adversely affect the operation of the Tennis Centre. The Tenant

agrees that a grant made under this Section 20.17 shall not constitute a breach of the Landlord's covenant for quiet enjoyment, and the Tenant hereby consents to any such grant and will forthwith execute and deliver and cause any Leasehold Mortgagee to execute and deliver to the Landlord such instruments as may be necessary to subordinate the Tenant's right and interest in the Premises under this Lease to any such grant.

DRAFT

20.18 SUCCESSORS AND ASSIGNS

All of the provisions of this Lease shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Lease as follows:

CITY OF SURREY, by its authorized signatories

Per: _____
Mayor

Per: _____
Clerk

Date: December _____, 2013

0956338 B.C. LTD., by its authorized signatory

Per: _____

Date: December ____, 2013

LAWRENCE JUROVICH

Date: December ____, 2013

Schedule A

SITE PLAN

DRAFT

Schedule B

TENNIS CENTRE OPERATING TERMS

1. COMMUNITY ACCESS AND PARTICIPATION

1.1 Community Access.

The Tenant agrees with the City to operate the Tennis Centre in accordance with the Community Access Principles.

1.2 Program Advisory Committee.

The Tenant will establish a committee (the "Program Advisory Committee") composed of five (5) members. Two members shall be representatives of the City, two shall be representatives of the Tenant and the remaining member is to be a resident of Surrey who is currently served by the Tennis Centre or who been a regular user of the Tennis Centre in the previous two (2) years. The Program Advisory Committee will act as an advisory group to give advice to the general manager of the Tennis Centre with respect to Tennis Centre programs and the operation of the Tennis Centre. The Program Advisory Committee shall have no power to make decisions with respect to, *inter alia*, the management, operation or control of the Tennis Centre.

1.3 Report to City.

The Tenant will convene one meeting of the Program Advisory Committee each year during the Term to give a year-end report with respect to the operation of the Tennis Centre (the "Annual Review").

During the Annual Review, the City may identify issues as being in need of improvement. For issues so identified by the City, the Tenant must take steps to bring the issue into compliance with this Agreement and report back to the Program Advisory Committee within 90 days of the date of the Annual Review.

In the event that any issue (as identified by the City) is not remedied to the satisfaction of the City within the time provided by this Section, any such unremedied issue(s) will constitute a material breach of the Lease.

The Tenant may also be called to report to the Parks and Recreation Commission from time to time regarding matters related to the Tennis Centre.

1.4 Continuous Operation.

The Tenant covenants and agrees that it shall operate the Tennis Centre continuously, diligently and competently and in accordance with standards consistent with the City's recreational centres such as the Surrey Sports and Leisure Complex in Fleetwood.

2. COMMUNITY ACCESS PRINCIPLES

The following principles will be used to guide the development, implementation and operation of the Tennis Centre for the express purpose of creating a facility that meets the tennis training, skill development and programming needs of the people of Surrey.

These principles have been developed cooperatively between the City and the Tenant to create a mutually successful agreement.

2.1 Community Involvement

- .1 The City and the Tenant both believe it is important that the community be involved in the planning, implementation and operation of the Tennis Centre and its programs.
- .2 During the planning process, the public will be given regular and ongoing opportunities to voice their comments, suggestions and concerns.

2.2 Planning, Design and Construction

- .1 the Tenant is responsible for the planning, design and construction of a tennis centre that meets the needs of the community. The City will appoint a liaison to act in an advisory capacity throughout the planning, design and construction period. The Tenant agrees to include the City liaison in the Tennis Centre design process and consider suggestions brought forward by the City liaison throughout the design and construction process.
- .2 The Tennis Centre is anticipated to include, but not be limited to: six indoor tennis courts; four outdoor tennis courts; an access drive and parking area as well as a support building that contains washrooms, change rooms, administrative office, front desk and possibly a juice bar/sandwich bar and facilities for conditioning, physiotherapy and sport psychology.
- .3 Public participation is an important aspect of the project. The Tenant is responsible for a complete public process as a component of project planning and design.

2.3 Tennis Centre Operations and Management

- .1 The Tenant will be responsible for the programming, operation and maintenance of the Tennis Centre but must meet the requirements of these Community Access Principles and the applicable City by-laws and policies.
- .2 The Tenant shall retain the services of a Tennis Centre Manager who will be situated at the Tennis Centre on a full time basis and whose primary duties are the management and operation of the Tennis Centre. Program Coordinators, instructors, coaches and support staff shall be retained by the Tenant as needed.
- .3 The Tenant will operate and maintain the Tennis Centre at a standard of care that is consistent with leisure facilities operated by the City.

2.4 Program Cooperation

- .1 To ensure that both financial sustainability and community needs are met, the Tenant will work in consultation with the City to orient its programs and services to best meet community needs.
- .2 The City and the Tenant will work cooperatively to ensure that the Tenant's role as the Tennis Centre operator is viewed by Surrey residents as a successful model for the delivery of leisure services in the community.
- .3 The Tenant will cooperate and coordinate their tennis services with the City of Surrey to ensure that a complete range of tennis programs and services, satisfactory to the Program Advisory Committee, are provided in the City of Surrey.
- .4 As competing tennis programs and facilities would probably be to the detriment of both parties, the City will endeavour, within 3 kilometres of the Tennis Centre, to only provide complementary facilities and programs.

2.5 Use of the Tennis Centre

- .1 The Tennis Centre shall be used by the Tenant to provide tennis training and instruction to participants on a fee for service basis and to provide court time to participants on a pay to play basis throughout the year. Recreational, instructional and developmental programs will be offered for juniors, adults and seniors. The Tennis Centre will also provide support services (which may include, but shall not be limited to: sports psychology, counseling, physiotherapy and massage therapy) for athletes as well as training and certification programs for tennis coaches.
- .2 Activities in the Tennis Centre will consist of tennis programs for approximately 70% of the time and general play for 30% of the time. General play shall be on a pay to play basis at rates that will be no more than 100% of market rates at

comparable, publically accessible facilities in the Lower Mainland of British Columbia. For context, “comparable facilities” would include, but not be limited to: UBC Tennis Centre; People’s Court Tennis Club, Coquitlam; and Grant Connell Tennis Centre, North Vancouver. Tennis programs will be offered to all segments of the population and shall consist of Learn-to-Play and Starter Programs as well as training programs for children, adults and seniors who wish to improve their tennis skills.

- .3 Programs for elite athletes will be limited to approximately 5%, and at no point in time will ever exceed 10% of the total daily court time available at the Tennis Centre.
- .4 The Tenant will strive to achieve a balance of prime-time and non prime-time, satisfactory to the Program Advisory Committee, for all users and program types. For greater clarity, “prime time” means:
 - a. from Monday to Friday: 4PM until 10PM; and
 - b. on Saturday, Sunday and statutory holidays: from 7AM until 4PM .

2.6 Community Access

- .1 The City and the Tenant are committed to ensuring equity in the provision and access to tennis programs, training and tennis related services.
- .2 The Tenant will provide full public access to the Tennis Centre’s programs and services. Community access will be of a broad nature, without discrimination and open to all, regardless of age, gender, ability, race, religion or economic circumstances.
- .3 The Tenant will develop an access program that is similar to the City’s Leisure Access Program to ensure that cost and economic hardship will not be a barrier for any participant who is passionate about tennis. An agreed minimum number of opportunities for public access, as determined annually by the Program Advisory Committee as part of the Annual Review, will be made available each week and each year in the Tennis Centre. The Tenant has the right to cancel any particular program if enrollment is not sufficient for that program to cover its direct costs.
- .4 The Tenant will engage in an extensive school outreach program and will develop tennis programs in consultation with Surrey schools and the Surrey School District.
- .5 The Tenant will offer a number of community event days at the Tennis Centre and will participate in City events by providing tennis related activities at a minimum of two of the six annual Town Centre Community Festivals each year.

2.7 Program and Tennis Centre Use Reporting and Review

- .1 The Tenant shall establish a Program Advisory Committee made up of five members. Two members shall be representatives of the City, two shall be representatives of the Tenant and one member shall be a Surrey resident, acceptable to both the City and Tenant, who is currently served by the Tennis Centre or who has been a regular user of the Tennis Centre during all or a portion of the preceding two years. The Surrey resident representative may only be removed as mutually agreed by the City and Tenant.
- .2 The PAC will act as an advisory group to give advice to the Tennis Centre Manager on maintenance issues, operating issues and programming of the Tennis Centre. The PAC shall have no power to make decisions with respect to the management, operation or control of the Tennis Centre. However, the reports provided to the PAC by the Tenant shall form the basis of the City's evaluation of performance or non-performance by the Tenant.
- .3 Commencing in 2014, and every year thereafter, the Tennis Centre Manager shall organize a meeting of the PAC at least twice per annum: once to review operational plans for the following year and once to review the actual operational performance over the past year. The Tenant is responsible for all administrative procedures associated with these meetings and for the preparation of minutes and a written record of the meeting and documentation of the PAC recommendations. All reports to the PAC shall be in written form.
- .4 The annual Summary of Operations for the previous year will include statements related to maintenance, operating issues, programming, user numbers and demographics for each program type (including the number of Leisure Access participants and an estimate of the monetary value of the Leisure Access Program), as well as an overview of the financial performance and gross operating profit or (loss) of the Tennis Centre in the previous calendar year.
- .5 Non-performance by the Tenant in meeting the City's expectations related to Community Access (including non-compliance with the reporting requirements) will be deemed a Non-Monetary Default as set out in Section 13.1 of this Lease.



CORPORATE REPORT

NO: **R064**COUNCIL DATE: **April 2, 2012**

REGULAR COUNCILTO: **Mayor & Council**DATE: **March 26, 2012**FROM: **General Manager, Parks, Recreation and Culture** FILE: **6140-20/T**SUBJECT: **Proposed Tennis Training Facility**

RECOMMENDATION

The Parks, Recreation and Culture Department recommends that Council receive this report as information.

INTENT

The purpose of this report is to provide information about the results of a Request for Expressions of Interest (RFEOI) that was issued in relation to the development of a Tennis Training Facility in Surrey.

BACKGROUND

The Parks Recreation and Culture Strategic Plan (2008-2017) states that “the City should work with community organizations to assist in the development of program opportunities and facilities (e.g. tennis and squash courts)”.

In the fall of 2011 the Parks, Recreation and Culture (PRC) Department received an unsolicited proposal from Laurus Coaching Solutions to develop a Tennis Training Facility on City-owned lands. With a view to determining more precisely the market interest in partnering with the City to develop such a facility, the PRC Department decided that the issuance of an RFEOI would be the next reasonable step. As such, in October 2011 the staff submitted a report complete with recommendations to the Parks, Recreation and Culture Committee (see the memorandum dated October 3, 2011 attached as *Appendix 1* to this report). After considering the report, the Committee adopted the following recommendation:

“That the Parks, Recreation and Culture Committee recommend that Council authorize staff to prepare a Request for Proposals (RFP) for the development of a Tennis Training Facility in Surrey.”

At its Regular meeting on November 7, 2011, Council considered and adopted the recommendation of the Committee.

An RFEOI was issued in February 2012 and was advertised on the BC Bid website. The RFEOI closed on March 9th, 2012. Only one response was received by the City, that response being from the original proponent, Laurus Coaching Solutions.

DISCUSSION

Laurus Coaching Solutions (LCS) has refined their original proposal to better respond to the terms outlined in the RFEOL. The LCS proposal articulates the following vision:

“Growing the game of tennis in Surrey and BC by stimulating participation and excellence in tennis.”

The proposal cites an increasing demand for tennis lessons in Surrey and the benefits of tennis as a healthy, positive activity for all community members. The proposal envisions a tennis training facility that provides lessons and court time to Surrey residents new to the sport of tennis and also enhanced training through professional staff for those who are aspiring to a higher level of competition.

The proposal includes sections on the philosophy and strategy for developing the facility. It also includes preliminary detailed information on the project timeline and project financing. The proponent envisions opening the facility by January 2013. The total estimated cost of the proposed facility is \$2.33 million. Laurus Coaching Solutions has assembled a team of consultants and contractors that are experienced in the area of developing such facilities.

The proposal from LCS includes a letter of support from each of Tennis BC and Tennis Canada that express an interest in using the facility for provincial and national programs and for hosting tournaments.

Next Steps

Given the merit of the LCS proposal staff intends to negotiate a Memorandum of Understanding (MOU) with LCS with a view to developing the proposal in more depth. This will include building a better understanding of the location of the facility, the contributions of each of the parties to the proposed facility and the availability of the facility for use by the general public. Subject to successful negotiations, the draft MOU is expected to be presented to Council for consideration during the summer of 2012.

CONCLUSION

The Parks, Recreation and Culture Department has received a proposal from Laurus Coaching Solutions to develop a Surrey Tennis Training Facility. From staff's perspective the proposal has sufficient merit to pursue further. Staff will develop an MOU with the proponent for the purpose of advancing the proposal with more details regarding its location, design and operation. It is expected that such an MOU will be presented to Council for consideration during the summer of 2012.

Laurie Cavan
General Manager
Parks, Recreation and Culture Department

Appendix 1: Memorandum, dated October 3, 2011 titled “Development of a Tennis Centre in Newton”

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INTER-OFFICE MEMO **E.4**

TO: Parks, Recreation and Culture Committee
FROM: Manager, Park Planning, Research and Design
DATE: October 3, 2011 **FILE:** 6140 - 20/
RE: Development of a Tennis Centre in Newton

RECOMMENDATIONS

It is recommended that the Parks, Recreation and Culture Committee recommend that Council authorize staff to prepare a Request for Proposals (RFP) for the development of a Tennis Training Facility in Surrey.

BACKGROUND

The Parks, Recreation and Culture Strategic Plan (2008-2017) recommends that the Department "Work with community organizations to assist in the development of program opportunities and facilities (e.g. tennis and squash courts, lawn bowling greens)". The Department has received unsolicited proposals from two groups based in Surrey who hope to develop tennis training facilities on city-owned parkland. Since that time, the two groups indicated that they have joined together to work towards a partnership with the City.

DISCUSSION

Department staff met with representatives for the proposed tennis training facility to better understand their proposal. The proposal is for a tennis facility that would be phased. In Phase 1, the facility as proposed would provide six covered and six outdoor tennis courts, with an amenity building and required parking. The 7,000 square foot Phase 1 building is proposed to contain change rooms, concession and a sports science suite, including workout gym, physiotherapy and treatment rooms. Phase 2 of the proposal envisions adding twelve more tennis courts, additional programming and greater capacity for the sports science suite.

The development of a partnership for a tennis training facility is aligned with the recommendation of the Parks Recreation and Culture Strategic Plan, which indicates that the City should work with organizations to assist in the development of facilities and program opportunities. The group proposes to provide a combination of publicly accessible programs and membership-based programs. The proposal cites the increasing demand for tennis lessons in a growing community and the benefits of tennis as a healthy, positive activity for children, youth and all community members. The proposal envisions a tennis training facility that provides lessons to Surrey residents new to the sport of tennis and also a location to provide enhanced training through professional staff for those who are aspiring to a higher level of competition. The proponents include tennis professionals with experience managing similar facilities in Canada. The proponents are working with both Tennis BC and Tennis Canada to create a facility that those groups would support and utilize for their area specific programs.

The proponents are interested in finding a location on publicly owned lands in Surrey that is centrally located, adjacent to compatible uses and on major transportation routes. A location in Newton has been identified in relation to this potential development. This site is described and illustrated in Appendix 1.

Staff has determined that there are three steps that need to be taken in relation to further exploring this opportunity. These are:

1. Issue a Request for Proposals for a tennis training facility;
2. Should a viable proposal be received, the City would work with the proponent to engage in a public process related to the location of the proposed facility; and
3. Negotiate a Letter of understanding (LOU) between the City and the successful proponents that would form the basis for an agreement with the facility proponents regarding the contribution of land by the City, the construction, operation, programming and maintenance of the facility and related parking, the terms in relation to public access to the facility and the terms of ownership of the proposed facility.

Subject to the Committee supporting the recommendations of this report, staff will develop an RFP for the project and would report the results of the RFP to the Committee and Council in due course.

SUMMARY

Based on the above discussion, it is recommended that the Parks, Recreation and Culture Committee recommend that Council authorize staff to prepare a Request for Proposals (RFP) for the development of a Tennis Training Facility in Surrey.



Ted Urich
Manager, Park Planning, Research and Design

Appendix 1 – Potential Site for the Tennis Training Facility

Potential Site for the Tennis Training Facility



SCHEDULE D

THIS MEMORANDUM OF UNDERSTANDING made the 28 day of June, 2012

BETWEEN:

CITY OF SURREY
14245 - 56th Avenue
Surrey, B.C.
V3X 3A2

(the "City")

(OF THE FIRST PART)

AND:

LAURUS COACHING SOLUTIONS
12234 Agar Street
Surrey B.C.
V4A 3C3

("Laurus")

(OF THE SECOND PART)

WHEREAS:

- A. The City, under the *Community Charter*, S.B.C. 2003, c. 26, is authorized to enter into an agreement with Laurus for the provision of facilities and services;
- B. Laurus and the City (collectively, "the Parties") have a number of shared goals with respect to the sport of tennis in Surrey and agree to cooperate, coordinate and partner with each other in order to deliver tennis services to the residents of the City;
- C. Laurus wishes to develop and operate a tennis training facility (the "Facility") on land owned by the City;
- D. The City is the registered owner in fee simple of the Phase One Lands (as defined herein) which it wishes to make available for the development of the Facility;
- E. In order to facilitate development of the Facility, it is the intention of the Parties to enter into a Partnering Agreement, Operating Agreement and Lease Agreement (collectively, the "Agreements"), all of which will be substantially based on the terms and conditions as described in this Memorandum of Understanding (the "MOU");
- F. This MOU shall set out the anticipated relationship between the Parties and their respective obligations and responsibilities with respect to the planning, development, and operation of the Facility (collectively, the "Project").

NOW THEREFORE in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Parties agree as follows:

1.0 THE LANDS

- 1.1 The Facility will be developed in two phases. During Phase One, the Facility will be constructed on an approximately seventeen thousand (17,000) square meter portion of land located adjacent to 144th Street and 58th Avenue, as shown outlined in heavy black line on the drawing attached to this MOU as Schedule "A". This seventeen thousand (17,000) square meter portion shall be referred to as the "Phase One Lands".
- 1.2 The City shall lease the Phase One Lands to Laurus for the period of time specified in Article 2 of this MOU.
- 1.3 The City shall also contribute the use of a structure, located on the Phase One Lands, that Laurus has expressed interest in utilizing for purposes related to the Facility.
- 1.4 With respect to Phase Two, under separate agreement, the City may contribute an approximately eighteen thousand (18,000) square meter portion of land (known as the "Phase Two Lands"). The Phase Two Lands are shown outlined in heavy black line on the drawing attached to this MOU as Schedule "B". However, the City retains the right to use, or enter into agreement with another party for other uses of the Phase Two Lands, subject to the provision of reasonable notice to Laurus.
- 1.5 No part of the Agreements will alter the City's ownership of the Phase One Lands or its ownership of the existing improvements thereon.
- 1.6 Upon expiry or early termination of the Agreements, the City shall assume full ownership of the Facility and Laurus shall enjoy no special rights in respect thereto, except as provided for in the Agreements.

2.0 TERM

- 2.1 The term of the Agreements shall be ten (10) years commencing upon total completion of the Facility (the "Term"), with options for Laurus to renew for one (1) further term of ten (10) years (the "First Renewal Term"), provided further that, during the Term, Laurus does not come to be in default of any of the conditions as set out in Articles 7 - 9 of this MOU.
- 2.2 The renewal Agreements for the First Renewal Term shall contain a further right of renewal for a term of ten (10) years (the "Second Renewal Term") from the expiration of the First Renewal Term.
- 2.3 The Parties acknowledge and agree that by Clauses 2.1 and 2.2 of this MOU, Laurus will be given the option of renewing the Agreements for only two (2) renewal terms of ten (10) years each, and at the expiration of the two (2) renewal terms Laurus shall have no further right of renewal. Notwithstanding this Article, however, the parties may by mutual consent choose to extend the Agreements after the expiry of the Second Renewal Term.

3.0 EARLY TERMINATION

3.1 The Agreements may be terminated as follows:

- (a) at any time by mutual consent of the Parties;
- (b) by the City:
 - (i) if Laurus comes to be in material default of any of Laurus' duties or obligations under the Agreements (as specified in Articles 7 -9 of this MOU) and which Laurus has not remedied within sixty (60) business days of receiving notice from the City; or
 - (ii) if, where the default is not capable of being remedied within sixty (60) days of receiving notice from the City, Laurus has not commenced remedying the default within sixty (60) business days of receiving said notice;
- (c) by Laurus if there is a material default by the City of any of the City's duties or obligations under the Agreements which defect is not remedied within 60 days.

4.0 CONDITIONS PRECEDENT

4.1 The obligations and duties of the Parties as contemplated in this MOU are subject to the satisfaction of the following conditions:

- (a) on or before December 31, 2012, approval of this MOU by the City's Municipal Council;
- (b) on or before December 31, 2012, final approval of the Agreements with respect to form only, by both parties and the City's Municipal Council;
- (c) on or before May 31, 2013, final adoption of a by-law that authorizes rezoning of the Phase One Lands;
- (d) on or before June 30, 2013, issuance of a development permit by the City's Municipal Council; and
- (e) on or before June 30, 2013, approval by the Approving Officer of the leasehold plan for the Phase One Lands.

4.2 In the event that the conditions listed in this Article are not satisfied on or before the dates indicated, this MOU shall be at an end and neither party shall have any further obligation to the other.

5.0 PLANNING AND DESIGN

- 5.1 Laurus shall prepare a site plan that clearly shows the layout and location of the Facility and all of its support components on the Phase One Lands. The site plan will allow for and show a potential Phase Two expansion that complements the First Phase.
- 5.2 Phase One of the Facility is anticipated to include, but not be limited to: six indoor tennis courts, four outdoor tennis courts, an access drive and parking area as well as a support building that contains facilities for conditioning, physiotherapy, sport psychology, washrooms, change rooms, administrative offices, front desk and a juice/sandwich bar.
- 5.3 Laurus shall take the lead in designing the Facility and is responsible for the preparation of detailed drawings as required for the issuance of all necessary permits by the regulatory and permitting divisions of the City.
- 5.4 In addition to the regulatory and permitting role that the City has for all developments, (which shall not be varied or changed in any way as a result of the Agreements), a liaison will be appointed by the City to act in an advisory capacity throughout the planning, design and construction period. Laurus agrees to include the City liaison in the Facility design process and consider suggestions brought forward by the City liaison throughout the design and construction process. As part of this design process, Laurus shall prepare a site development plan that is acceptable to the City liaison, acting reasonably.
- 5.5 The City liaison will be asked to approve the Project at various stages, as agreed to by the Parties, and upon substantial completion and total performance of the Project (collectively, the "Progress Milestones"). If the City liaison does not, within ten (10) days of reaching the Progress Milestones, either:
- (a) provide approval; or
 - (b) acting reasonably, raise an issue or deficiency to be resolved or remedied by Laurus
- Laurus is authorized to proceed with the Project to the next stage.
- 5.6 If an issue or deficiency is identified by the City liaison under Subclause 5.5(b), Laurus shall either:
- (a) resolve or remedy the issue or deficiency within ten (10) days; or
 - (b) provide the City liaison with a schedule reasonably acceptable to the City liaison for such correction and complete the correction in accordance with such schedule.

6.0 DEVELOPMENT

- 6.1 The Parties estimate the cost of constructing the Facility during Phase One to be two million three hundred thirty thousand (\$2,330,000) dollars.

- 6.2 The City shall contribute approximately seventeen thousand (17,000) square meters of land for Phase One, having an assessed value in 2012 of \$3,193,259 in order to facilitate the Project.
- 6.3 The Facility shall be built to current tennis industry development standards. Lighting levels shall meet or exceed national standards for tennis court illumination. All aspects of the Project shall comply with all current regulatory and code requirements in effect at the City.
- 6.4 All costs incurred in relation to the Project shall be paid by Laurus. These costs shall include, but not be limited to: rezoning costs, servicing costs, construction costs, maintenance, operation, management and repair costs. Laurus agrees that it assumes sole responsibility for performing its due diligence with respect to determining its costs in relation to the Project.
- 6.5 The City has no intention to make any monetary contribution to the Project and no part of the Agreements with Laurus shall have the effect of placing a monetary obligation on the City.
- 6.6 The City makes no warranties or representations with respect to the condition of the Phase One Lands or their suitability for any particular purpose. The parties agree that the Phase One Lands are provided to Laurus on an "as-is" basis.

7.0 OPERATION

- 7.1 The Facility shall be used by Laurus to provide tennis training and instruction to participants on a fee for service basis and to provide court time to participants on a pay to play basis throughout the year. Recreational, instructional and developmental programs shall be offered for juniors, adults and seniors. The Facility shall also provide athlete support services for local competitive athletes as well as training and certification programs for tennis coaches.
- 7.2 Activities in the Facility will consist of organized tennis programs for approximately seventy (70%) percent of the time and general play for thirty (30%) percent of the time. General play shall be on a pay to play basis at rates that, at any time, will be no more than one hundred ten (110%) percent of the highest market rate at a public tennis facility in the Lower Mainland of British Columbia. Tennis programs shall be offered to all segments of the population and shall consist of Starter and Learn-to-Play Programs as well as training programs for children, adults and seniors who wish to improve their tennis skills. Starter Programs shall be conducted with up to twelve (12) players per court for one (1) hour per week over a four (4) week period. Learn to Play Programs shall involve up to six (6) players per court for ninety (90) minutes per week over a six (6) week period. Programs for elite athletes will be limited to approximately five (5%) percent, and at no point in time will ever exceed ten (10%) percent, of the total court time available at the Facility.

- 7.3 Laurus shall retain the services of a Facility Manager who shall be situated at the Facility on a full time basis and whose primary duties are the management and operation of the Facility. Program Coordinators, instructors, coaches and support staff shall be retained by Laurus as needed.
- 7.4 Laurus shall establish a committee to be known as the Program Advisory Committee (the "Committee"), composed of not more than seven (7) individuals, that will act as an advisory group and provide advice to the Facility Manager regarding maintenance issues, operating issues and Facility programming. Two members of the Committee shall be appointed by the City, two shall be appointed by Laurus and the remaining members are to be residents of the area served by the Facility; the Committee shall meet at least twice per annum. The Committee shall have no power to make decisions with respect to the management, operation or control of the Facility.
- 7.5 Commencing in 2013 and continuing every year thereafter for the duration of the Term, Laurus will prepare and review with the Committee, on or about January 15th, a written Summary of Operations for the previous year which will include statements related to maintenance, operating issues, programming, user numbers and demographics (including the number of leisure access participants and an estimate of the monetary value of the Leisure Access Program) as well as an overview on the financial performance and gross operating profit or (loss) of the Facility in the previous calendar year.
- 7.6 Laurus is and shall at all times for the duration of the Term be an independent contractor and at no time shall Laurus be deemed an agent, servant, or partner of the City. All persons employed or contracted with by Laurus to perform obligations pursuant to the Agreements shall be its employees, servants or agents and not the employees, servants or agents of the City.
- 7.7 Laurus may erect banners and other sponsorship media at the Facility, provided that all such media complies with the guidelines outlined in the City's Sponsorship Policy.
- 7.8 Laurus shall place in and around the Facility media that conveys acknowledgement of the City's contribution to the Facility. This media shall be in the form of logos or other graphic materials and be posted in such locations and in such formats as agreed to by the Parties. Said graphic material shall be on display for the duration of the Term and shall be maintained appropriately by Laurus throughout that time.
- 7.9 Use of the Facility shall be governed by the Agreements and by the applicable City by-laws and policies.
- 7.10 Laurus shall be responsible for one hundred (100%) percent of all costs associated with the Facility. These costs shall include, but not be limited to: operation, maintenance, repair and management costs. Laurus shall operate and maintain the Facility using best practices in sustainability and to a standard of care that is consistent with leisure facilities that are operated by the City.

8.0 COMMUNITY ACCESS

- 8.1 Laurus shall provide full public access to the Facility and its programs and services. This access shall be of a broad nature, without discrimination and open to all, regardless of age, gender, ability, race, religion, economic circumstances or other similar grounds.
- 8.2 Laurus will develop a Leisure Access Program to ensure that cost and economic hardship is not a barrier for any participant.
- 8.3 Laurus will engage in an extensive school outreach program, will offer a minimum of two (2) of community event days at the Facility and will participate in City events by providing tennis related activities at no less than two (2) of the six (6) annual Town Centre Community Festivals each year.
- 8.4 Laurus will, annually, provide the City and the Program Advisory Committee with full access to Laurus' client database including the fees charged to those clients through the Leisure Access Program, as well as the complete financial records associated with the operation and programming of the Facility.
- 8.5 Laurus shall prepare and maintain proper records related to Facility revenues and with respect to public participation in Facility programs. On request from the City, Laurus shall make the records available to audit examination by the City at any time during regular business hours throughout the Term.

9.0 ANNUAL PAYMENTS TO THE CITY

- 9.1 Having regard for the Community Access requirements Laurus will satisfy in accordance with Article 8 of this MOU, Laurus shall pay to the City one (\$1) dollar per year as rent throughout the Term of the Agreements.
- 9.2 Municipal taxes on the Phase One Lands and Facility shall be payable by Laurus to the City on an annual basis throughout the Term of the Agreements.

10.0 INDEMNITY AND INSURANCE

- 10.1 Laurus shall indemnify and save harmless the City, its elected and appointed officials, agents and employees from and against any and all liability, costs, damages, claims, suits, expenses or actions arising from the construction and/or operation of the Facility or any default of Laurus under or in respect of the Agreements.
- 10.2 Laurus shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain insurances in forms and amounts that are acceptable to the City.
- 10.3 Before the Agreements take effect, Laurus shall at its sole expense furnish security to the City in the form of an irrevocable Letter of Credit in the amount of two million three hundred thirty thousand (\$2,330,000) dollars, in a form satisfactory to the City, as a guarantee for the due and faithful construction of the Facility by Laurus.

- 10.4 Should it become evident that the Letter of Credit is insufficient to complete construction of the Facility, then the City reserves the right to request additional security.
- 10.5 The City may draw on the security to carry out the duties, obligations and responsibilities of Laurus under this MOU if, in relation to Progress Milestones described in Clause 5.5, such duties, obligations and responsibilities are not completed to the City's satisfaction in accordance with Clause 5.6 hereof.
- 10.6 The City shall not be responsible nor shall it pay to Laurus any interest on the Letter of Credit.
- 10.7 The Letter of Credit shall be released by the City, subject to this Article, upon total completion of the Facility.

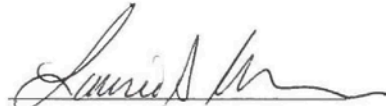
11.0 DISPUTE RESOLUTION

- 11.1 Any dispute arising between the Parties in connection with the interpretation of the Agreements or with the maintenance, operation and use of the Facility shall be first referred to the Committee. If the dispute cannot be resolved, it shall be referred to the General Manager of Parks Recreation and Culture (City) and to the President of Laurus Coaching Solutions (Laurus). If these individuals are unable to resolve the dispute, then the dispute will be referred to mediation. If the dispute remains unresolved after mediation, it may then be referred to the British Columbia Supreme Court at either Party's option.

IN WITNESS WHEREOF the Parties have duly executed this Memorandum of Understanding as of the day and year first above written.

CITY OF SURREY

by its authorized signatory:



Laurie Cavan
General Manager, Parks, Recreation
and Culture Department

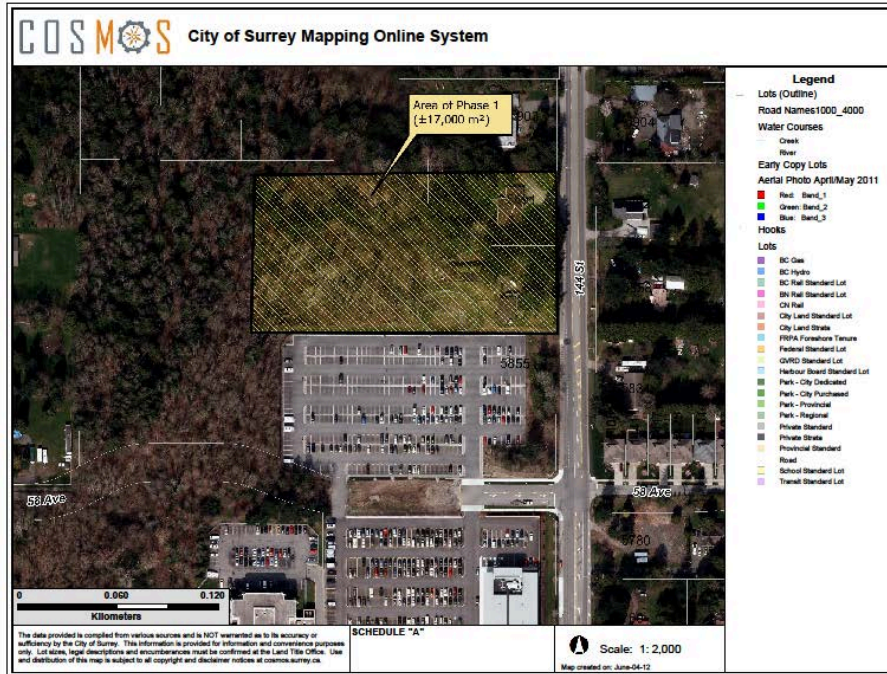
LAURUS COACHING SOLUTIONS

by its authorized signatory:



Larry Jurovich
President

SCHEDULE "A"



SCHEDULE "B"

