

NO: R260

COUNCIL DATE: December 5, 2016

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **November 30, 2016**

FROM: **General Manager, Parks, Recreation and Culture** FILE: **6140-20/S**
City Solicitor

SUBJECT: **South Surrey Athletic Park, Covered Practice Facility - 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 conditions precedent, the execution by the appropriate City officials of the Partnering Agreement between the City of Surrey (the "City") and the Coastal Football Club ("Coastal"), a copy of which is attached to this report as Appendix "I" and as generally described in this report; and
3. Approve, subject to execution of the Partnering Agreement, the execution of a Lease Agreement between the City and Coastal substantially in the form attached as Schedule "A" to the Partnering Agreement 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 (the "Partnering Agreement") and a lease (the "Lease"), all of which are in relation to the planning, development and operation of a soccer related, Covered Practice Facility on City-owned lands in the South Surrey Athletic Park (the "Facility").

BACKGROUND

The Parks, Recreation and Culture Strategic Plan (2008-2017) recommend that the Department “work with community organizations to assist in the development of program opportunities and facilities”.

Coastal Football Club (“Coastal”), based in South Surrey, is a successful soccer association with thousands of members and a Capital Legacy Fund for projects that can enhance the services they provide to their members. In the past, Coastal provided nearly \$300,000 to construct an artificial turf practice and warm-up area adjacent to Field 9 at South Surrey Athletic Park. Coastal made a presentation to the Parks, Recreation and Sport Tourism Committee in October 2014 regarding partnering with the City to develop a covered soccer practice facility in South Surrey Athletic Park.

Parks staff, in consultation with the City’s Legal Division, prepared a Request for Expressions of Interest (RFEOI) for covered sport practice facilities. The RFEOI process included public notification and was open for four weeks to any group interested in partnering with the City on the construction of a Covered Practice Facility. Coastal was the only response submitted. Since that time Parks staff members have met with Coastal FC executives on several occasions to discuss their proposal and reach agreement on a number of design and operational details.

Coastal is now in a position to proceed with the project through the Development Approval processes. A Development Permit and Subdivision Application have recently been submitted by Coastal to the City’s Planning and Development Department. Approval of the Lease Agreement and the Partnering Agreement by Council are pre-requisites for Coastal 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 development application approval process as would be typical of any development application.

DISCUSSION

The City-owned land that is proposed for use by Coastal for the Covered Practice Facility is on a gravel area adjacent to the Softball City complex, within the South Surrey Athletic Park as shown on a Schedule to the Lease Agreement. A Map showing the location of the facility is attached to this report as Appendix “II”.

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 Coastal builds and operates the Facility on behalf of its members and the broader sport community according to a number of operating conditions contained in the Lease. The primary function of the Facility is to provide a covered turf area for soccer practices for the many teams engaged in the sport in South Surrey. Coastal is required to pay all of the costs associated with building and operating the Facility, thus relieving the City of substantial capital and operating costs. In order to fund this, the Club will charge rental fees for the use of the Facility and will sell advertising to its many sponsors and suppliers. The Lease contains provisions that ensure community access at reasonable rates.

One of the revenue streams that Coastal is counting on to help cover the operating costs at the Facility is generated by the sale of Naming Rights to a Private sponsor. A number of requirements have been put in place regarding Naming Rights to ensure that signage complies with all City bylaws and requirements and to ensure that the City name and logo shall be the dominant visual

element of all exterior signage. All aspects of the exterior signage are subject to a review and approval process.

The Partnering Agreement

The Partnering Agreement authorizes the City to provide "assistance" to Coastal for this project. 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 Coastal includes the following potential types of assistance:

- a. a contribution by the City of land for use by Coastal throughout the Term of the Lease for the Covered Practice Facility;
- b. payment by the City of all permit fees and development cost charges levied by the City, and those collected by the City on behalf of a third party, attributable to the construction of the Facility;
- c. payment by the City of all costs associated with subdividing, and registering the subdivision, to create the parcel of leased land;
- d. provision or secondment of City employees or employee time to work with Coastal to help guide the Facility through the development review process and coordinate the use and operation of the Facility with other City services or programs;
- e. waiver of the City’s potential interest in any revenues collected by Coastal related to the Facility;
- f. construction and maintenance of sanitary service for the washroom facilities constructed by Coastal as part of the Covered Practice Facility at no cost to Coastal;
- g. maintenance by the City of the parking areas, entry plaza, pedestrian pathways and landscaping adjacent to the Facility at no cost to Coastal;
- h. access to and use of the Facility for a nominal rate over an extended Term of ten (10) to thirty (30) years at Coastal’s sole option.

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 Coastal for a nominal rate. The Lease Agreement will govern the terms and conditions associated with the use of the city land upon which the Facility is built and will also ensure that the Facility is operated in a manner that is acceptable to the City. It contains clauses which ensure that the Facility 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 Facility.

The Lease Agreement is for a term of 10 years with an option in favour of Coastal to renew the lease for two additional 10-year terms. This term of lease with renewals is necessary for Coastal to recoup their capital costs through annual revenues.

Attached as a Schedule to the Lease Agreement is the Operating Terms (the "Operating Terms") which outline the manner in which Coastal must operate and maintain the Facility. Coastal must establish a Program Advisory Committee (with City representation on the Committee) and provide access to their usage data so that City staff can monitor the manner in which the Facility is being used by the community.

Next Steps

Subject to Council approval of the Partnering and Lease Agreements, respectively, Coastal will continue to move forward with the development approval and Building Permit approval process. Upon the issuance of a building permit by the City, Coastal will proceed with project construction. It is expected that the Facility will be open for play in the fall of 2017.

SUSTAINABILITY CONSIDERATIONS

The development of a Facility, as outlined in this report, will assist in achieving the following Desired Outcomes and Strategic Directions of the Sustainability Charter:

- Built Environment and Neighbourhoods SD 6: Provide a range of community amenities including culture, recreation, health and educational facilities in each Town Centre.
- Health and Wellness DO 6: Residents participate in a wide range of recreation and leisure activities.
- Health and Wellness SD 1: Connect, facilitate and support people and organizations in innovative alliances for delivery of social, health and wellness programs.

CONCLUSION

Based on the above discussion, 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 conditions precedent, the execution by the appropriate City officials of the Partnering Agreement between the City of Surrey (the "City") and the Coastal Football Club ("Coastal"), a copy of which is attached to and generally described in this report; and
3. Approve, subject to execution of the Partnering Agreement, the execution of a Lease Agreement between the City and Coastal substantially in the form attached to this report 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

Appendix "I" Covered Practice Facility Partnering Agreement
Appendix "II" Location of the Covered Practice Facility

COVERED PRACTICE FACILITY
SOUTH SURREY ATHLETIC PARK
PARTNERING AGREEMENT

THIS AGREEMENT dated for reference the 12th day of October, 2016.

BETWEEN:

CITY OF SURREY
13450 – 104 Avenue,
Surrey, British Columbia V3T 1V8

("City")

AND:

THE COASTAL FOOTBALL CLUB
13739 – 23A Avenue,
Surrey, British Columbia, V4A 9V8

("Coastal")

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 partner with Coastal, who wishes to construct and operate a Covered Practice Facility at 2201 – 148th Street, on the lands legally described as:

PID 015 151 077
LOT 3, SECTION 15, TOWNSHIP 1, PLAN 83184 NWD EXCEPT PLANS LMP
36078 AND BCP 46838

NOW THEREFORE in consideration of \$10.00 paid by Coastal to the City and other good and valuable consideration, the receipt and sufficiency of which the City 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) "**Covered Practice Facility**" means the improvements constructed by Coastal including:
 - A metal frame, fabric-covered structure over a synthetic turf surface;
 - A washroom facility adjoining the fabric-covered structure;
 - An entry plaza and pedestrian pathway;
 - A vehicular connection road to Rotary Way and an asphalt parking area for 30 parking stalls;

all built according to plans and drawings prepared by Coastal and approved by the City for use and operation as a Covered Practice Facility for soccer and other field sports according to the Terms and Conditions of a Lease Agreement substantially in the form attached hereto as Appendix I.

2. This Partnering Agreement is effective upon execution by both parties and may not be terminated except by unanimous consent of both parties.
3. Coastal agrees to pay all costs and assume full responsibility for:
 - (a) construction of the Covered Practice Facility according to City standards and in a manner that complies with the City's development approval and building permitting procedures and requirements including site improvements, parking and landscaping;
 - (b) construction and installation of all services and utilities reasonably required for the development and operation of the Covered Practice Facility, excluding the sanitary services for the washroom facility;
 - (c) the allocation of space and the operation of the Covered Practice Facility in a manner that conforms to the principles and procedures outlined in a separate Lease Agreement between the City and Coastal; :
4. 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 Coastal in connection with the construction, management and on-going operation of the Covered Practice Facility including, without limitation, any one or more of the following:
 - (a) a contribution by the City of land for use by Coastal throughout the Term of a Lease Agreement substantially in the form attached hereto as Appendix I, as the site for the Covered Practice Facility; and
 - (b) payment by the City of all permit fees and development cost charges levied by the City, and those collected by the City on behalf of a third party, attributable to the construction of the Covered Practice Facility; and
 - (c) payment by the City of all costs associated with subdividing, and registering the subdivision, to create the parcel of land that is subject to the terms of the Lease Agreement between the City and Coastal;
 - (d) provision or secondment of City employees or employee time to work with Coastal to help guide the Covered Practice Facility through the development review process and coordinate the use and operation of the Covered Practice Facility with other City services or programs;
 - (e) access to, at no charge, by the City to Coastal, the City's stored supply of turf and infill material for use by Coastal at the Covered Practice Facility;
 - (f) waiver of the City's potential interest in any revenues collected by Coastal related to the Covered Practice Facility;
 - (g) construction and maintenance of sanitary service for the Washroom Facilities constructed as part of the Covered Practice Facility at no cost to Coastal;

- (h) maintenance by the City of the parking areas, entry plaza, pedestrian pathways and landscaping adjacent to the Covered Practice Facility at no cost to Coastal;
 - (i) access to and use of the covered Practice Facility for a nominal rate over an extended Term of ten (10) to thirty (30) years at Coastal's sole option.
5. No part of this Partnership Agreement alters the City's ownership of the Lands or its ownership of improvements thereon.
 6. The City and Coastal are not joint venturers or the agent 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: October 12th, 2016
CITY OF SURREY
by its authorized signatories:

Linda Hepner
Mayor

Jane Sullivan
City Clerk

Date: October 12th, 2016
COASTAL FOOTBALL CLUB
by its authorized signatories:

Geoff Killam
President, Coastal Football Club

Mike Hornak
VP Operations, Coastal Football Club

Attachment: Appendix 1, Lease Agreement

**APPENDIX 1
COVERED PRACTICE FACILITY
LEASE AGREEMENT
TERMS OF INSTRUMENT - PART 2**

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THIS LEASE AGREEMENT dated for reference the 12th day of October, 2016,

BETWEEN:

CITY OF SURREY
13450 – 104 Avenue
Surrey, British Columbia V3T 1V8

(the "Landlord")

OF THE FIRST PART

AND:

COASTAL FOOTBALL CLUB
13739 – 23A Avenue
Surrey, British Columbia V4A 9V8

(the "Tenant")

OF THE SECOND PART

WITNESSES THAT WHEREAS:

- A. The Landlord is the registered owner of the Lands as hereinafter defined; and
- B. The Tenant agrees to lease the Lands for the purposes of constructing, maintaining and operating a Covered Practice Facility 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

- .1 In this Lease, including the recitals hereof and the Schedules attached hereto, the following words and expressions have the following meanings:
 - (a) "Access Easement" means that 0.912 hectare portion of Lot 3 shown hatched and marked "Access Easement" on the Reference Plan dated April , 2016 prepared by Montgomery C. Brisson, B.C.L.S. and annexed hereto as Schedule "C".

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- (b) "Annual Review" has the meaning set out in Schedule B, Section 1.8.
- (c) "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.
- (d) "Business Day" means any day which is not a Saturday, Sunday or statutory holiday in the Province of British Columbia.
- (e) "City" means the City of Surrey, British Columbia, in its capacity as the municipality having jurisdiction over the Lands and any successor in function to the City of Surrey.
- (f) "Community Access Principles" has the meaning set out in Schedule B.
- (g) "Community Access" has the meaning set out in Schedule B, Section 1.6.
- (h) "Community Users" means members of the public who are users of the Covered Practice Facility.
- (i) "Construction Schedule" means the schedule prepared by the Tenant showing the timelines for the construction of the Covered Practice Facility as set out in Section 10.3.2.
- (j) "Covered Practice Facility" means the synthetic turf field and the fabric covered structure over the field, including washroom facilities, lighting, passive heating, ventilation and air handling within the structure as shown on the Site Plan, attached hereto as Schedule A, and more specifically as approved as a result of the Development Permit Review Process by the City of Surrey.
- (k) "Covered Practice Facility 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 Covered Practice Facility and the duties and responsibilities of the City and the Tenant regarding the operation and maintenance of the Covered Practice Facility, attached hereto as Schedule B.
- (l) "Facility Advisory Committee" has the meaning set out in Schedule B, Section 1.7.

- (m) "First Renewal Term" has the meaning set out in Section 2.3.2 herein.
- (n) "Improvements" encompasses the Covered Practice Facility 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 Covered Practice Facility without material damage thereto), facilities, landscaping, and all other appurtenances at any time in, upon or serving the Covered Practice Facility.
- (o) "Initial Term" has the meaning set out in Section 2.3 herein.
- (p) "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.
- (q) "Lands" means that 0.532 hectare portion of those lands legally described as PID: 015 151 077, Lot 3, Section 15, Township 1, Plan 83184 NWD except PlanS LMP 36078 and BCP and more particularly shown outlined in bold black and marked "Lease Area" on the Reference Plan dated April 28th, 2016 prepared by Montgomery C. Brisson, B.C.L.S. and annexed hereto as Schedule "C".
- (r) "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.
- (s) "Lease" means this Lease Agreement executed by the Landlord and the Tenant, as amended from time to time.
- (t) "Lease Commencement Date" means the later date on which the building permit for the Covered Practice Facility on the Lands is issued by the City, and all Conditions Precedent in Section 19.1 have been waived.
- (u) "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.

- (v) "Leasehold Mortgage" means a bona fide mortgage, indenture, deed of trust or similar security in respect of the Tenant's interest in the Lands and this Lease which has been executed by the Tenant and entered into in accordance with Article 7 and which has not been discharged.
- (w) "Leasehold Mortgagee" means the holder of any Leasehold Mortgage.
- (x) "Notice to Proceed" means a written notice from the Landlord to proceed with the construction of the Covered Practice Facility.
- (y) "Partnering Agreement" is a separate agreement between the City and the Tenant, which indicates that the Tenant intends to construct a Covered Practice Facility in the South Surrey Athletic Park and that the City intends to provide assistance of various sorts.
- (z) "Penalty Rate" means the Prime Rate plus three (3%) percent.
- (aa) "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.
- (bb) "Person" means any individual, partnership, corporation, trust, unincorporated organization, corporation without share capital, municipality, government, or governmental agency or any combination thereof.
- (cc) "Plans and Specifications" means the plans and specifications prepared by the Tenant 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.
- (dd) "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.

- (ee) "Rent" has the meaning set out in Section 3.1 herein.
- (ff) "Rent Commencement Date" means the date when the Improvements, or any portion of the Improvements, are open for regular business.
- (gg) "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.
- (hh) "Second Renewal Term" has the meaning set out in Section 2.3 herein.
- (ii) "Site Plan" means the site plan attached hereto as Schedule A, prepared by the Tenant, and approved by the Landlord, showing the Lands and the location of the Improvements and Covered Practice Facility thereon as revised from time to time by agreement of the Landlord and Tenant until a municipal building permit and Site Plan is approved by the Landlord.
- (jj) "Substantial Completion" has the meaning set out in Section 10.4 herein.
- (kk) "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 Lands or any part thereof or the Covered Practice Facility 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.

- (ll) "Term" has the meaning set out in Section 2.3 herein inclusive of the Initial Term, the First Renewal Term and the Second Renewal Term.

1.2 SCHEDULES

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

Schedule A – Site Plan
 Schedule B – Covered Practice Facility Operating Terms
 Schedule C – Lease Lands and Access Easement

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 Lands to the Tenant and the Tenant hereby leases the Lands from the Landlord for the Initial Term commencing on the Lease Commencement Date.

2.2 USE AND NAME

- .1 The Tenant shall use the Lands and the Improvements for the purpose of providing soccer related programming and services throughout the year. Soccer related recreational, instructional, and developmental programs shall be provided. The Tenant may also rent space within the facility to other sports, community and school groups. The Tenant may engage in uses that are incidental to soccer play and instruction but shall not use nor allow or permit the Lands, 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 allocation, operation, and use of the Covered Practice Facility shall comply with the Covered Practice Facility Operating Terms (Schedule B).
- .3 The Covered Practice Facility shall be available generally to all citizens of the City and other members of the public without exclusion.
- .4 The Tenant and the Landlord will enter into a separate naming rights agreement regarding the right to name the Covered Practice Facility, to change such name from time to time, and to place name related signage on the south and north facing exterior of the Covered Practice Facility, such agreement to include, without limiting the terms of that agreement, the following requirements that:

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- (a) all advertising and sponsorship signage are in keeping with the City's Advertising and Sponsorship Policies and will not include the name or trade name, trade mark or brand name of any business which manufactures or sells alcoholic beverages or tobacco products or sexual material;
- (b) the Landlord retains its rights as landowner to proceed with a separate initiative related to naming rights in which case the Landlord will provide 12 months notice to the Tenant to remove all name related signage and terminate any separate naming rights agreement related to the Covered Practice Facility; and
- (c) during any National or International event, including a 7 day period prior to and after the event, hosted on the Lands and adjacent city lands, the Landlord shall have the right to cover up any naming, advertising and/or sponsorship signage, and erect other naming, advertising and/or sponsorship signage related to the National/International event as deemed appropriate by the Landlord.

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") provided that:
 - (a) during the First Renewal 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 First Renewal Term, in accordance with Article 17 of this Lease.
- .4 The terms and conditions of this Lease and the Partnering Agreement shall apply in their entirety during the Second Renewal Term, excluding the Tenant's option to renew.
- .5 At the expiration of the Second Renewal Term, the Tenant shall have no further right of renewal.
- .6 The terms and conditions of this lease shall supercede the expiry date specified on the leasehold plan.
- .7 Notwithstanding this Article, the Landlord and the Tenant may, by mutual consent, choose to extend the Lease for an additional period of time.

2.4 SURRENDER BY THE TENANT AT EXPIRY OF TERM

- .1 If at least three (3) months, and no greater than five (5) months, prior to expiry of the Term the Landlord has given written notice to the Tenant to demolish the Covered Practice Facility the Tenant will, no later than ninety (90) days 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 Covered Practice Facility 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 Covered Practice Facility, the Lands or the operation of the Covered Practice Facility.
- .3 At the expiry of the Term, the Tenant shall surrender the Lands without any payment to the Tenant either, at the Landlord's option:
 - (a) with the Covered Practice Facility left thereon in the state of repair required to be maintained under this Lease; or
 - (b) with the Covered Practice Facility demolished and removed and the Lands returned to a graded and clean vacant state within one hundred eighty (180) days after the expiry of the Term.

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- .4 The Tenant covenants that it will upon such expiry or earlier termination leave the Lands and, if not demolished, the Covered Practice Facility 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

- .1 To ensure the orderly continuance of operation of the Covered Practice Facility by the Landlord or its assignees, subject to the provisions of Article 7.4 in favour of any Leasehold Mortgagee, the Tenant shall at the option of the Landlord perform for no consideration (except as contemplated by Section 2.5.1(d) the following at the expiry of the Term or the earlier termination of this Lease:
 - (a) assign to the Landlord or as the Landlord may direct, to the extent assignable, all of the Tenant's interest in the Lands and the Covered Practice Facility together with the benefit of all Subleases, license agreements, guarantees, warranties and other agreements and rights benefiting the Lands or the Covered Practice Facility or the Tenant's interest in the Lands or the Covered Practice Facility or pertaining to the operation of the Covered Practice Facility;
 - (b) deliver to the Landlord or as the Landlord may direct executed copies of all such available agreements;
 - (c) deliver to the Landlord or as the Landlord may direct copies of all available books and records with respect to the Lands and the Covered Practice Facility for the two (2) year period preceding the expiry of the Term or termination of this Lease; and
 - (d) 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 Lands as the Landlord may wish to acquire, including the Tenant's interest in any lease of any item stored or located on the Lands, at a price for each item equal to the fair market value of such item, as agreed between the parties. The Landlord may set off any amounts owing by the Tenant to it against any amount due to the Tenant under this Section 2.5.1(d).

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 Lands 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 Lands, the Covered Practice Facility, 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 Lands and the Covered Practice Facility and the Tenant covenants with the Landlord accordingly.

4. ENVIRONMENTAL CONCERNS**4.1 DEFINITIONS**

.1 For the purposes of this Article:

- (a) "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;

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- (b) "Environmental Laws" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any governmental authority having jurisdiction over the Lands 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;
- (c) "Existing Contaminants" means the Contaminants, if any, existing in or on the Lands as of the Lease Commencement Date; and
- (d) "Lands" includes Improvements.

4.2 TENANT'S COVENANTS AND INDEMNITY

.1 The Tenant covenants and agrees as follows:

- (a) not to install, store, use and dispose of any Contaminants except any Contaminants that are necessary for the normal operation of the Covered Practice Facility, and to install, store, use and dispose of all such Contaminants strictly in accordance with applicable Environmental Laws;
- (b) 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 Lands;
- (c) to promptly provide to the Landlord a copy of any environmental site assessment, audit or report and any environmental testing results relating to the Lands conducted by or for the Tenant at any time;
- (d) within ninety (90) days of the expiry of the Term or 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 Lands and an environmental audit of the operations of the Covered Practice Facility, including any additional investigations as the environmental consultant may recommend;
- (e) to promptly notify the Landlord in writing of any release of a Contaminant or any other occurrence or condition at the Lands which could contaminate the Lands or subject the Landlord or the Tenant to any fines, penalties, orders, investigations or proceedings under Environmental Laws;

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- (f) 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 Lands all Contaminants except Existing Contaminants, if any, and to remediate any contamination of the Lands resulting from Contaminants, in either case brought onto, used at or released from the Lands 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 Lands; and
- (g) 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 Lands) arising from or in connection with:
 - (i) any breach of or non-compliance with the provisions of this Article 4 by the Tenant; or
 - (ii) any release or alleged release of any Contaminants at or from the Lands related to or as a result of the use and occupation of the Lands 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 Lands 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 Lands at a level which

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would preclude development or use of the Lands as a Covered Practice Facility, 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 Lands at a level which would preclude development or use of the Lands as a Covered Practice Facility, then the Tenant may, at its option and at its own cost, 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 Lands 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 Tenant chooses to complete any remedial work, then the Tenant will be deemed to have accepted the Lands with any and all defects, including latent defects therein, including Existing Contaminants, if any, and to have confirmed that the Lands are in good order and satisfactory condition. No promise of the Landlord to do any work in respect of the Lands and no representation respecting the condition of the Lands has been made by the Landlord other than as expressly set forth in this Lease. For clarity, the Landlord is not required to remediate any Contaminants, if any are found on the Lands.

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 Covered Practice Facility 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 Covered Practice Facility, 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

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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 Covered Practice Facility.
- .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*.

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- .9 The Tenant agrees that it shall comply with all WCB requirements (if any) for itself and all workers, employees, servants and others, including volunteers, 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 Lands, 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 Lands 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 Lands or the Covered Practice Facility in any manner whatsoever and shall have no financial obligations whatsoever concerning the design, development, construction, operation repair, maintenance, insurance or financing of the Covered Practice Facility, save as expressly provided in this Lease.

5.4 OWNERSHIP OF IMPROVEMENTS

- .1 As between the Landlord and the Tenant during the Term, any Improvements on the Lands 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 Lands 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 Lands shall take priority over any other interest in the Improvements or the Lands which may now or hereafter be created by the Tenant, and all dealings by the Landlord with the Improvements or the Lands 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. In the event that the Landlord elects to have the Tenant demolish the Improvements or portions thereof, the ownership of the Improvements to be demolished will be transferred to the Tenant, and the Tenant may re-use or retain any proceeds of sale of the demolished Improvements or portions thereof, without additional compensation to the Landlord.
- .2 Within the time frame of the Initial Term, the Landlord agrees to not construct, or cause to be constructed through a third party, a covered

sports field facility within 5 km of this Covered Practice Facility without the consent of the Tenant.

6. TENANT'S 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 Covered Practice Facility, subject to this Lease, provided that the Covered Practice Facility 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 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

.1 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:

- (a) 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 Lands, the Covered Practice Facility or any part thereof;

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- (b) all business taxes, license fees and similar taxes which may be charged, levied or assessed in connection with the Lands, the Covered Practice Facility or any part thereof or which are levied or assessed against the Tenant, or other person carrying on business therein or therefrom; and
- (c) all other charges and expenses relating to the Lands or the Covered Practice Facility 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, 6.4, and 6.5 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 Lands, the Covered Practice Facility 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 Lands, the Covered Practice Facility 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 Covered Practice Facility, 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 Lands, 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 Lands and the Covered Practice Facility, 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 Lands or the Covered Practice Facility, or to the occupation and use of the Lands or the Covered Practice Facility, or to the making of any alterations, changes, improvements, repairs, additions or other work in or to the Lands or the Covered Practice Facility, or to the conduct of any business conducted in or from the Lands or the Covered Practice Facility.

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 Lands 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 Lands and shall keep the Lands 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 Lands or the Improvements any notices that the Landlord may desire to post under the provisions of the *Builders Lien Act*.

6.13 PARKING

- .1 As part of the Improvements, the Tenant will construct 30 parking stalls, including related signage, driveways, curbs, drainage structures and connections, curb let-downs, walkways and access routes as shown on the Site Plan.
- .2 The Landlord will restripe such parking areas periodically when necessary and shall maintain the parking stalls, driveways, walkways and access

routes for use by all members of the public using or visiting the South Surrey Athletic Park.

6.14 CONTINUOUS OPERATION

Subject to typical seasonal closures as well as temporary closure during repair, reconstruction or renovations of the Covered Practice Facility during which closure all insurance coverages shall remain in effect and subject to Section 20.7, the Tenant shall commence operations in the Covered Practice Facility 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 Covered Practice Facility are temporarily closed or interrupted, the Tenant shall use its best efforts to restore full operations as soon as possible. The Lands and the Covered Practice Facility 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 Lands 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 or sold to any Person without the consent in writing of the Landlord.

7.3 TENANT'S RIGHT TO MORTGAGE

.1 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:

- (a) the Landlord shall be given the name and address for service of the Leasehold Mortgagee;

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- (b) 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;
- (c) 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
- (d) such Leasehold Mortgagee shall first enter into an agreement with the Landlord incorporating the provisions of Section 7.4 and to the effect that 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 Section 7.3, 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 Lands in accordance with the Covered Practice Facility Operating Terms. 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 Lands.

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**

Except as otherwise set out in Section 8.3 below, 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 Lands. 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 Lands 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 Lands. 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

.1 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:

- (a) 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;

- (b) any damage to property, either real or personal, howsoever occasioned by the construction, use or occupation of the Lands by anyone on the Lands save and except as noted in Section 8.1 above;
- (c) 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 Lands by anyone thereon, save and except as noted in Section 8.1 above;
- (d) 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
- (e) 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 Covered Practice Facility by the Tenant or any of the activities of the Tenant, its employees, agents, volunteers 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 COURSE OF CONSTRUCTION INSURANCE

- .1 Prior to the commencement of any demolition or construction on the Lands, 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 Lands, Improvements and fixtures, equipment and building materials on the Lands during construction on an "all risks" form to include:
- (a) the perils of flood and earthquake;
 - (b) 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
 - (c) 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 Lands or Improvements or out of the operations of the Tenant, its contractor and its employees, agents, volunteers, consultants, subcontractors and subconsultants in, or about the Lands 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 to the Landlord forthwith after obtaining same.
- .2 Certificates of insurance shall be provided on a form satisfactory to the City's Risk Management Division, 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 Covered Practice Facility with a stated amount co-insurance clause. This stated amount shall not be less than the full

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Replacement Cost of the Covered Practice Facility 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 insurance monies payable under any or all of the policies of insurance referred to in Sections 9.12.1 and 9.12.2 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.
- .4 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 Covered Practice Facility or arising out of the operations of the Tenant and its contractor in, on or about the Covered Practice Facility 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 Covered Practice Facility, 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;

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- (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.

- .5 If the Covered Practice Facility includes a boiler, 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 Cost of the Covered Practice Facility 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.
- .6 The Tenant may at its option place the insurance required to be maintained pursuant to Sections 9.12.1 or 9.12.5 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.
- .7 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, 9.12.4, and 9.12.5 to reflect requirements of applicable laws, general increases in inflation or damage awards.
- .8 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.
- .9 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.
- .10 The Tenant shall provide the City with evidence of all required insurance before commencing operation of the Covered Practice Facility. 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.

- .11 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.
- .12 All required insurance shall be endorsed to provide the City with thirty (30) days advance written notice of cancellation or material change.
- .13 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.
- .14 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.
- .15 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 9.12.6.
- .16 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-fulfillment of condition or otherwise, except after thirty (30) days' prior written notice to the City.
- .17 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.

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- .18 The Tenant shall cause the policies of insurance provided for in Sections 9.12.1 and 9.12.5 to show the City as an insured party, and the policies of insurance provided for in Section 9.12.4 to show the City as an additional insured party, all subject to the rights of any Leasehold Mortgagee.
- .19 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.
- .20 All policies of property insurance to be taken out pursuant to Sections 9.12.1 and 9.12.5 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 9.12.4 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 Lands 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

- .1 Upon approval of the Site Plan and Plans and Specifications by the Landlord in accordance with Section 19.1 and upon the Tenant entering into the construction contract or contracts in accordance with Section 10.3, 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 fifty percent (50%) of the estimated cost, as approved by the Landlord, of the Improvements contemplated by the Plans and Specifications to be constructed upon the Lands 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 Lands 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.

- .2 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 Lands 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 Lands 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. The entire amount of the Security held by the City shall be returned to the Tenant sixty (60) days following the issuance of Final Occupancy without any conditions by the City.

10.3 INITIAL CONSTRUCTION

- .1 Prior to the commencement of any development on the Lands, the Tenant will apply to the City of Surrey for a Development Permit, Building Permit, Servicing Agreement and any other permits necessary to construct the Covered Practice Facility, and at the same time deliver to the Landlord

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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 Prior to the commencement of any development on the Lands, the Tenant shall submit to the Landlord:
 - (a) evidence that the City has issued a building permit for the construction of all Improvements on the Lands;
 - (b) copies of all bonds and insurance policies required under this Lease;
 - (c) evidence that the Tenant has entered into a construction contract or contracts to construct all Improvements and all ancillary services or facilities required in connection therewith with a contractor or contractors satisfactory to the Landlord;
 - (d) evidence satisfactory to the Landlord 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; and
 - (e) a Construction Schedule, satisfactory to the Landlord, for the development of the Improvements.

- .3 The Tenant will not commence construction of the Improvements 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 Section 10.3.2 and its sub clauses.

- .4 Upon receipt of the Notice to Proceed, the Tenant will construct the Improvements 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 permit by the City of Surrey is based, in compliance with the Laws.

- .5 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 Improvements 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.

- .6 The Tenant shall bear all costs of construction with respect to the Improvements including, without limiting the generality of the foregoing:
- (a) site preparation and the installation of all required services (storm, water, power, etc), except as noted in (k);
 - (b) a rigid metal frame, fabric covered structure (or approved equal) on an appropriate foundation;
 - (c) the transportation, storage, handling and installation of a synthetic infill turf, field-of-play surface within the structure;
 - (d) a prepared surface area around the perimeter of the structure for service and emergency access;
 - (e) lighting to 250 LUX evenly distributed across the field-of-play as well as security lighting around the outer perimeter of the structure;
 - (f) passive heating, ventilation and air handling within the structure;
 - (g) a vehicular connection road to Rotary Way and an asphalt parking area for 30 parking stalls, built to City of Surrey engineering standards;
 - (h) an entry plaza;
 - (i) any and all landscaping, retention or detention ponds;
 - (j) all federal, provincial or other sales taxes, customs and excise duties, freight costs, charges, utility or service connection fees or charges specific to the Lands; and
 - (k) a washroom facility including associated fixtures, excluding sanitary services for the facility.
- .7 The Landlord agrees to authorize construction of the Improvements by the Tenant on land owned by the Landlord and shall bear the cost of permit fees and development cost charges levied by the City, and collected by the City on behalf of a third party, attributable to the construction of the Improvements by the Tenant. The Landlord may, at its sole discretion, undertake improvements adjacent to the Improvements by the Tenant. This may include the construction of additional parking spaces, including

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site preparation and lighting. The Landlord further agrees to cause to be constructed sanitary service to the location of the washroom facilities at the sole cost of the Landlord. The Landlord shall coordinate activities with the Tenant to minimize any interference with the Tenant's operations when undertaking Improvements.

- .8 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.
- .9 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, the 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 Substantial Completion.
- .10 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.
- .11 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.
- .12 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

- .1 The Covered Practice Facility 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:
 - (a) the Covered Practice Facility 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 Covered Practice Facility has been based, except for deficiencies the correction of which, in the opinion of the Architect or engineer, is adequately ensured;
 - (b) 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;
 - (c) all permits for occupancy that may be required by the City of Surrey have been obtained;
 - (d) the entry plaza and the vehicular connection to Rotary Way and the 30 parking stalls are ready for public use; and
 - (e) the Covered Practice Facility is ready for occupancy.

For purposes other than subclause 10.5.1(b), Substantial Completion may be in respect of portions of the Covered Practice Facility.

10.5 DEADLINES FOR COMMENCEMENT OF CONSTRUCTION AND SUBSTANTIAL COMPLETION OF BUILDINGS

- .1 The Tenant covenants and agrees with the Landlord that, subject always to Section 20.7:
 - (a) commencement of construction of the Improvements will take place in accordance with the Construction Schedule; and
 - (b) the Improvements will be Substantially Completed in accordance with the requirements of Section 10.4 on or before the day that is 310 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 Improvements 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 seek resolution of such dispute 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

- .1 The Tenant shall have the right, from time to time:
 - (a) to conduct repairs and cosmetic renovations of the Covered Practice Facility without the consent of the Landlord in accordance with the Laws; and
 - (b) to undertake major construction, alterations, demolition, reconstruction or replacement of all or any part of the Covered Practice Facility provided that the consent of the Landlord is first obtained, which consent shall not be unreasonably withheld, and provided that:
 - (i) all construction and approval requirements of this Article 10 apply to such construction and are complied with;
 - (ii) 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;
 - (iii) the Tenant observes and complies with all applicable Laws in force which pertain to or affect the construction, use or operation of the Covered Practice Facility, or the making of any repairs, replacements, alterations or additions to the Covered Practice Facility; and

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- (iv) the Tenant carries out all modifications, alterations or changes of or to the Covered Practice Facility and the conduct of operations in or use of the Covered Practice Facility 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 Lands 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 Lands 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 Covered Practice Facility 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 Covered Practice Facility. For greater certainty, it is expressly agreed that the responsibility for the Covered Practice Facility 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 Covered Practice Facility 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 Covered Practice Facility 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 Covered Practice Facility. Upon reasonable advance notice, the Landlord or its agents may inspect the state of repair of the Covered Practice Facility.

12. DAMAGE OR DESTRUCTION

12.1 CONTINUATION OF RENT

The partial or complete damage to or destruction of the Covered Practice Facility 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 Covered Practice Facility, 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 Covered Practice Facility or part of the Covered Practice Facility damaged or destroyed with new construction 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 Covered Practice Facility to the extent of more than fifty percent (50%) of the Replacement Cost of the Covered Practice Facility 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 Covered Practice Facility and instead demolish the Covered Practice Facility on the Lands and return the Lands to a vacant state in compliance with Section 13.1 all at its sole cost and expense, and terminate this Lease 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 Covered Practice Facility Lands 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

- .1 If and whenever:
 - (a) 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;
 - (b) 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 ninety (90) 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 ninety (90) day period and thereafter proceeds to remedy the same with reasonable diligence;

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- (c) 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 13.1.1(c); or
- (d) 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 Lands 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 Lands 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.

- .2 If the Landlord terminates this Lease in accordance with the provisions of Section 13.1.1(b), the Tenant shall surrender the Covered Practice Facility to the Landlord in accordance with Section 2.4 of the Lease.
- .3 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 90 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 Lands 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 Lands 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 Lands 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 Lands, 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 Lands, the Landlord may follow same for thirty (30) days.

13.6 PROTECTION OF LEASEHOLD MORTGAGEE

- .1 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:
 - (a) 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:
 - (i) the Landlord shall have given each such Leasehold Mortgagee notice specifying the particulars of such default or non-performance;
 - (ii) 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
 - (iii) in the case of any other breach or non-performance, the same shall not have been remedied within a period after

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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 Lands 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.
- .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

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

- (a) 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 Covered Practice Facility or the Lands; and
- (b) 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 Lands through sale or forfeiture. If any loss of the Lands is threatened, the Tenant will take such steps as the Landlord reasonably requires to ensure that such loss does not occur.

15. DISPUTE RESOLUTION

Any controversy, dispute or claim between the parties hereto arising out of or relating to this Lease or in connection with the interpretation of this Lease or relating to the maintenance, operation and use of the Lands and the Covered Practice Facility thereon, shall be first referred to the Facility Advisory Committee [the establishment and membership of this Committee is required elsewhere in the Lease]. If the controversy, dispute or claim cannot be resolved by the Facility Advisory Committee to the satisfaction of both the Landlord and the Tenant, the matter shall be referred to the General Manager of Parks, Recreation and Culture (representing the Landlord) and the President of Coastal Football Club (representing the Tenant). If resolution is not achieved, the matter may then be referred to the British Columbia Supreme Court by either party.

16. 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**

- .1 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:
 - (a) 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

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either that it gives its Approval, or that it withholds its Approval, setting forth in reasonable detail its reasons for withholding;

- (b) 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;
- (c) unless otherwise provided herein, an Approval may not be unreasonably withheld; and
- (d) where applicable, a dispute as to whether or not the Approval has been unreasonably withheld will be resolved in accordance with 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, sent by email, or by fax, or personally delivered, in either case to the addresses as follows:

if to the Landlord:

CITY OF SURREY
13450 - 104 Avenue
Surrey, British Columbia
V3T 1V8
Fax No.: 604 598-5701

Attention: Manager, Real Estate

c.c. City Solicitor

if to the Tenant:

COASTAL FOOTBALL CLUB
13739 - 23A Avenue
Surrey, British Columbia
V4A 9V8
email:geoffk@coastalfc.ca

Attention: Geoff Killam

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.

18. EXPROPRIATION

If during the Term of this Lease title is taken to the whole or any part of the Lands 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 Lands or any part thereof during the Term.

19. CONDITIONS

19.1 CONDITIONS PRECEDENT

- .1 This Lease is subject to the following conditions precedent which are to be waived or satisfied by July 30, 2017:
- (a) that the Tenant, acting reasonably, is satisfied:
 - (i) with the result of its soils inspection conducted pursuant to Section 4.4;
 - (ii) that electricity and gas service for the Covered Practice Facility will be available from the suppliers of such services at a location acceptable to the Tenant;
 - (iii) that the required expenditures and financing of the Covered Practice Facility has been approved by the members of the Coastal Football Club at a special General Meeting; and
 - (iv) with the Assessment pursuant to Section 4.4
 - (b) that the Landlord has approved:
 - (i) the Site Plan prepared by the Tenant;
 - (ii) the Plans and Specifications prepared by the Tenant; and
 - (iii) any changes to this Lease requested by such Leasehold Mortgagee pursuant to Section 7.7; and
 - (iv) that the City has issued a building permit for the construction of all Improvements on the Lands.

The conditions set out in Sections 19.1.1(a) and its subclauses 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 conditions set out in Section 19.1.1(b) and its

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subclauses are for the benefit of both parties and may only be waived by written notice with the mutual consent of both parties.

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) and Section 19.1.1(b) 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 Section 19.1.1(b) have been satisfied or waived, setting forth the date of satisfaction or waiver.

19.3 NOTICES BY FAX OR EMAIL

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 email, written fax, with receipt confirmed by telephone call, given to the following email addresses and fax numbers:

to the Landlord:

City of Surrey
Attention: City Clerk

Tel: (604) 591-4011
 Email: clerks@surrey.ca

to the Tenant:

Coastal Football Club
Attention: Geoff Killam

Tel: (604) 617-4936
 Email: geoffk@coastalfc.ca

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 Covered Practice Facility 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 Lands 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 Lands. 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 APPURTENANT EASEMENT

The Landlord hereby grants and conveys to the Tenant, as appurtenant to this Lease and the Tenant's leasehold interest in the Lands, the following easement for the Tenant, its servants, agents, occupiers, contractors, workmen, employees, customers, licensees and invitees:

- (a) The full and free right, liberty, and easement in common with the Landlord, its successors and assigns, to enter into and upon the Access Easement:
 - (i) For going, returning, passing, and repassing on foot and with vehicles, for access, ingress, and egress to and from the Lands and public roadways; and
 - (ii) For all acts, things and matters necessary for or incidental to the rights granted in this sub-section 18.1(a);

To have and to hold the said rights, liberties, and easement unto the Tenant, its successors and assigns, as appurtenant to this Lease for the Term;

- (b) The Landlord will not construct or permit to exist any fence, barrier, structure or any other improvements of any kind whatsoever in the Access Easement that would prevent or inhibit the use or enjoyment of the rights granted in sub-section 18.1(a) hereof; and
- (c) The rights, liberties, and easement herein granted by the Landlord and the obligations of the Landlord hereunder shall be construed as running with and annexed to the Lease and shall attach to and bind the Access Easement, being a part of Lot 3.

20.16 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 Landlord shall pay all costs of obtaining necessary plans of the Lands in form acceptable for such registration and the Landlord shall pay all costs of registering this Lease in the appropriate Land Title Office.

20.17 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.

20.18 STATUTORY RIGHT-OF-WAY

The Landlord hereby reserves the right to grant other dispositions of the Lands, excluding areas occupied by the structure of the Covered Practice Facility 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 Covered Practice Facility. The Tenant agrees that a grant made under this Section 20.1818 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 Lands under this Lease to any such grant.

20.19 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: _____, 2016

COASTAL FOOTBALL CLUB

by its authorized signatory

Per: _____
Geoff Killam

Per: _____
Mike Hornak

Date: _____, 2016

SCHEDULE B**COVERED PRACTICE FACILITY OPERATING TERMS****1. COMMUNITY ACCESS PRINCIPLES**

The following principles will be used to guide the development, implementation and operation of the Covered Practice Facility for the express purpose of creating a facility that meets the indoor training, skill development and practice needs of Surrey's soccer community. These principles have been developed cooperatively between the Landlord and the Tenant to create a mutually successful agreement.

1.1 Community Involvement

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

1.2 Planning, Design and Construction

- .1 The Tenant is responsible for the planning, design and construction of a Covered Practice Facility and the preparation of detailed drawings as required for the submission of an application for all necessary development and/or building permits. The Tenant shall comply with all requirements of the development approval process. The Landlord will appoint a liaison to act in an advisory capacity throughout the planning, design and construction period. The Tenant agrees to include the Landlord liaison in the Covered Practice Facility design process and consider suggestions brought forward by the Landlord liaison throughout the design and construction process.
- .2 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.

1.3 Covered Practice Facility Allocation, Operations and Management

- .1 The Tenant is responsible for the allocation, programming, operation and maintenance of the Covered Practice Facility but must meet the requirements of these Community Access Principles and the applicable City by-laws and policies.

- .2 The Tenant will operate and maintain the Covered Practice Facility at a standard of care that is consistent with leisure facilities operated by the Landlord.

1.4 Program Cooperation

- .1 To ensure that both financial sustainability and community needs are met, the Tenant will work in consultation with the Landlord to allocate the facility and orient its programs and services to best meet community needs.
- .2 The Landlord and the Tenant will work cooperatively to ensure that the Tenant's role as the Covered Practice Facility operator is viewed by Surrey residents as a successful model for the delivery of leisure services in the community.

1.5 Use of the Covered Practice Facility

- .1 The Covered Practice Facility shall be used by the Tenant to provide soccer related programs, practice time and general play for Coastal Football Club teams and members and other not-for-profit clubs, organizations and teams based in Surrey on a pay to play basis throughout the year. Other recreational, instructional and developmental programs may also be offered by the Tenant
- .2 The Tenant will prepare and adopt an allocation process for the Covered Practice Facility that establishes priorities and fees for various categories of user types for review and endorsement by the Facility Advisory Committee on an annual basis.
- .3 The Tenant will strive to achieve a balance in the allocation of prime-time and non prime-time, satisfactory to the Facility Advisory Committee, for all user types. For greater clarity, "prime-time" means:
 - (a) from Monday to Friday: 4:00 PM until 10:00 PM; and
 - (b) on Saturday, Sunday and statutory holidays: from 7:00 AM until 4:00 PM.

1.6 Community Access

- .1 The Landlord and the Tenant are committed to ensuring equity in the provision and access to the Covered Practice Facility.
- .2 The Tenant will provide full public access to the Covered Practice Facility. 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 with a goal that cost and economic hardship will not be a barrier for any participant. The Tenant's obligations under this program will be limited to

specific budget commitments that are established by the Tenant from time to time and reported annually to the Facility Advisory Committee. The Tenant may act in partnership with the City and various other organizations in pursuit of this goal.

- .4 The Tenant will offer at least two (2) community event days at the Covered Practice Facility each year throughout the Term.

1.7 Facility Advisory Committee.

The Tenant will establish and maintain a committee (the "Facility Advisory Committee") composed of five (5) members. Two members shall be representatives of the Landlord, two shall be representatives of the Tenant and the remaining member is to be a resident of Surrey who is currently served by the Covered Practice Facility. The Facility Advisory Committee will act as an advisory group to give advice with respect to the operation and allocation of time in the Covered Practice Facility. The Facility Advisory Committee shall have no power to make decisions with respect to, *inter alia*, the management, operation or control of the Covered Practice Facility.

1.8 Annual Review and Reporting

- .1 The Tenant will convene one meeting of the Facility Advisory Committee each year during the Term to give a year-end report with respect to the operation of the Covered Practice Facility (the "Annual Review").
- .2 The Tenant shall provide information for examination at the Annual Review of sufficient detail and type such that the Facility Advisory Committee may determine compliance with the Community Access requirements of this Schedule B.
- .3 During the Annual Review, the Facility Advisory Committee and/or the Landlord's representatives on the Facility Advisory Committee may identify issues as being in need of improvement and shall provide notice of these issues to the Tenant. For issues so identified, the Tenant must take steps to bring the issue into compliance with this Agreement and report back to the Facility Advisory Committee within 90 days of the date of the notice.
- .4 In the event that any issue (as identified by the Landlord and/or the Facility Advisory Committee) is not remedied to the satisfaction of the Landlord within the time provided by this Section, any such unremedied issue(s) will, subject to dispute resolution in accordance with Section 15 of the Lease, constitute a material breach of the Lease.
- .5 The Tenant may also be called to report to the Parks and Recreation Commission from time to time regarding matters related to the Covered Practice Facility.

SCHEDULE C

LEASE LANDS AND ACCESS EASEMENT

FORM_SPC_V11

**SURVEY PLAN CERTIFICATION
PROVINCE OF BRITISH COLUMBIA**

PAGE 1 OF 2 PAGES

By incorporating your electronic signature into this form you are also incorporating your electronic signature into the attached plan and you

(a) represent that you are a subscriber and that you have incorporated your electronic signature to the attached electronic plan in accordance with section 168.73 (3) of the Land Title Act, RSBC 1996 c. 250; and

(b) certify the matters set out in section 168.73 (4) of the Land Title Act.

Each term used in this representation and certification is to be given the meaning ascribed to it in part 10.1 of the Land Title Act.



1. BC LAND SURVEYOR: (Name, address, phone number)

Import Profile**Monty Brisson**

City of Surrey, Engineering Dept.

13450 - 104 Ave.

Surrey

BC V3T 1V8

(604)591-4630

mbrisson@surrey.ca

 Surveyor General Certification [For Surveyor General Use Only]

2. PLAN IDENTIFICATION:

Control Number: **148-002-8127**Plan Number: **EPP61606**This original plan number assignment was done under Commission #: **774**

3. CERTIFICATION:

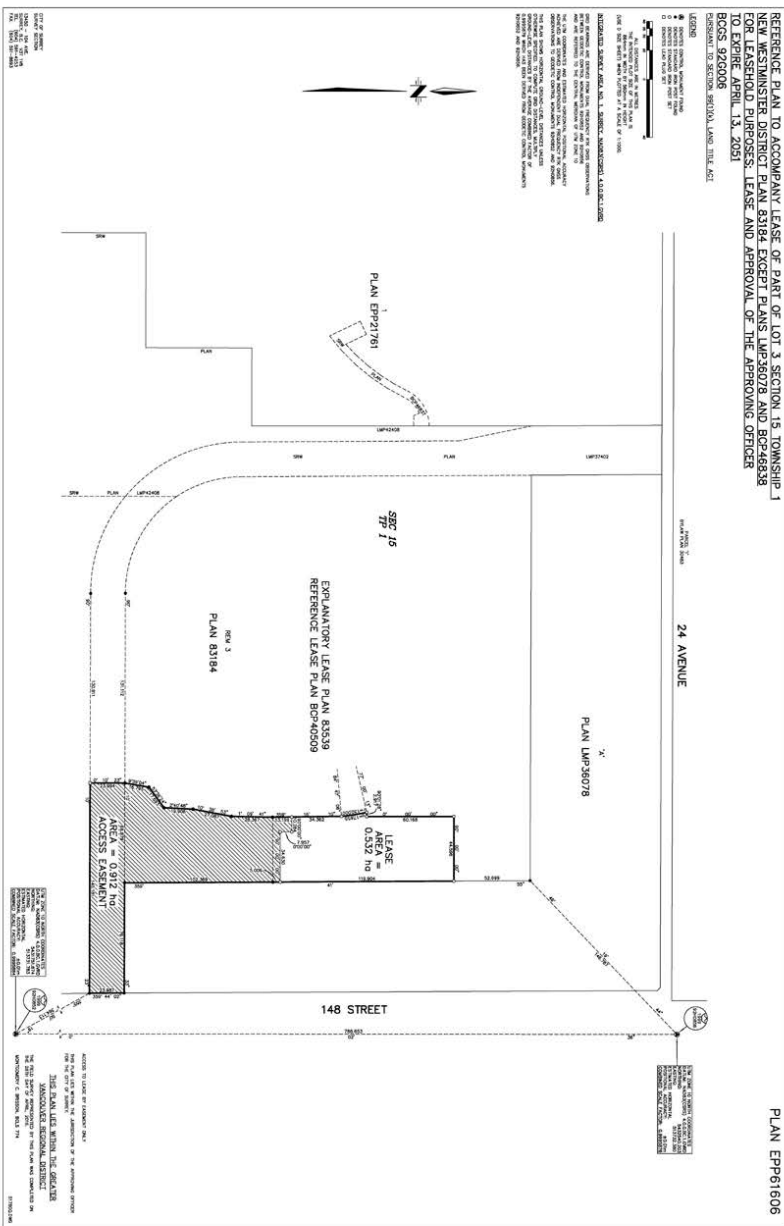
 Form 9 Explanatory Plan Form 9A

I am a British Columbia land surveyor and certify that I was present at and personally superintended this survey and that the survey and plan are correct.

The field survey was completed on: 2016 April 28 (YYYY/Month/DD) The checklist was filed under ECR#: 186278

The plan was completed and checked on: 2016 May 03 (YYYY/Month/DD)

 None Strata Form S None Strata Form U1 Strata Form U1/U2Arterial Highway 4. ALTERATION:



Location of the Covered Practice Facility



**COVERED
PRACTICE FACILITY**

**Parks, Recreation
and Culture Department**

The data provided is compiled from various sources and IS NOT warranted as to its accuracy or sufficiency by the City of Surrey.
This information is provided for information and convenience purposes only. Lot sizes and legal descriptions must be confirmed at the Land Title Office

J:\PARK-REC\PlanDesign\General\PROJECTS\South Surrey Athletic Park\2016 Covered Practice Facility