



Staff Report to Committee of the Whole

DATE: Monday, February 27, 2023

DEPARTMENT: Administration

SUBJECT: YMCA Financial Challenges and Next Steps

BACKGROUND:

Pre-2013, the City worked with the YMCA-YWCA of Greater Victoria (the YMCA) and Westhills Land Corporation (Westhills) to create a plan to provide an aquatic centre (the Recreation Centre) on Westhills Drive.

The plan called for Westhills to fund and build the Recreation Centre, which would be purpose built to meet the requirements of the YMCA and the City. The plan also called for the YMCA to lease the Recreation Centre from Westhills for 25 years, and for the City to purchase recreation services from the YMCA, also for a period of 25 years.

A Tripartite Agreement between the City, the YMCA and Westhills was also developed under which the City agreed to assume the Lease if the YMCA ceased to operate the Recreation Centre or defaulted under the Lease, including by failing to make the monthly rent payments to Westhills. The purpose of the tri-partite agreement was to provide certainty to Westhills that the lease payments for the Recreation Centre would continue to be paid for the full term contemplated.

In early 2013, Council approved the Tripartite Agreement and Operating (Services) Agreement, copies of which are attached to this report.

Since the opening of the Recreation Centre in 2016, the YMCA has indicated that it has lost more than \$10,000,000 operating the Recreation Centre. Further, since 2020, Westhills has provided a variety of rent deferrals to the YMCA. (See attached letters between the YMCA to Westhills, which the City was copied on.)

In late January, 2023, Derek Gent, the Chief Executive Officer advised the City that the YMCA Board had passed the following resolution:

BE IT RESOLVED THAT due to ongoing financial deficits in the operation of the Westhills YMCA/YWCA facility in Langford (hereinafter "WHY"), the Board directs staff to initiate actions toward a facility closure starting March 31, 2023 unless, prior to March 31, 2023, the City of Langford commits to a further annual contribution of \$950,000 which

contribution shall be in addition to that required under the Services Agreement dated for reference February 7, 2013.

Given the requirements within the existing agreements and the above resolution from the YMCA Board, the intent of this report is to provide a path forward for the City that meets the following objectives:

1. Ensure the continued operation of the Recreation Centre under the YMCA in the short-term;
2. Ensure the residents of Langford are getting the best possible services at a good value at the Recreation Centre; and
3. Ensure the City is taking all the steps necessary to minimize its long-term financial exposure.

COMMENTARY:

Objective 1: Ensure the continued operation of the Recreation Centre under the YMCA in the short-term

In the short term, staff believe that it is critical that the YMCA remain the operator at the Recreation Centre. This will ensure that the existing services levels at the Recreation Centre are maintained, without the City having to financially contribute anything greater than if the YMCA were to cease operations and the Recreation Centre to be without an Operator.

Under the terms of the Operating agreement, the City is obligated to provide \$950,000 to the YMCA as an annual subsidy. The YMCA has advised that, unless the City increases the annual contribution to \$1,900,000, as of March 31, 2023, they will begin to initiate a closure of the Recreation Centre (actual date not defined). If the YMCA were to initiate a closure of the Recreation Centre, they would be in breach of the Operating Agreement, allowing the City to terminate the Operating Agreement (and obligating Westhills to terminate the Lease Agreement). If this were to happen, the City would no longer be obligated to provide the annual subsidy, but would become responsible for the monthly rent due under the Lease Agreement until a new operator is found, which the City understands to be an amount equal to approximately double the City's annual contribution, until a new operator is found.

Therefore, in the short-term, by increasing its annual contribution to the Recreation Centre, the City will maintain existing services to the community at approximately the same cost as if the Recreation Centre did not have an operator.

Objective 2: Ensure the residents of Langford are getting the best possible services at a good value at the Recreation Centre

Staff believe that if the City agrees to double its annual contribute to the Recreation Centre, it should be conditional upon the City conducting a governance and operational review of the Recreation Centre to ensure the residents of Langford are getting the best possible services at a good value for money spent.

This review would have three parts:

First, section 4.8 of the Operating Agreement requires the YMCA, on a bi-annual basis, to provide the City with a report relating to the operation and management of the Recreation Centre. No reporting has been received by the City since the opening of the Recreation Centre in 2016. Therefore, staff recommend that the City requires detailed reporting of the operation and management of the Recreation Centre going back five years be provided to the City.

Second, and using these reports, once received, as a starting point, staff also recommend that the YMCA commits to a comprehensive governance and operational review of its operations at the Recreation Centre to determine what improvements can be made, if any.

Third, staff recommend that the governance and operating structure of the YMCA at the Recreation Centre be assessed and compared to other similar facilities in the region to help determine the most suitable governance and operating structure that best meets the needs of Langford residents going forward.

Objective 3: Ensure the City is taking all the necessary steps to minimize long-term financial exposure.

As noted above, the City is currently providing \$950,000 as an annual subsidy to the YMCA. If the City were to increase its contribution, the City would pay approximately \$34,000,000 over the remaining term of the Lease Agreement (approximately 18 years). However, at the end of the Lease Agreement, Westhills would continue to own the Recreation Centre and additional lease payments would be required at that time to continue to provide the Recreation Centre as a benefit to the community.

Through conversations with the YMCA and Westhills, staff understand that Westhills may be willing to sell the Recreation Centre. Therefore, staff recommend that the City enter into negotiations with Westhills for the potential purchase of the Recreation Centre, including entering into detailed discussions regarding purchase price and terms, and seeking relevant information from Westhills regarding the Recreation Centre (e.g. available depreciation reports, lease agreements with other tenants, etc.).

FINANCIAL IMPLICATIONS:

In the short term, in order to ensure the ongoing operation of the Recreation Centre, it is recommended that the City increase its annual contributions from \$950,000 to \$1,900,000. For the 2023 budget, this would have a tax implication of approximately 2.5%, if the additional contribution was provided from April to December).

In the long term, it is recommended that the City consider purchasing the Recreation Centre. The financial implication of this purchase would be determined through negotiations with Westhills.

LEGAL IMPLICATIONS:

Detailed legal implications regarding this matter will be provided to Council at an In-Camera Council meeting.

Council may wish to note that under the current operating agreement, the YMCA does not have the authority to initiate a facility closure, as indicated in the YMCA Board resolution in the January 27th email (attached). If the YMCA were to take this step, the City would be in a position to terminate the Operating Agreement with the YMCA (and cease the \$950,000 annual subsidy to the YMCA).

If this occurs, the City will become the month-to-month lessee of the Recreation Centre on the terms of the current Lease until the City and Westhills have entered into new agreements with a replacement operator. As noted above, the cost of this would be approximately double the City's annual contribution, until a new operator is found.

OPTIONS:

Option 1

THAT Committee of the Whole recommends that Council:

1. Direct staff to include an additional \$950,000 in the 2023 budget and five-year financial plan as an additional financial contribution for the operation of the Recreation Centre by the YMCA under the current tripartite, operating and lease agreements;
2. Direct staff to request the following information and assurances of next steps from the YMCA:
 - a. Operating reports, as specified under the operating agreement, for the last five years;
 - b. Commitment to a comprehensive operational review of the YMCA governance and operating structure at the Recreation Centre;
3. Direct staff to assess and compare the governance and operating structure of the YMCA at the Recreation Centre to other comparable facilities in the region to determine the most suitable governance and operating structure that would provide the greatest level of service at the lowest cost for Langford residents going forward; and
4. Direct staff to enter into negotiations with Westhills for the potential purchase of the Recreation Centre;

OR Option 2

THAT Committee of the Whole recommends to Council an alternative direction regarding the YMCA's funding challenges and next steps.

SUBMITTED BY: Braden Hutchins, Director of Corporate Services

Concurrence: Donna Petrie, Senior Manager of Business Development and Events

Concurrence: Yari Nielsen, Director of Parks, Recreation and Facilities

Concurrence: Matthew Baldwin, MCIP, RPP, Director of Planning and Subdivision

Concurrence: Katelyn Balzer, P.Eng., Director of Engineering and Public Works

Concurrence: Michael Dillabaugh, CPA, CA, Director of Finance

Concurrence: Marie Watmough, Deputy Director of Corporate Services

Concurrence: Darren Kiedyk, Chief Administrative Officer

Attachments:

Attachment 1 – Letter from YMCA to Westhills Dated February 17, 2023

Attachment 2 - Letter from Westhills to the City Dated February 14, 2023

Attachment 3 – Letter from Westhills to the YMCA dated February 14, 2023

Attachment 4 – Letter from the YMCA to Westhills Dated January 30, 2023

Attachment 5 – Email from the YMCA to the City Dated January 30, 2023

Attachment 6 – Letter from Westhills to the YMCA Dated Jan 25, 2023

Attachment 7 – 2013 Staff Report to Council Regarding Agreements

Attachment 8 – Tripartite Agreement

Attachment 9 – Operating (Service) Agreement



**YMCA-YWCA
Vancouver Island**

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Ryan McKenzie, Westhills Land Corporation
957 Langford Parkway
Langford, BC V9B 0A5

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sent by e-mail to rmckenzie@westhillslandcorp.com

February 17, 2023

cc to Darren Kiedyk, City of Langford and Deb Moore, Breakwater Realty Inc.

Dear Ryan,

Thank you for the response dated February 14, 2022. Our Board is convening next week and will consider your comments and suggestions, including the opportunity to meet with representatives from WLC. We continue to work closely with the City of Langford to advocate for increased funding and support that could help us to reach a sustainable level of operations under the current lease. The process emerging there promises an opportunity to more clearly communicate the value of this facility to the community, clarify our capacity to deliver services in the current context and show a path forward together.

In terms of an update on our operations, January was a good month, relative to earlier periods, with the addition of approximately 500 new members at the Westhills Y (bringing our total here to almost 6200 individuals, with almost 10,000 between our branches) demonstrating to us that our efforts to increase membership are working. It is also noteworthy that our membership consists of 70% Langford residents. We have not yet reached the \$200K monthly membership level referenced in our earlier letter, but are inching closer and February growth has been strong. Despite growth, this branch of our operations continues to lose significant money each month; the fixed occupancy costs being one of our biggest expense items.

To the comment about operating hours, as part of our planning, we have extended both weekday and weekend opening and closing times as of February 21st, and we continue to work to add programming and capacity as we monitor activities and as we strive to find enough employees. While internal capacity is limited, our marketing efforts are ongoing, in terms of electronic, print and bus ads in circulation, we have expanded our social media presence and we have been offering promotional days, like the recent Free on the 5th days, encouraging guest pass usage and swim promotions. The recent Westhills sponsored contest for a free family membership promoted on social media was well received. Camp Thunderbird registrations recently opened and we have had a good response to this year's offerings so far. Our other programs, including the \$10 per day childcare at the Westhills Y are going as expected.

Further to your request, I also enclose a copy of our 2022 year end consolidated financial results, including income statement and balance sheet. These results are still unaudited, and subject to further likely additional year end adjustments, but should provide a bit more indication of our continued financial challenges here, especially with the loss of government pandemic supports. The Board continues to impose restrictions on our assets which will be more accurately reflected in the presentation and notes of our audited statements, as in previous years.

We remain committed to making progress toward a solution with the City of Langford in the near term and that we can work to address your concerns as we continue to serve the growing and evolving community here. Thank you for your continued engagement.

Best regards,

Derek Gent, Chief Executive Officer



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February 14, 2023

City of Langford
877 Goldstream Avenue
Victoria, BC V9B 2X8

Attention: Darren Kiedyk

Dear Darren:

Re: YMCA Rent and Arrears

Enclosed please find a copy of our letter to the YMCA of today's date. As you know, we are very willing to work with the YMCA and the City to make the YMCA the ongoing success it should be. We are concerned however, that the YMCA may not be taking this matter as seriously as it should be. This is evidenced by the fact that the YMCA appears to have had approximately \$8.4 million dollars in liquid assets as at the end of 2021, while allowing the arrears it owes Westhills to build up to over \$1.6 million dollars, while ignoring our offer to meet with the board to explore solutions. In addition, though we understand that the YMCA, like all businesses, is experiencing struggles with labour and other issues coming out of the pandemic, we feel that they may need some direction and support in getting back on track.

As noted in our letter to them, the YMCA fitness centre is only open until 7:45 Monday to Friday, and until 4:00 on weekends, as compared with the JDF fitness centre, which is open until 10:00 Monday to Friday, and 8:00 on weekends, a fact which concerns us. In addition, we would love to help the YMCA get word out to Westhills (and greater West Shore) residents – with whom we have several means of direct contact – about the YMCA and its offerings. We have made this offer to the YMCA several times, and with the exception of including a fairly basic flyer in one mailout last year, they have not taken us up on these offers. One thought we had, which we have not mentioned to the YMCA but which we wanted to raise with the City, was the possibility of the City leasing space from the YMCA to operate a youth centre. This was a focus for supporters of Mayor and Council during the election, and the YMCA facility contains a space originally designated to be a youth centre.



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The Westhills YMCA is an incredible one-of-a-kind facility. It is irreplaceable, in location and design, and it would be impossible for the YMCA to construct it now for anything close to the equivalent of its rental investment. None of the parties want to see this enterprise fail, and so we are asking that the City take all reasonable steps to ensure the YMCA's success. Please let us know what we can do to be helpful in this process.

Yours truly,

Westhills Land Corp.

Per:

Ryan McKenzie
Manager

Encl.



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February 14, 2023

YMCA-YWCA of Vancouver Island
1319 Westhills Drive
Langford, BC V9B 0S2

Attention: The Board of Directors of the YMCA-YWCA and Derek Gent

Dear Derek and Board Members:

Re: Westhills YMCA

Thank you for your letter dated January 30, 2023. While we understand that the YMCA is having some ongoing challenges, we were disappointed with your response to our letter. Westhills' accommodations to date have been entirely voluntary; we are not obligated to accept less than full rent from the YMCA, and we feel that we have been more than reasonable in doing so for an extended period of time through, and coming out of, the pandemic. We do appreciate that the YMCA increased its monthly rent payment to 85% of the amount owed in February however we have been clear in recent correspondence that we will not accept less than full rent at this time and that a plan must be made to address the over \$1.6 million in arrears currently owing. We were also disappointed that you did not take us up on our offer to meet with the YMCA Board to discuss these issues.

You have advised us that the YMCA's revenues have not returned to pre-pandemic levels, and we trust that you are doing everything possible to increase those revenues. We do have some concerns about the YMCA's current operating hours, particularly for the fitness centre. The YMCA fitness centre is currently only open until 7:45 Monday to Friday, and until 4:00 on weekends. With the fitness centre being in direct competition with the JDF fitness centre, which is open until 10:00 Monday to Friday, and 8:00 on weekends, it's not surprising that new members might choose the latter. We are also unsure about the intensity of the YMCA's public efforts to recapture the membership lost during the pandemic. Westhills has offered to use our resources such as social media, resident mailouts, etc. to assist the YMCA and we have seen very little uptake from the YMCA on these offers. Also, while service levels and programming are between the YMCA and the City pursuant to the Services Agreement between the two, we are certainly supportive of the City providing additional support to the YMCA, and we have no doubt that you are working with the City to achieve this.



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On a final note, we are aware from financial statements previously provided that the YMCA that as of the end of 2021, the YMCA had \$8.4 million in cash and other investments, and is therefore capable of paying full rent to Westhills. We do not feel it is reasonable of the YMCA to ask Westhills to allow further arrears to build up while it retains millions of dollars itself. On that note, we would appreciate being provided with the most recent copies of the YMCA's financial statements including the balance sheet.

We are, as always, happy to discuss these matters and to work with the YMCA to facilitate its future success, but we must reiterate our request that full rent be paid starting immediately, and that a plan be developed to address the arrears. We remain more than happy to meet with yourself and the Board.

Yours truly,

Westhills Land Corp.

Per:

Ryan McKenzie
Manager

cc: City of Langford – Attention: Darren Kiedyk
Breakwater Realty Inc. – Attention: Deb Moore



**YMCA-YWCA
Vancouver Island**

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Ryan McKenzie, Westhills Land Corporation
957 Langford Parkway
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sent by e-mail to rmckenzie@westhillslandcorp.com

January 30, 2023

cc to Darren Kiedyk, City of Langford and Deb Moore, Breakwater Realty Inc.

Dear Ryan,

Thank you for the correspondence addressed to our Board of Directors from January 25, 2023, and for your continued conversations and support regarding the situation at our Langford location.

Unfortunately, despite the abatement of many pandemic restrictions and conditions, we have not seen a return of the health and fitness memberships at our Westhills Y location to anywhere near the levels of 2019. Monthly membership revenues in December of 2022 were approximately \$175,000, compared against average monthly revenues of over \$330,000 in 2019. We are pleased to report that the Childcare Centre at this location was approved as a \$10 per day site starting this month, which has resulted in significantly lower fees to parents.

We have experienced operating losses at this location in excess of \$1.7MM in 2022, bringing our cumulative deficit since opening in 2016 to more than \$10MM here. You may recall that we had already reported losses in the pre-pandemic period which have been significantly exacerbated by the pandemic and changes in market conditions. While the government supported wage and rent subsidies that are now at an end have been helpful, and we continue to see growth in membership as we also seek more diversified and alternative revenue sources as an organization, the financial situation remains very challenging. In an effort to reduce expense, our health and fitness centre and childcare at Eagle Creek in View Royal have not re-opened since the pandemic closure in 2020, and we have subleased the facility at this location. We also sought and obtained an amendment to the lease at our Downtown facility that provides us additional financial relief and allows us to continue delivery of services at this site. Operations at *Camp Thunderbird*, *Pandora Youth Apartments*, *Y Young Moms* and through various programs such as *Y-Mind*, *Healthy Living*, and our *Leadership Development* trips are ongoing.

Efforts are underway to work with the City of Langford to increase the City's contribution as a means to help us continue operation of this location. We have requested that by March 31, 2023, the City provide to us their commitment to increase their financial contribution.

At this time, we request a continued partial deferral of our rent payments to Westhills Corporation, with a proposed increase to 85% of the regular rent payment for February (based on the \$175K membership target reached in December), and then up to 90% to be based on increasing membership revenues to over \$200K, with 95% at \$225K and then 100% at \$250K, or based on receiving additional funding from the City of Langford. Note that these membership targets do not represent breakeven operations in the absence of additional funding, but we hope that this proposal shows our willingness to continue seeking mutual solutions.

Our organization very much wants to operate this important facility serving thousands of people from the Westhills neighbourhood and Langford community (70% of current users live in this municipality), as well as other users from the region. We will continue our efforts to seek additional resources and develop a sustainable operating model for addressing the evolving needs of residents here.

We greatly appreciate your patience and candour, with all efforts to work collaboratively.

Best regards,

Derek Gent, Chief Executive Officer

From: Derek Gent <dgent@vancouverislandy.ca>
Sent: Friday, January 27, 2023 11:24 AM
To: Darren Kiedyk <dkiedyk@langford.ca>; Braden Hutchins <bhutchins@langford.ca>
Subject: RE: Follow up from our conversation

Hi Darren and Braden,

Our Board met yesterday on January 26th and unanimously passed the following resolution:

BE IT RESOLVED THAT due to ongoing financial deficits in the operation of the Westhills YMCA/YWCA facility in Langford (hereinafter "WHY"), the Board directs staff to initiate actions toward a facility closure starting March 31, 2023 unless, prior to March 31, 2023, the City of Langford commits to a further annual contribution of \$950,000 which contribution shall be in addition to that required under the Services Agreement dated for reference February 7, 2013.

We will be responding to the Westhills letter received on Wednesday with a request for continued rent deferral at this time, based on our proposal for a proportional amount to be paid based on achieving continued growth in membership revenues at this location. December revenue was approximately \$175,000, and we propose to pay 85% of the total base rent for February (up from 75% paid in January and earlier periods), with up to 90% paid at \$200K, 95% at \$225 and 100% at \$250K, or upon receipt of additional funding contributions requested from the City of Langford.

Again, we would like to request that this information remain confidential within the City to avoid undue concern or potential risk to our current operations.

Happy to chat further about where things are at in the process there or any ways we can further support your work.

Regards,
Derek

Derek Gent
Chief Executive Officer

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January 25, 2023

YMCA-YWCA of Vancouver Island
1319 Westhills Drive
Langford, BC V9B 0S2

Attention: The Board of Directors of the YMCA-YWCA and Derek Gent

Dear Derek and Board Members:

Re: Westhills YMCA

Further to our discussion prior to the holidays we write regarding the outstanding rent arrears owed by the YMCA-YWCA of Vancouver Island (the “YMCA”) to Westhills Land Corp. (“Westhills”).

As you are aware, Westhills worked proactively with the YMCA throughout the pandemic and the associated restrictions including the following measures:

- Agreeing to reduce rent by 50% (on a deferred basis) for 6 months (April – July, Sept. & Oct. 2020)
- Agreeing to reduce rent by 25% (on a deferred basis) for 22 months (Aug. 2020, Nov. 2020 – July 2022)
- Not implementing the rent adjustments that were due February 1, 2021 & 2022
- Providing assistance in marketing the YMCA to increase membership
- Exploring sale of the Westhills facility to the YMCA at a price less than fair market value
- Proactively approaching the City of Langford to discuss ways that they could assist with rental arrears and ongoing financial support

The agreement to allow the YMCA to pay partial rent for a period of time was on the basis that the parties would determine moving forward how the deferred rent would be paid to Westhills.

On July 7, 2022, Westhills advised the YMCA in writing that as of August 1, 2022, it would require that full rent once again start to be paid. Since receipt of that letter, you have advised us that the YMCA board has instructed you not to pay full rent, and instead have continued to submit payment of only 75% of the required amount for each month from August, 2022 through January, 2023.

While the pandemic caused incredible challenges for most organizations, we now seem to be well past the most difficult stage of it. We strongly encourage you to take all steps necessary to ensure that the YMCA’s operating model is viable. We have provided financial assistance for almost three years and it is simply not sustainable for Westhills to continue to do so.



Westhills

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The YMCA is in default of the lease and Westhills cannot allow the rental arrears to accumulate any further. As of today's date, the rental arrears without interest are approaching \$1,600,000. Interest on these arrears is approximately \$150,000. We require that the full monthly rent payment be submitted in February 2023 and in all subsequent months. We also require that the YMCA develop a plan to pay down the arrears. We would be pleased to meet with you and the YMCA board to discuss your plan to address this situation.

The Westhills YMCA-YWCA facility could not have been created without the significant and innovative commitments made by the YMCA, the City of Langford and Westhills. When the project was initially discussed it was clear that none of the parties were interested in owning a recreation centre. Westhills, in particular, was reluctant to own the facility due to the significant capital infusion and borrowing that it would require, the construction risk, the potential tenancy issues, and the fact that unique facilities such as this are not typically owned by land development companies. At the end of the day, the significant commitments made by the YMCA and the City in the Lease, Tripartite Agreement and Services Agreement encouraged us to take on the commitment of constructing and owning the facility. We worked closely with the YMCA through the design and construction process to create a flagship facility based on significant input from the YMCA to ensure the design met your operational requirements, and as indicated above, we have continued to work with you since the YMCA opened to try to help ensure its success.

Most recently, when you approached us about potentially selling the facility to the YMCA, Westhills was willing to explore that option as well. With respect to those recent negotiations, we point out that given the market changes in land value and construction costs in the years since the YMCA was constructed it would be impossible today to create such a facility in a similar location at a cost anywhere close to the value at which Westhills was recently prepared to sell the building.

We have invested heavily in the recreation centre and believe that it can be a successful facility that will continue to offer tremendous benefits to the surrounding residents and wider community for many years to come, but it is imperative that we commence discussions as soon as possible to resolve some of the outstanding issues. We look forward to hearing from you at your earliest convenience.

Yours truly,

Westhills Land Corp.

Per:

Ryan McKenzie
Manager

cc: City of Langford – Attention: Darren Kiedyk
Breakwater Realty Inc. – Attention: Deb Moore



Staff Report to Council

Date: February ^{4th} 2013

Department: Administration

Subject: Agreements between YMCA and City to Establish New Service (Aquatic Centre)

Background

As Council is aware, staff have been working with the YMCA-YWCA of Greater Victoria (the Y) in a plan to provide an aquatic centre for Langford residents on Langford Parkway. The plan calls for Westhills Land Corporation (WLC) to build the aquatic centre on land near City Centre Park; for the Y to lease the centre from WLC for 25 years; and for the City to purchase service from the Y, also for a period of 25 years. A tripartite agreement between the City, the Y and WLC was developed under which the City agrees to assume the lease if the Y ceases to operate the facility. In addition, as part of the overall agreement for the facility, a separate lease agreement is being prepared which will see the City lease an additional 4,000 sq ft. in the building. The City is working with the Greater Victoria Public Library in hopes to use this space for a new Library, however, at this time it has not been confirmed that a Library will occupy the space.

Commentary

The 'Operator Agreement' between the City and the Y and the Tripartite Agreement between all three parties have been finalized and the agreements are attached to this report.

The Operator Agreement:

- Is effective from the date the Y begins to provide services to the public (expected to be in late 2015),
- Specifies services to be provided by the Y to Langford residents, including discounts to be given on proof of residency,
- Provides for annual payment by the City to the Y of \$750,000, indexed by population to a maximum of \$950,000.
- Requires the Y to indemnify the City from any liability arising out of the operation of the aquatic centre.

The Tri-Partite Agreement:

- Provides that in the event the Y ceases to operate the aquatic centre the City will rent the area from WLC. It would be the understanding that the City would operate the facility itself until it finds a new operator. Once a new operator is found, a new lease and operating agreement will be established with a new operator. The rents paid will be the same as the lease payments previously paid by the Y.

Additional Lease Space:

- Provides for the lease of an additional 4,000 sq ft of space in the main floor of the recreation facility.
- Staff are still working with WLC on establishing the terms and conditions of the lease.

Financial Implications

When the Operator Agreement comes in to force, there will be a budget impact of \$750,000 annually plus approximately \$100,000 for the additional 4,000 sq.ft. of leased space. About \$315,000 of this will be offset by elimination of debt servicing cost for the pool at Juan de Fuca Recreation and an additional \$110,000 through retirement of debt for trails leaving a net tax cost of about \$17 on the average home.

Legal Implications

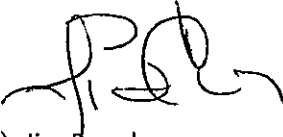
Council is authorized under section 8 of the *Community Charter* to provide municipal services by contract.

Options


That Council:

1. Approve the Operator Agreement and Tripartite Agreement as presented, and
2. Direct Staff to finalize the Lease Agreement with WLC for an additional 4,000 sq ft of space in the YMCA/YWCA Facility, or
3. Decline to establish the service of an aquatic centre under the terms presented.

Respectfully submitted,

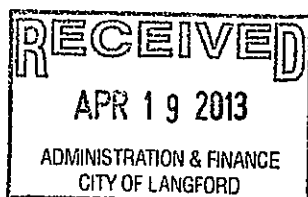


Jim Bowden
Administrator



Steve Ternent
Treasurer

SCANNED



957 Langford Parkway
Victoria, BC V9B 0A5
T: (250) 383-9281
F: (250) 478-6671
www.westhillsbc.com

April 18, 2013

Hand Delivered

City of Langford
2nd Floor, 877 Goldstream Ave
Langford, BC V9B 2X8

Attention: Jim Bowden

Re: Westhills YMCA/YWCA – Tripartite Agreement

Dear Jim,

Enclosed for your records are two fully executed copies of the Tripartite Agreement.

Yours truly,

Westhills Land Corp.

Per:



Ryan McKenzie
Manager

Encl.

TRIPARTITE AGREEMENT

THIS AGREEMENT dated effective the 7th day of February 2013

AMONG:

THE CITY OF LANGFORD
877 Goldstream Avenue, 2nd floor,
Victoria, BC V9B 2X8
(the "City")

OF THE FIRST PART

AND:

THE YMCA – YWCA OF GREATER VICTORIA
(Society No. S-0006088)
851 Broughton Street,
Victoria BC V8W 1E5
(the "Y")

OF THE SECOND PART

AND:

WESTHILLS LAND CORP.
(Inc. No. 0752971)
957 Langford Parkway
Victoria, B.C. V9B 0A5
(“WLC”)

OF THE THIRD PART

WHEREAS:

- A. Certain lands in the City of Langford have been identified as desirable for a community recreation centre to include an aquatic and fitness centre with a 25 metre pool; a warm pool with a movable floor; hot tubs and saunas and a wave pool, health & fitness areas, a gymnasium, a child minding area, and an outdoor play area for children, with offices (the "Recreation Centre");
- B. The aquatic and fitness centre will consist of a reception area and food service area, a 25 metre pool, warm pool with movable floor, hot tubs and saunas, lazy river, water slide, wave pool, health & fitness areas, a gymnasium, including change rooms, multi-purpose rooms, administration areas, and public areas for programs and services (referred to herein as the "Aquatic Facility");
- C. The land identified for the Recreation Centre is owned by WLC, being a portion of Part of Block I, Sections 86, 87, 88, 89 and 90, Esquimalt District, and Section 87 Metchosin District, Plan 1139, which will be subdivided for the construction of the Recreation Centre (the "Lands");
- D. The Y has agreed to lease the Recreation Centre, which includes the Aquatic Facility from WLC for a period of 25 years, pursuant to the terms of a lease dated the 7th day of February, 2013 (the "Lease");

- E. The City has agreed to purchase recreational services from the Y as operator of the Aquatic Facility, pursuant to the terms of an agreement dated the 7th day of February, 2013 (the "Services Agreement");
- F. The parties acknowledge and agree that the Lease and Services Agreement are separate and independent agreements wherein the City will have no privity of contract regarding the Lease and WLC will have no privity of contract regarding the Services Agreement;
- G. The parties acknowledge and agree that a tripartite agreement among the City, the Y and WLC for matters relating to both the Lease and the Services Agreement is in order;

NOW THEREFORE this Agreement witnesses that in consideration of the premises and mutual covenants and agreements, and other good and valuable consideration (the receipt and sufficiency of which each party acknowledges), the parties agree as follows:

PART 1 – DEFINITIONS AND TERMS FROM OTHER AGREEMENTS

- 1.1 Certain defined words, terms and phrases contained in the Services Agreement and Lease are incorporated into this Agreement as Schedule "A".
- 1.2 The Parties have agreed that the name of the Building/Recreation Centre will be "Westhills YMCA/YWCA" and the Aquatic Facility will have the sub-name "Langford Aquatics."
- 1.3 The Term of this Agreement will be as set out in Schedule "A."

PART 2 – EARLY WARNING NOTIFICATION

- 2.1 The parties agree that it is critical to the success of the Aquatic Facility that all parties to this Agreement uphold their obligations under the Services Agreement, the Lease, and this Agreement. Accordingly, should any party become aware that any other party is in breach of an obligation under one of those agreements or is otherwise conducting itself in such a way as might jeopardize the success of the Aquatic Facility, the party becoming so aware will notify the other parties to this Agreement.

PART 3 - TERMINATION OF LEASE OR SERVICES AGREEMENT

- 3.1 The provisions of this Part 3 apply in the event the Lease or Service Agreement is being terminated for cause and the Y is no longer the operator of the Aquatic Facility.
- 3.2 Termination of Agreements

- a. In the event the City intends to terminate the **Services Agreement** as provided in the **Services Agreement** prior to the expiry of the Term, or WLC intends to terminate the **Lease** as provided in the **Lease** prior to the expiry of the Term, the terminating party will advise the other parties as soon as is reasonable practical to do so, and will advise of the date of the intended termination.
- b. Notwithstanding any other provision relating to termination or cancellation of either the **Services Agreement** or the **Lease**, in the event the City terminates or cancels the **Services Agreement**, WLC will terminate and cancel the **Lease** concurrently therewith; and in the event WLC terminates or cancels the **Lease** prior to expiry of the Term, the City will terminate and cancel the **Services Agreement**.
- c. Where the **Lease** and **Services Agreement** are terminated and cancelled, the follow provisions apply:
 - i. WLC will not remove from the **Aquatic Facility** any furniture, equipment or other chattels or fixtures it obtains ownership of through the course of termination of the **Lease**. Such chattels or fixtures will be left at the **Aquatic Facility** for use by the City or the new service provider for the term of the **New Services Agreement** and **New Lease**.
 - ii. The City will use its best efforts to locate a new service provider for the **Aquatic Facility** (the "New Service Provider") and to enter into a new agreement on the same terms and conditions as the **Services Agreement** with such service provider (the "New Services Agreement");
 - iii. In the interim, the City agrees to:
 1. Rent the **Aquatic Facility** from WLC on a month to month basis, it being agreed and understood that:
 - A. Neither the City nor WLC will have the right to cancel the month to month lease until such time as a New Service Provider is operating the **Aquatic Facility** and Rent is being paid by the new provider to WLC under a lease on the same terms and conditions as the **Lease** (the "New Lease") and the parties (being the City, WLC and the New Service Provider) have entered a new tri-partite Agreement on the same terms as this Agreement (the "New Tripartite Agreement"); and
 - B. The Rent payment for the month to month lease will be the same as the Rent paid by the Y to WLC; and

C. The City's obligation to rent the Aquatic Facility will terminate upon payment of Rent under the New Lease by the New Service Provider.

iv. Any portion of the Deposit being held by WLC at the time the City commences renting the Facility will be applied to Rent payable by the City at the times and using the process set out in the Lease. Should the City's obligation to rent the Aquatic Facility terminate under 3.2(c)(iii)(C), WLC will refund to the City a corresponding amount of the Deposit being held by it to the amount of any deposit paid to WLC by the New Service Provider. Any amount of the Deposit in excess of the deposit received from the New Service Provider will be retained by WLC until the termination or expiration of the New Lease.

d. The New Services Agreement, New Lease, and New Tripartite Agreement will be identical to the Services Agreement, Lease, and this Agreement respectively, other than that the term of the New Services Agreement and New Lease will be the time that would have remained in the Term under the Services Agreement and Lease at the time the New Services Agreement and New Lease are entered into, and that any provisions in the Lease that by necessary implication can pertain only to the Y as the operator of the Aquatic Facility will be omitted;

e. Once a New Service Provider has been found, the City will notify WLC in writing. WLC will have the right to approve the new operator, such approval not to be unreasonably withheld and given within thirty (30) days of such notice. The parties agree that WLC's financial institution's refusal to approve the New Service Provider will be considered a "reasonable" basis for WLC to disapprove the New Service Provider. Where WLC does not advise the City within the said thirty (30) days, WLC will be deemed to have approved the New Service Provider.

f. Once the New Service Provider has been approved, the City and WLC agree that within 30 days following execution by the New Service Provider of the New Service Agreement, New Lease, and New Tripartite Agreement they will also execute the New Service Agreement, New Lease and New Tripartite Agreement as required.

g. The City will continue to purchase services under the New Services Agreement immediately upon that agreement being effective. The effective date will be the day Rent is paid by the New Service Provider to WLC under the New Lease.

3.3 This Agreement will automatically terminate upon execution of the New Tripartite Agreement by all parties to that agreement.



PART 4– CITY AGREEMENT TO RENT ADDITIONAL SPACE

- 4.1 In addition to the **Services Agreement** between the Y and the City and the **Lease** between the Y and WLC, the City agrees to enter into a lease with WLC (hereinafter the “**City Lease**”) to rent approximately 4,000 sq. ft. of space (hereinafter the “**Demised Premises**”) in the **Recreation Centre** for one term of five (5) years commencing on the **Opening Day** of the **Aquatic Facility** and terminating on the 5th anniversary thereof.
- 4.2 The parties agree that the rent for the **Demised Premises** will be \$25.00 per sq. ft. for each year of the term.
- 4.3 The City will have the right to assign or sub-let any or all of the **Demised Premises** provided that assignment by the City will not relieve the City of its obligations under the **City Lease** if the assignee defaults in its obligations to WLC. WLC will have the right to approve any assignee or sub-tenant, such approval not to be unreasonably withheld and given within thirty (30) days of notice of assignment or sub-let. Where WLC does not advise the City within the said thirty (30) days, WLC will be deemed to have approved the assignment or sub-let.

PART 5 – USE AND RELEASE OF INFORMATION

- 5.1 The parties represent, warrant and covenant that they will comply with all laws, bylaws, ordinances, regulations, and the directive of any public authority having jurisdiction, including the requirements of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996 c. 165 as amended.
- 5.2 Where information of a party deemed confidential by that party is shared with the other parties hereto, the other parties agree:
 - a. to use the confidential information of the other party solely for the purposes of this Agreement, the **Services Agreement** and the **Lease** and for no other purpose;
 - b. to protect the confidential information of the other party and not disclose the confidential information other than to persons who have a *bona fide* need to have access to such confidential information in order for the parties to carry out the purposes and objectives of this Agreement, the **Services Agreement** and the **Lease**;
 - c. No part of this section prevents disclosure by a party of any confidential information if, in the written opinion of the party’s legal counsel, the disclosure is legally required to be made in a judicial, administrative, or governmental proceeding or pursuant to the party’s obligations under any applicable legislation;

- d. Information will be not be considered confidential if it:
 - i. is in the public domain prior to its disclosure by a party;
 - ii. is in the receiving party's possession prior to its disclosure by the other party;
 - iii. lawfully enters the public domain through no violation of this confidentiality obligation after disclosure to another party; or
- e. The covenants in this section 5 shall survive the termination of this Agreement, the Services Agreement and the Lease for a period of one year from the date of termination.

PART 6 – ASSIGNMENT

- 6.1 In the event WLC assigns its right, title and interest in and to the Lease, WLC may also assign its right, title and interest in this Agreement without the consent of the other parties.

PART 7 - GENERAL PROVISIONS

- 7.1 All notices required or permitted to be given under this Agreement must be in writing and may be delivered by hand, sent by facsimile or forwarded by registered mail to the addresses shown on the first page or any other address of which notice in writing is given.
- 7.2 Time is of the essence respecting this Agreement.
- 7.3 This Agreement is governed by and will be construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- 7.4 This Agreement survives any termination of the Services Agreement or Lease, or any New Services Agreement or New Lease with any other service provider.
- 7.5 Other than provided for herein, none of the parties shall assign this agreement to any other party without the express written consent of the other parties.
- 7.6 No amendment to this Agreement shall be effective unless consented to in writing by all the parties.
- 7.7 The parties covenant and agree that in the event any provision of the Services Agreement or Lease are altered, modified, amended, deleted, or replaced, the parties to the Agreement being amended will forthwith notify the party not a party to that agreement.
- 7.8 No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any

other or future default or defaults hereunder, whether of a like or different character.

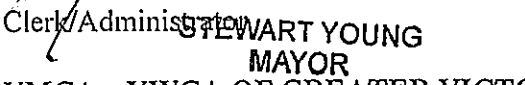
- 7.9 Each Party will execute and deliver all such further documents and do all such further things as may be reasonably requested by the other Party to give full effect to the intent and meaning of this Agreement.
- 7.10 Nothing in this Agreement will create a partnership, joint venture, or employment. The parties acknowledge each is an independent party in entering into this Agreement, the Services Agreement and the Lease.
- 7.11 This Agreement may be executed by the parties in one or more counterparts and may be delivered by facsimile or other means of electronic transmission, each of which when delivered shall be deemed to be an original and all of which shall together constitute one and the same Agreement.
- 7.12 This Agreement shall be binding upon and enure to the benefit of, the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above by their respective authorized representatives.


CITY OF LANGFORD, by its authorized signatories:

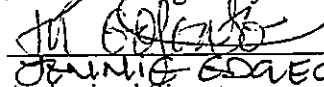


Jim Bowden
Mayor/Corporate Officer



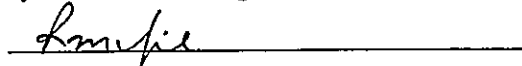
Clerk/Administrator
STEWART YOUNG
MAYOR
YMCA – YWCA OF GREATER VICTORIA
by its authorized signatories:



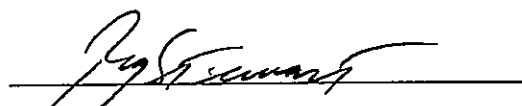
JACK BARRY, CHAIR BOARD DIRECTORS
Authorized Signatory


JEANNE EDOUCOURE, CEO
Authorized Signatory

WESTHILLS LAND CORP.
by its authorized signatories:



Authorized Signatory



Authorized Signatory

SCHEDULE "A"

DEFINITIONS

- (a) "Additional Rent" means all sums of money to be paid by the Tenant, whether to the Landlord or otherwise under the Lease, except for Annual Base Rent and GST/HST payable by the Tenant.
- (b) "Annual Base Rent" means the following:

Lease Years	\$ per square foot of Rentable Area per annum
1	\$20.00 per ft ²
2	\$21.50 per ft ²
3	\$23.00 per ft ²
4	\$24.50 per ft ²
5	\$26.00 per ft ²
6-10 11-15 16-20 and 21-25	For each 5 year period, then current Market Rent determined as provided for below

Market Rent: The Landlord will retain a qualified commercial real estate appraiser who will determine the then current market Annual Base Rent which may not:

- (i) for the first year of the five year periods representing years 6 through 10 and 11 through 15, be less than 100% nor more than 115% of the rate during the previous year; and
- (ii) for the first year of the five year periods representing years 16 through 20 and 21 through 25, be less than 95% nor more than 115% of the rate during the previous year.

The Annual Base Rent for the first year of each five year period commencing in year 6 will be the then current market rate determined by the appraiser, with an increase or decrease in each subsequent year of the five year period reflective of the increase or decrease in the Consumer Price Index for Victoria ("CPI") for the preceding twelve month period. Notwithstanding the foregoing:

- (1) if the increase in CPI is 4% or less for a given year of the Term to which the CPI provisions apply, the increase in Annual Base Rent for that year will be the amount of the CPI increase;
- (2) if the increase in CPI is more than 4% for a given year of the Term to which the CPI provisions apply, the increase in Annual Base Rent for

that year will be 4%; and

(3) if CPI decreases for a given year of the Term to which the CPI provisions apply, the Annual Base Rent will decrease by the amount of the decrease in CPI, provided however that the Annual Base Rent in any given year of a five year period set out in the table above shall not be less than the Annual Base Rent of the first year of that five year period.

Should the Tenant disagree with the Landlord's appraiser's valuation of market rent, the Tenant may retain its own appraiser to calculate then current market rent, which appraisal shall only use the direct comparison approach if it can in fact identify a building or buildings that are directly comparable. If the parties cannot agree on market rent after reviewing the two appraisals, either party may elect, by giving notice in writing to the other party, to proceed to arbitration to have an arbitrator determine market rent, which the parties agree shall nonetheless be between 100 and 115% of the previous year's rent. The costs of such arbitration will be split equally between the Landlord and Tenant.

- (c) "Building" means that certain building and those certain areas and improvements to be constructed on the Lands and all additions and replacements to it;
- (d) "Business Day" means a day other than a Saturday, Sunday or statutory holiday in British Columbia;
- (e) "Completion Date" means the date on which the Landlord advises the Tenant it will complete construction of the building, or as extended under the Lease;
- (f) "Deposit" means the sum of \$250,000.00 which will be paid by the Tenant to the Landlord;
- (g) "Force Majeure" means any act of God, major storms, civil disturbance or any similar major event or occurrence not within the control of a party and which by the exercise of due diligence by such party could not have been prevented, but lack of funds on the part of such party shall not be deemed to be a Force Majeure;
- (h) "Landlord" means Westhills Land Corp., Inc. No. BC0752971;
- (i) "Lands" means those lands owned by WLC being a portion of Part of Block I, Sections 86, 87, 88, 89 and 90, Esquimalt District, and Section 87 Metchosin District, Plan 1139, which will be subdivided for the construction of the Recreation Centre;
- (j) "Lease" means the lease agreement between the Y and WLC for the Aquatic Facility dated effective February 7, 2013;

- (k) “Lease Year” means, in the case of the first Lease Year, the period beginning on the Completion Date and terminating 12 months from the last day of the calendar month in which the Completion Date occurs (except that if the Completion Date occurs on the first day of a calendar month, the first Lease Year will terminate on the day prior to the first anniversary of the Completion Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year;
- (l) “Opening Day” means the first day the Aquatic Facility is open to the public for use;
- (m) “Purchase Commitment” means the annual payment by the City to the Y in consideration of the Y operating and maintaining the Aquatic Facility and the programs offered therein, initially in the amount of \$750,000.00 per year, and which may increase every two years by a percentage amount equal to the percentage increase in the population of the City during that period, to a maximum of \$950,000.00 annually;
- (n) “Rent” means the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the Landlord under the Lease except for goods and services tax payable by the Tenant.
- (o) “Rentable Area” means *approximately* 57,000 ft² on three floors, rental area to be confirmed using BOMA 2010 Office Standard measurement;
- (p) “Report” means the statistical summary prepared by the Y of the usage of the Aquatic Facility including programs, activities, events and services; membership numbers, and any notable accomplishments, challenges or trends during the year;
- (q) “Services” means all of the activities and services necessary and incidental to the performance of the Y in operating and managing the Aquatic Facility and offering programs to the public under this Agreement, including but not limited to, the obligations set forth herein and any other direction by or obligation to the City arising from this Agreement;
- (r) “Services Agreement” means the agreement whereby the City agrees to purchase services from the Y for its operation of the Aquatic Facility;
- (s) “Substantial Breach” means:
- a. any event which will, as a result, have a material adverse effect upon the delivery of the Services or the performance of the Y under this

Agreement, including but not limited to:

- i. temporary or permanent closure of any part of the Aquatic Facility where the consent of the City has not been obtained in writing;
- ii. failure to maintain accurate books and records in the operation of the Aquatic Facility;
- iii. the petitioning into bankruptcy of the Y or the making of any assignment for the benefit of his creditors;
- iv. the institution of proceedings for the dissolution or winding-up of the Y.

b. termination of the **Lease**;

- (u) “**Tenant**” means YMCA/YWCA of Greater Victoria, Inc. No. S-0006088.
- (v) “**Term**” means 25 years, commencing on the day that is two months after the Completion Date and expiring on the 25th anniversary of that date unless this agreement is earlier terminated in accordance with the provisions of this agreement.



WESTHILLS YMCA/YWCA
RECREATION CENTRE AT CITY CENTRE PARK

THIS LEASE, dated February 1, 2013 is made by the Landlord and Tenant named below who, in consideration of the covenants in this Lease, agree as follows:

1. BASIC TERMS, SCHEDULES, AND DEFINITIONS

1.1 Basic Terms

- (a) Landlord: Westhills Land Corp., Inc. No. BC0752971
Address of Landlord: Suite 219 – 967 Langford Parkway,
Victoria, BC V9B 0A5
- (b) Tenant: YMCA/YWCA of Greater Victoria, Inc. No. S-0006088
Address of Tenant: 851 Broughton Street, Victoria, BC V8W 1E5
- (c) Leased Premises: Floors 1-3, approximately as shown on Schedule B
- (d) Rentable Area: approximately 57,000 ft² on three floors, to be confirmed using BOMA 2010 Office Standard measurement
- (e) Term: commences on the reference date above, and ends on the day that is 25 years after the Completion Date
Completion Date: will be as set out in section 3.2(4)

(f) Annual Base Rent:

Lease Years	\$ per square foot of Rentable Area per annum
1	\$20.00 per ft ²
2	\$21.50 per ft ²
3	\$23.00 per ft ²
4	\$24.50 per ft ²
5	\$26.00 per ft ²
6-10 11-15 16-20 and 21-25	For each 5 year period, then Current Market Rent determined as provided for below

Market Rent: The Landlord will retain a qualified commercial real estate appraiser who will determine the then current market Annual Base Rent which may not:

INITIALS	
Landlord	Tenant

(i) for the first year of each of the five year periods representing years 6 through 10 and 11 through 15, be less than 100% nor more than 115% of the rate during the previous year; and

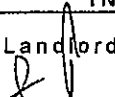

(ii) for the first year of each of the five year periods representing years 16 through 20 and 21 through 25, be less than 95% nor more than 115% of the rate during the previous year.

The Annual Base Rent for the first year of each five year period commencing in year 6 will be the then current market rate determined by the appraiser, with an increase or decrease in each subsequent year of the five year period reflective of the increase or decrease in the Consumer Price Index for Victoria ("CPI") for the preceding twelve month period. Notwithstanding the foregoing:

- (1) if the increase in CPI is 4% or less for a given year of the Term to which the CPI provisions apply, the increase in Annual Base Rent for that year will be the amount of the CPI increase;
- (2) if the increase in CPI is more than 4% for a given year of the Term to which the CPI provisions apply, the increase in Annual Base Rent for that year will be 4%; and
- (3) if CPI decreases for a given year of the Term to which the CPI provisions apply, the Annual Base Rent will decrease by the amount of the decrease in CPI, provided however that the Annual Base Rent in any given year of a five year period set out in the table above shall not be less than the Annual Base Rent of the first year of that five year period.

Should the Tenant disagree with the Landlord's appraiser's valuation of market rent, the Tenant may retain its own appraiser to calculate then Current Market Rent, which appraisal shall only use the direct comparison approach if it can in fact identify a building or buildings that are directly comparable. If the parties cannot agree on market rent after reviewing the two appraisals, either party may elect, by giving notice in writing to the other party, to proceed to arbitration to have an arbitrator determine market rent, which the parties agree shall nonetheless be between 100 and 115% of the previous year's rent. The costs of such arbitration will be split equally between the Landlord and Tenant.

- (g) Permitted Use: for the purpose of a recreation centre, including an Aquatic Facility, a child minding area, and an outdoor play area for children ("Recreation Centre") for the management and operation by the Tenant.
- (h) Parking Entitlement: See section 17.2
- (i) Deposit \$ 250,000.00 which will be paid by the Tenant as follows:

INITIALS	
Landlord 	Tenant 

(a) \$125,000 upon being advised by the Landlord pursuant to subsection 3.2(2) that it is proceeding to the Construction Drawing Stage; and

(b) \$125,000 upon being advised by the Landlord pursuant to subsection 3.2(3) that it is proceeding to the Construction Stage (the "Second Payment").

The entire amount of the Deposit will become non-refundable once the Landlord advises the Tenant pursuant to section 3.2(3) that it is proceeding to the Construction Stage. At the end of the period that is five years after the Second Payment is made, provided that the Tenant has made all Rent payments on time during the preceding five year term, one-half of the Deposit will be applied to monthly Rent until that one-half of the Deposit is exhausted. At the end of the next five year term, provided that the Tenant has made all Rent payments on time during the preceding five years, the other half of the Deposit will be applied to monthly Rent until that second half of the Deposit is exhausted. If any Rent payments have not been made on time during one of the two five year terms mentioned in this subsection above, the same process will be followed for the next five year term, and, if necessary, five year terms after that one until either the Deposit is fully applied to monthly Rent or the Term of this Lease expires.

- (j) **Building Standard:** The Recreation Centre will be built in a manner that is consistent with those drawings referenced in Schedule C.

The Recreation Centre will be built with HVAC and water systems consistent with the concept plans developed by AME Group, dated February 3, 2012, and supported by the Mechanical Design Report, also prepared by AME Group, dated February 3, 2012. The Tenant and Landlord agree however to adopt a system of CO2 injection in maintaining the pool PH levels rather than the use of muriatic acid as proposed in the design report.

Other aspects of the Recreation Centre will be built to a standard similar to other facilities built and intended for use as aquatic and recreation centres. Should the Tenant wish to have systems or components installed that are more expensive than those designed by the Landlord, it may do so with the Landlord's approval and upon paying the excess cost of such systems or components.

- (k) **Project Management:** The Landlord intends to retain a construction manager (the "Construction Manager") who will be the adjudicator of the contract between the Landlord and the builder of the Recreation Centre and will also be the head of the project team that will plan and oversee the construction of the Recreation Centre (the "Project Team"). The Tenant may appoint an expert (the "Tenant's Expert") to be part of the Project Team and the Construction

INITIALS	
Landlord <i>[Signature]</i>	Tenant <i>[Signature]</i>

Manager will consult and work with the Tenant's Expert to ensure that the Leased Premises are constructed to the Building Standard.

The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms will be construed to include the above provisions as well as all of the additional terms and conditions of the applicable sections of this Lease where the Basic Terms are more fully described.

1.2 Schedules

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

Schedule	Subject
A	Definitions
B	Floor Plan(s)
C	Conceptual Drawing References
D	Rules and Regulations
E	Tenant's Work
F	Maintenance Responsibilities
G	Lands

1.3 Definitions

In this Lease, the words, phrases and expressions set out in Schedule A are used with the meanings defined in Schedule A.

2. PREMISES

- (1) In consideration of the rents, covenants, and agreements reserved and contained on the part of the Tenant to be paid, observed, and performed, the Landlord demises and leases to the Tenant, and the Tenant leases from the Landlord the Leased Premises.
- (2) The name of the Building/Recreation Centre will be "Westhills YMCA/YWCA" and the Aquatic Facility will have the sub-name "Langford Aquatics."
- (3) The Landlord will consult with the Tenant regarding any future sponsorship for the Building or Leased Premises in order to avoid any potential conflict with the Y's charitable mission and operation of the Recreation Centre.
- (4) The Landlord agrees that the Tenant may seek sponsorships for various activities in the Leased Premises and may name, place plaques, and place sponsorship names on some areas of the Leased Premises, in consultation with the Landlord.

INITIALS	
Landlord <i>[Signature]</i>	Tenant <i>[Signature]</i>

(5) The Tenant may establish a strong profile at and within the Recreation Centre and may publicly associate itself with the Leased Premises in its advertising and media identification including the Tenant's news releases, interviews and related community involvement. The Tenant advertising and media identification must not conflict with the rights of any naming sponsor in any of the Landlord's naming or advertising agreements.

3. TERM

3.1 Term

The Term of this Lease is the period set out in subclause 1.1(e).

3.2 Construction Schedule

(1) The construction of the Leased Premises will take place in three stages:

- (a) The financing stage, during which the Landlord will determine whether it can obtain satisfactory financing from a qualified lender on rates and terms which make the project feasible (the "Financing Stage");
- (b) The construction drawing stage, during which the Landlord will arrange for the production of detailed construction drawings and will determine whether the Leased Premises, as contemplated by the construction drawings can be constructed within the time and budget contemplated by the parties (the "Construction Drawing Stage");
- (c) The construction stage, which will commence when ground is broken for construction of the Leased Premises and will end on the Completion Date (the "Construction Stage").

(2) The Landlord agrees that within 3 months of the execution of this agreement, the Landlord will advise the Tenant in writing that the Financing Stage is at an end, and will advise the Tenant if it intends to proceed to the Construction Drawing Stage. If the Landlord advises that it is not going to proceed to the Construction Drawing Stage, this agreement will terminate and neither party will be under any further obligation to the other.

(3) If the Landlord advises that it intends to proceed to the Construction Drawing Stage under subsection (2), then the Landlord will arrange to have the construction drawings commenced and completed as soon as reasonably possible. The Landlord anticipates that the Construction Drawing Stage will take approximately 6 months, and agrees to use commercially reasonable best efforts to conclude the Construction Drawing Stage within 6 months. Notwithstanding the foregoing, within 8 months of the Landlord giving notice that it is proceeding to the Construction Drawing Stage, the Landlord will advise the Tenant if it intends

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to proceed to the Construction Stage. If the Landlord advises that it is not going to proceed to the Construction Stage, this agreement will terminate, the Landlord will forthwith return any portion of the Deposit held by it to the Tenant, and neither party will be under any further obligation to the other.

(4) If the Landlord advises that it intends to proceed with the Construction Stage under subsection (3), it will also advise the Tenant of the date on which it will complete construction of the Building (the "Completion Date"), which it anticipates will be not more than eighteen to twenty-four months after such notice is given. The Completion Date shall not be more than three years after the date on which notice is given, and the Landlord agrees to use commercially reasonable best efforts to complete the Leased Premises by the initial Completion Date. Notwithstanding the foregoing, the Completion Date may subsequently be extended once or more than once by the Landlord to a date which is not later than three years after the date on which notice under subsection (3) is given, provided the Landlord provides notice to the Tenant not less than three months' prior to the original Completion Date or the Completion Date as previously extended.

(5) Notwithstanding subsection (4), if, at the end of the three year period the Landlord has commenced and is diligently pursuing construction of the Leased Premises, it will be granted a further twelve months in which to complete the Leased Premises and the Completion Date will be extended accordingly. If upon the Completion Date, including as extended under this section 3.2, the Leased Premises are not complete, the Tenant may terminate this Lease, in which case the Landlord will return any portion of the Deposit being held by it, and in such case the parties will have no further obligation to the other and neither party will be liable to the other for any further damages.

(6) Notwithstanding anything else in this section, if the Landlord's ability to complete the Leased Premises is affected by strikes, lockouts, fire, lightning, tempest, riot, war, or unusual delay by common carriers, unavoidable casualties or by any other cause of any nature whatsoever beyond the control of the Landlord, the Landlord will be permitted a reasonable extension to the Completion Date.

(7) During the two month period starting on the Completion Date, the Tenant may assemble and install furniture and equipment for the fitness, administration and child care areas and prepare and test the Aquatic Facility. The Leased Premises are not to be open to the public during this two month period.

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4. RENT

4.1 Rent

Payment of Rent under the table in 1.1(f) shall commence on the date that is two months after the Completion Date and shall continue for a period of 25 years. The Tenant will pay the Landlord for the Leased Premises, at the office of the Landlord's building manager, or as the Landlord may direct in writing, during the Term in lawful money of Canada without any set-off, abatement, compensation, or deduction whatsoever on the days and at the times specified in this Lease, Rent that will include the aggregate of the sums specified in subclauses (a) and (b):

(a) Annual Base Rent

Annual Base Rent in the amount per annum set out in subclause 1.1(f) for each respective Lease Year, subject to the adjustment provisions of subclause 4.2(c); and

(b) Additional Rent

The aggregate of the following:

- (i) the Tenant's Share of Tax Cost;
- (ii) the Tenant's Share of Operating Costs; and
- (iii) the other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord under this Lease in addition to Annual Base Rent.

4.2 Payment of Rent

The Rent will be paid by the Tenant as follows:

(a) Annual Base Rent

The Annual Base Rent will be paid in equal consecutive monthly instalments in advance on the first day of each month during the Term starting on the date that is two months after the Completion Date. Where the Completion Date is the first day of a month the instalment will be in respect of that month; where the Completion Date is not the first day of a calendar month, the Annual Base Rent for the period from the date that is two months after the Completion Date to the first day of the next ensuing calendar month will be pro-rated on a per diem basis and paid on the date that is two months after the Completion Date and the first regular instalment will be paid on the first day of the next full calendar month. Thereafter, subsequent monthly instalments will be paid in advance on the first day of each ensuing calendar month during the Term.

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(b) Additional Rent

The amount of any or all of the items of Additional Rent under subclause 4.1(b) that the Tenant is to pay may be estimated by the Landlord for the calendar year or portion of it as the Landlord may determine. The Tenant agrees to pay to the Landlord the amount of the estimate in monthly instalments in advance in amounts and during the period specified by the Landlord on the dates and at the times for payment of the Annual Base Rent. The Landlord may make its estimates so that the Tenant's share of Additional Rent will be payable to the Landlord prior to the time the Landlord is obliged to pay the costs in respect of which the Additional Rent is payable. The Landlord may submit to the Tenant at any time during a period a re-estimate of the amount of Additional Rent payable by the Tenant under subclause 4.1(b) and a revised monthly instalment amount. As soon as reasonably possible, but in any case not more than 120 days after the end of the calendar year for which the estimated payments have been made, the Landlord will make a final determination of Tax Cost, Operating Costs, and other amounts under 4.1(b)(iii) for the calendar year and notify the Tenant of the actual amount required to be paid as Additional Rent. If necessary an adjustment will be made between the parties and any money owing by or to one party will be paid or credited within 30 days of the notice. The Tenant will be entitled to audit the amount of Additional Rent calculated by the Landlord. Should the Tenant exercise this right to audit, the Landlord will provide such information and documentation as is reasonably required for this purpose. If, after conducting an audit, the Tenant disagrees with the Landlord's determination, the matter will be resolved by the Landlord's accountant whose decision is final.

(c) Basis of Determining Rent

The Tenant acknowledges that the Annual Base Rent is calculated on the basis of the Rentable Area of the Leased Premises, being as set out in subclause 1.1(d) and at the rate set out in subclause 1.1(f) for each square foot of Rentable Area. The Tenant agrees that the Landlord may adjust the Annual Base Rent and the Additional Rent if the Rentable Area of the Leased Premises is found to be different from the Rentable Area stated above, provided however that the proposed rentable area (the "Proposed Rentable Area") will be agreed to by the parties by signing off on the completed construction drawings, and that the final Rentable Area shall not be more than 3% greater nor less than the Proposed Rentable Area unless agreed to in writing by the parties.

(d) Post-dated Cheques/Electronic payment

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If requested by the Landlord from time to time, the Tenant will provide to the Landlord without prejudice to any other right or remedy of the Landlord a series of cheques, post-dated to the respective due dates of payments, for the amounts of the Rent and estimates on account of it that are periodically payable under this Lease. If requested by the Landlord, the Tenant will arrange payment electronically through its financial institution.

4.3 Rent for Irregular Periods

All Rent reserved in this Lease will be deemed to accrue from day to day, and if for any reason it becomes necessary to calculate Rent for irregular periods of less than one year an appropriate pro-rata adjustment will be made on a daily basis in order to compute Rent for the irregular period.

4.4 Waiver of Set-offs

The Tenant waives and renounces any and all existing and future claims, set-offs, and compensation against any Rent and agrees to pay the Rent regardless of any claim, set-off, or compensation that may be asserted by the Tenant or on its behalf.

4.5 Application of Payments

All payments by the Tenant to the Landlord under this Lease will be applied toward any amounts then outstanding under this Lease as the Landlord determines and the Landlord may subsequently alter the application of any payment.

4.6 Net Lease

The Tenant acknowledges and agrees that this Lease will be a completely net lease for the Landlord except as otherwise expressly provided in this Lease, and that the Landlord is not responsible during the Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the Leased Premises. Except as otherwise provided in the specific provisions in this Lease, the Tenant will pay all charges, impositions, and costs of every nature and kind relating to the Leased Premises whether or not referred to in this Lease and whether or not within the contemplation of the Landlord or the Tenant, and the Tenant covenants with the Landlord accordingly.

5. TENANT'S COVENANTS

5.1 Tenant's Covenants

The Tenant covenants with the Landlord as follows:

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5.2 Rent

To pay the Rent on the days and in the manner provided in this Lease and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord or to others under this Lease.

5.3 Occupancy and Permitted Use

To take possession of and occupy the Leased Premises and commence to carry on operations in all or substantially all of the Leased Premises no later than 90 days after the Completion Date, to use the Leased Premises only for the purpose specified in subclause 1.1(g) and not to use or permit the Leased Premises to be used for any other purpose. To not exceed applicable Building Code limits for occupancy and to avoid occupancy levels which would excessively impact the Landlord’s HVAC system and other utility systems.

5.4 Waste and Nuisance

Not to commit or permit any waste or injury to the Building or the Leased Premises including the Leasehold Improvements and the fixtures in them; any overloading of the floors; any conduct that impedes or, in the opinion of the Landlord acting reasonably, could impede the business of any other occupant of the Building or that constitutes or, in the opinion of the Landlord acting reasonably, could constitute a nuisance to the Landlord, any other occupant of the Building, or anyone else; or any other use or manner of use that annoys or interferes with the operations of any other occupant of the Building or, in the opinion of the Landlord acting reasonably, may have an adverse impact on the reputation of the Building.

5.5 Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Leased Premises anything that would cause the Landlord’s cost of insurance to be increased (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant will pay to the Landlord upon demand, the amount of any increase or cost caused by anything so done or omitted to be done) or that will cause any policy of insurance to be subject to cancellation.

5.6 Cleanliness

Not to permit the Leased Premises to become untidy, unsightly, or hazardous, jeopardise public health and safety or permit unreasonable quantities of waste or refuse to accumulate in them, and at the end of each day to leave the Leased Premises in a condition so as to reasonably facilitate the performance of the Landlord’s janitorial and cleaning services referred to in clause 6.

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5.7 Compliance with Laws

To comply at its own expense with all municipal, provincial, and federal sanitary, fire, and safety laws, bylaws, regulations, and requirements pertaining to the operation and use of the Leased Premises, the condition of the Leasehold Improvements, fixtures, furniture, and equipment installed in them, and the making by the Tenant of any repairs, changes or improvements in them.

5.8 Installations

To permit the Landlord during the Term, at the Tenant's cost, to install any equipment in or make alterations to the Leased Premises necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in clause 5.7 and imposed after completion of the Landlord's original construction of the Building, provided that any such work will be done in such a manner as to minimize the disruption to the Tenant's operation of the Facility and at a cost comparable to the cost in the market for the completion of the same work. To permit ingress and egress to and from the Leased Premises by the Landlord or by other tenants of the Landlord or by their respective employees, servants, workers, and invitees, by use of fire exit doors in case of fire or emergency.

5.9 Rules and Regulations

To observe, and to cause its employees, invitees, and others over whom the Tenant can reasonably be expected to exercise control to observe the Rules and Regulations attached as Schedule D, and the further and other reasonable rules and regulations and amendments and changes to them as may hereafter be made by the Landlord, which changes will be made in consultation with the Tenant and to the mutual satisfaction of the Landlord and Tenant; and all the rules and regulations will be deemed to be incorporated into and form part of this Lease.

5.10 Overholding

That if the Tenant continues to occupy the Leased Premises after the expiration of this Lease without any further written agreement and without objection by the Landlord, the Tenant will be a monthly tenant at a monthly base rent equal to 125% of the monthly instalment of Annual Base Rent payable by the Tenant as provided in Article 4 during the last month of the Term and (except as to length of tenancy) subject to the provisions and conditions of this Lease.

5.11 Signs

Subject to clause 2(4), not to paint, display, inscribe, place, or affix any sign, symbol, notice, or lettering of any kind anywhere outside the Leased Premises (whether on the outside or inside

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of the Building) or within the Leased Premises so as to be visible from the outside of the Leased Premises, without the prior written approval of the Landlord. The Landlord may install the sign, as an Additional Service at the cost of the Tenant.

5.12 Inspection and Access

To permit the Landlord from time to time to enter and to have its authorized agents, employees, and contractors enter the Leased Premises for the purpose of inspection, window cleaning, maintenance, providing janitorial service, or making repairs, alterations, or improvements to the Leased Premises or the Building, or to have access to utilities and services or to determine the electric light and power consumption by the Tenant in the Leased Premises during normal building operations. The Tenant will provide free and unimpeded access for the purpose, and is not entitled to compensation for any inconvenience, nuisance, or discomfort, but the Landlord in exercising its rights will endeavour to minimize interference with the Tenant's use and enjoyment of the Leased Premises.

5.13 Showing Leased Premises

To permit the Landlord and its authorized agents and employees to show the Leased Premises to prospective tenants during the Normal Operating Hours of the last nine months of the Term.

5.14 At its risk, the Tenant will perform the Tenant's Work described in Schedule E. The Tenant's Work must comply with the applicable requirements of federal, provincial and municipal laws and regulations.

5.15 The Tenant will perform the maintenance responsibilities contained in Schedule F.

6. LANDLORD'S COVENANTS

6.1 Landlord's Covenants

The Landlord covenants with the Tenant as follows:

6.2 Leasehold Improvements

To construct the Leasehold Improvements in the Leased Premises, in substantial accordance with the plans referenced in Schedule C, in compliance with the applicable requirements of federal, provincial and municipal laws and regulations.

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6.3 Quiet Enjoyment

Provided the Tenant pays the Rent and performs its other covenants in this Lease, the Tenant will and may peaceably possess and enjoy the Leased Premises for the Term hereby granted, without any interruption or disturbance from the Landlord or its assigns, or any other person or persons lawfully claiming by, from, through, or under the Landlord.

6.4 Interior Climate Control

To provide to the Leased Premises during Normal Operating Hours, and as an Additional Service outside of Normal Operating Hours, by means of one or more separate systems for heating, cooling, filtering, and circulating air and processed air in the quantities, at the temperatures as will maintain in the Leased Premises conditions of reasonable temperature and comfort in accordance with good standards of interior climate control generally pertaining at the date of this Lease applicable to similar buildings based on the permitted occupancy of the premises. The Landlord will have no responsibility for any inadequacy of performance of the system unless the Landlord is negligent in maintaining or operating the system. The Tenant acknowledges that the initial balancing of the systems may take up to one year after the Completion Date. The Tenant acknowledges that the comfort of the Tenant will be reduced if the Leased Premises include installed partitions or other installations in locations that interfere with the proper operation of the said systems or if window coverings on exterior windows are not fully closed while the windows are exposed to direct sunlight. The Tenant agrees that the Landlord will have no responsibility to provide for the removal of smoke, dust, or odours originating from within the Leased Premises.

6.5 Elevators

Subject to the supervision of the Landlord, to furnish for use by the Tenant and its employees, invitees, customers and clients, in common with others so entitled passenger elevator service to the Leased Premises, and to furnish for the use of the Tenant in common with others so entitled at reasonable intervals and during the Normal Operating Hours, and as an Additional Service outside of the Normal Operating Hours, elevator service to the Leased Premises for the carriage of furniture, equipment, deliveries, and supplies, provided that if the elevators become inoperative or damaged or destroyed the Landlord will have a reasonable time within which to repair the damage or replace the elevator. The Landlord will repair or replace it as soon as reasonably possible, but is not liable for indirect or consequential damages or other damages for personal discomfort or illness during the period of repair or replacement.

6.6 Entrances, Lobbies, and Other Common Areas

To permit the Tenant and its employees and invitees, in common with others so entitled, to have the use during Normal Operating Hours of the common entrances, lobbies, stairways, and corridors of the Building giving access to the Leased Premises (subject to the Rules and

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Regulations in Schedule D and the other reasonable limitations as the Landlord may from time to time impose).

6.7 Washrooms

To permit the Tenant and its employees and invitees in common with others so entitled to use the washrooms in the Building on the floor and floors on which the Leased Premises are situate, in addition to those provided specifically for the Leased Premises.

6.8 Janitorial Service of Common Area

To cause when reasonably necessary from time to time the floors of the Common Area of the Building to be swept and cleaned, the windows on the exterior of the Leased Premises to be cleaned, and the other janitorial services to be provided as are commonly provided in comparable buildings, but with the exception of the obligation to cause the work to be done, the Landlord will not be responsible for any act of omission or commission on the part of the persons employed to perform the work. The janitorial work will be done at the Landlord's direction without interference by the Tenant, its agents, or employees.

6.9 Maintenance of Common Areas

To cause the elevators, common entrances, lobbies, stairways, corridors, washrooms, and other parts of the Building from time to time provided for common use and enjoyment to be swept, cleaned, and otherwise properly maintained.

6.10 Building Directory

The Landlord will maintain a directory in the main entrance lobby of the Building and will list on the directory the name of the Tenant and the suite or floor number(s) of the Leased Premises.

6.11 The Landlord will perform the maintenance responsibilities set out in Schedule F.

6.12 Except those explicitly excluded in Schedule E, all improvements, alterations, additions and permanent fixtures made to or installed on or in the Recreation Centre, whether before or during the Term, including where made or installed by or on behalf of the Tenant, will become the property of the Landlord as they are made or installed and remain with the Recreation Centre during the Term and upon the expiry or earlier termination of this Agreement.

7. REPAIR, DAMAGE, AND DESTRUCTION

7.1 Landlord's Repairs

(1) The Landlord covenants with the Tenant:

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- (a) subject to subclause 7.3(b), to keep in a good and reasonable state of repair, and consistent with the general standards of recreation centres of similar age and character
 - (i) the Building (other than the Leased Premises and premises of other tenants) including the foundation, roof, exterior walls including glass or window portions, the systems for interior climate control, the elevators, entrances, stairways, corridors, lobbies, and washrooms from time to time provided for use in common by the Tenant and other tenants of the Building and the systems provided for bringing utilities to the Leased Premises; and
 - (ii) the structural members or elements of the Leased Premises; and
- (b) to repair defects in construction performed or installations made by the Landlord in the Leased Premises and Insured Damage.

7.2 Tenant's Repairs

(1) The Tenant covenants with the Landlord

- (a) subject to subclause 7.3(b), to keep in a good and reasonable state of repair and consistent with the general standards of recreation centres of similar age and location, the Leased Premises including all Leasehold Improvements and all trade fixtures and all glass in them other than glass portions of exterior walls, but with the exception of structural members or elements of the Leased Premises, defects in construction performed or installations made by the Landlord and Insured Damage;
- (b) that the Landlord may enter and view the state of repair, that the Tenant will repair according to notice in writing, and that the Tenant will leave the Leased Premises in a good and reasonable state of repair, subject always to the exceptions referred to in subclause (a); and
- (c) that if any part of the Building, including the systems for interior climate control and for the provision of utilities, is in disrepair, damaged, or destroyed through the negligence or misuse of the Tenant or its employees, invitees, or others over which the Tenant can reasonably be expected to exercise control, the Tenant will reimburse the Landlord for the expense of repairs or replacements, promptly upon demand.

(2) The Recreation Centre includes public swimming pools and hot tubs and pool chemicals will be used and stored at the Recreation Centre. The Tenant's environmental responsibilities are limited to the performance of the Tenant's duties and obligations in the

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operation of the Recreation Centre, and those that occur as a result of the Tenant's actions in the performance of those duties and obligations. The Tenant is not responsible for any environmental impacts occurring as a result of the construction of the Leased Premises, nor any actions of others, including the Landlord in its performance of its duties and obligations in this Lease and the Landlord agrees to indemnify the Tenant for any claims which may result.

7.3 Abatement and Termination

If the Leased Premises or the Building are damaged and

- (a) if the damage is such that the Leased Premises or any substantial part of them are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its occupation for any period in excess of 10 days,
 - (i) unless the damage was caused by the fault or negligence of the Tenant or its employees, invitees, or others under its control, from and after the date of occurrence of the damage and until the Leased Premises are again reasonably capable of use and occupancy as specified, Rent will abate from time to time in proportion to the part or parts of the Leased Premises not reasonably capable of use and occupancy, and
 - (ii) unless this Lease is terminated as provided, the Landlord or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) will repair the damage with all reasonable diligence, but to the extent that any part of the Leased Premises is not reasonably capable of use and occupancy by reason of damage that the Tenant is obligated to repair under this Lease, any abatement of Rent to which the Tenant is otherwise entitled under this Lease will not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence; and

- (b) if either:
 - (i) the Leased Premises; or
 - (ii) premises, whether of the Tenant or other tenants of the Building, comprising in the aggregate 25% or more of the Rentable Area of the Building

are substantially damaged or destroyed by any cause to the extent that in the reasonable opinion of the Landlord they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, the Landlord, at its option, exercisable by written notice to the Tenant given within 60 days after the occurrence of the damage

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or destruction, may terminate this Lease, and neither the Landlord nor the Tenant will be bound to repair as provided in clauses 7.1 and 7.2. The Tenant will instead deliver up possession of the Leased Premises to the Landlord with reasonable expedition and within 60 days after delivery of the notice of termination. The Rent will be apportioned and paid to the date upon which possession is delivered up (but subject to any abatement to which the Tenant may be entitled under subclause 7.3(a) by reason of the Leased Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) will repair the damage with reasonable diligence.

7.4 Service Interruptions

The Tenant acknowledges to the Landlord that the operation of systems and the availability of facilities may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the Landlord. During periods of the interruption, any obligation of the Landlord to provide access to the systems and facilities or common areas of the Building will be suspended and clause 14.1 will apply.

8. TAXES AND OPERATING COSTS

8.1 Landlord's Tax Obligations

The Landlord covenants with the Tenant, subject to clause 8.2, to pay to the taxing authority or authorities having jurisdiction, all Taxes.

8.2 Tenant's Tax Obligations

The Tenant covenants with the Landlord:

- (a) to pay when due, all taxes, business taxes, business licence fees, and other taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Leased Premises by the Tenant, or the equipment, machinery, or fixtures brought in them by or belonging to the Tenant, or to anyone occupying the Leased Premises with the Tenant's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu of, and to pay to the Landlord upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Lands and Building that is attributable to any equipment, machinery, or fixtures on the Leased

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Premises that are not the property of the Landlord or that may be removed by the Tenant;

- (b) to pay promptly to the Landlord when demanded or otherwise due hereunder all Taxes in respect of all Leasehold Improvements in the Leased Premises; and
- (c) to pay to the Landlord in the manner specified in subclause 4.2(b) the Tenant's Share of the Tax Cost.

8.3 Goods and Services Tax/Harmonized Sales Tax (GST/HST)

The Tenant will pay to the Landlord GST/HST in accordance with the applicable legislation at the same time as the amounts to which GST/HST apply are payable to the Landlord under the terms of this Lease or upon demand at other time or times as the Landlord may determine. The Landlord will provide the Tenant with its GST/HST registration number. Notwithstanding any other provision of this Lease, the amount payable by the Tenant under this clause will be deemed not to be Rent, but the Landlord will have the same remedies for and rights of recovery of the amount as it has for recovery of Rent under this Lease.

8.4 Tenant's Tax Cost

(1) After the commencement of the Term of this Lease and prior to the commencement of each fiscal period determined by the Landlord that commences during the Term, the Landlord may estimate the Tax Cost and the Tenant's Share, or any instalment on account of the Tax Cost, to become due on any date during the ensuing fiscal period or (if applicable) portion of it, the amount of it that will be payable by the Tenant, and notify the Tenant in writing of the estimate.

(2) If the Tenant has overpaid the Tenant's Share of the Tax Cost, the Landlord will refund any excess paid, but if any balance remains unpaid, the Landlord will fix monthly instalments for the then remaining balance of the fiscal period or portion of it so that, after giving credit for instalments paid by the Tenant in respect of the calendar year, the entire Tenant's Share of Tax Cost will be fully payable prior to the time the Landlord is obliged to pay the Taxes in respect of which the Tenant's Share of Tax Cost is payable.

(3) If for any reason the Tax Cost is not finally determined within a fiscal period or portion of it, the parties will make the appropriate readjustment when the Tax Cost becomes finally determined.

(4) The Landlord and the Tenant acknowledge that Taxes in respect of the Building may be payable during the course of a year as prepayment for the Taxes accruing due in respect of the year, and if the Term ends during a year, the appropriate adjustment will be made under clause 4.3.

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(5) Any report of the Landlord's accountant as to the Tax Cost will be conclusive as to the amount for any period to which the report relates.

8.5 Postponement of Payment of Taxes

The Landlord may postpone payment of any Taxes payable by it under clause 8.1 to the extent permitted by law if prosecuting in good faith any appeal against the assessment of the Lands and Building for Taxes or the imposition of Taxes.

8.6 Receipts for Payment

Whenever requested by the Landlord, the Tenant will deliver to it receipts for payment of all taxes, rates, duties, levies, and assessments payable by the Tenant under subclauses 8.2(a) and (b) and furnish any other related information reasonably required by the Landlord.

8.7 Operating Costs

During the Term, the Tenant will pay to the Landlord in the manner specified in clauses 4.1 and 4.2 the Tenant's Share of Operating Costs. Any report of the Landlord's accountant as to the Operating Costs will be conclusive as to the amount for any period to which the report relates.

8.8 Allocation to Particular Tenant

Notwithstanding any of the foregoing, whenever in the Landlord's reasonable opinion any Operating Costs or item of Operating Costs properly relates to a particular tenant or tenants within the Building, the Landlord may allocate the Operating Costs or item of Operating Costs to the tenant or tenants. Any amount allocated by the Landlord to the Tenant under this clause will be payable by the Tenant promptly upon demand and, provided that the amount incurred by the Landlord has been included in the total Operating Costs, will be credited against the total Operating Costs of the Building.

9. UTILITIES AND ADDITIONAL SERVICES

9.1 Utilities

The Landlord will furnish ducts for bringing telephone and other telecommunication services to the Leased Premises and will provide water to washrooms available for the Tenant's use in common with others so entitled and the washrooms and showers in the Leased Premises.

9.2 Additional Services

Except the movement of equipment in the usual course of its delivery of services, if the Tenant wishes to move furniture or equipment or make repairs or alterations within the

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Leased Premises, or requires other service in the Leased Premises, the Landlord, at its option, by way of Additional Services, may provide or have its designated agents or contractors provide the service at then prevailing market commercial rates. The cost of Additional Services provided will be paid to the Landlord by the Tenant from time to time promptly upon receipt of invoices for them from the Landlord. The Cost of Additional Services charged directly to the Tenant and other tenants will be credited in computing Operating Costs to the extent that it would otherwise have been included.

9.3 Additional Utilities

Upon request by the Tenant, the Landlord may agree from time to time to supply additional heating, ventilating, and air-conditioning, electricity, or other services to the Leased Premises above those normally provided to tenants of the Building or outside Normal Operating Hours. The Tenant will pay to the Landlord in the manner in which Operating Costs is paid any additional costs of the Landlord that may arise in respect of the use by the Tenant of the Leased Premises for hours that do not coincide with Normal Operating Hours for the Leased Premises generally or that may arise in respect of additional heating, ventilating, and air-conditioning, electricity, and other services that are arranged to be provided to the Tenant over and above those normally provided to tenants of the Building or outside of Normal Operating Hours, together with the Landlord's reasonable administrative costs in respect of managing, administering, and billing for the services. The Landlord reserves the right to install at the Tenant's expense meters to check the Tenant's consumption of electricity, water, or other utilities.

9.4 Energy Conservation

The Tenant covenants with the Landlord that

- (a) the Tenant will cooperate with the Landlord in the conservation of all forms of energy in the Building, including without limitation the Leased Premises;
- (b) the Tenant will comply with all laws, bylaws, regulations, and orders relating to the conservation of energy and affecting the Leased Premises or the Building;
- (c) at its own cost and expense, the Tenant will comply with all reasonable requests and demands of the Landlord made with a view to energy conservation; and
- (d) any and all costs and expenses paid or incurred by the Landlord in complying with the laws, bylaws, regulations, and orders, so far as the same apply to or are reasonably apportioned to the Building by the Landlord will be included in Operating Costs and the Tenant will pay these costs as part of the Operating Costs.

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The Landlord is not liable to the Tenant in any way for any loss, costs, damages, or expenses, whether direct or consequential, paid, permitted, or incurred by the Tenant as a result of any reduction in the services provided by the Landlord to the Tenant or to the Building as a result of the Landlord's compliance with the laws, bylaws, regulations, or orders for energy conservation.

10. LICENCES, ASSIGNMENTS, AND SUBLETTINGS

10.1 Licences, Franchises, and Concessions

The Tenant will not permit any part of the Leased Premises to be used or occupied by any persons other than the Tenant, any subtenants permitted under clause 10.2, and the employees of the Tenant, or permit any part of the Leased Premises to be used or occupied by any licensee, franchisee, or concessionaire, or permit any persons to be upon the Leased Premises other than the Tenant, the permitted subtenants, and their respective employees, customers, members, clients and others lawfully on the Leased Premises. The Landlord acknowledges that the Tenant may contract with an operator to provide services in the café/concession in the Leased Premises and in the gymnasium area. The Tenant must give notice to the Landlord of the name of any operator and confirms that the Tenant is responsible for all actions, omissions and operations of the operator. The provisions of section 10.3 apply to the Tenant and its operator.

10.2 Assignment and Subletting

- (1) The Tenant will not assign this Lease or sublet the whole or any part of the Leased Premises, unless it has
 - (a) received or procured a valid written offer to take an assignment or sublease that is not inconsistent with, and the acceptance of which would not breach any provision of this Lease if this clause is complied with, and that the Tenant has determined to accept subject to this clause being complied with, and
 - (b) first requested and obtained the consent in writing of the Landlord.
- (2) Any request for the Landlord's consent will be in writing and accompanied by a true copy of the offer.
- (3) The Tenant will furnish to the Landlord all information available to the Tenant and requested by the Landlord as to the responsibility, reputation, financial standing, and experience of the proposed assignee or subtenant.
- (4) The Landlord will obtain the written approval of the City of Langford prior to approving any request to sublet or assign any portion of the Leased Premises, other than as provided in section 10.1.

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(5) Within 30 days after the receipt by the Landlord of the Tenant's request for consent and of all information the Landlord has requested under this clause (and if no information has been requested, within 30 days after receipt of the request for consent) the Landlord shall advise the Tenant in writing whether the Tenant's request is approved. The Landlord may refuse any request to sublet or assign other than as provided in section 10.1 in its absolute discretion.

(6) If the Landlord consents to any proposed assignment or subletting, the Tenant will assign or sublet, as the case may be, only upon the terms set out in the offer submitted to the Landlord as specified and not otherwise.

(7) As a condition of the Landlord's consent, the assignee or subtenant, as the case may be, will agree (and will be deemed to have agreed) with the Landlord to observe the obligations of the Tenant under this Lease as they relate to the space assigned or sublet (except, in the case of a sublease, the Tenant's covenant to pay Rent) by entering into an assumption agreement with the Landlord and the Tenant, in the Landlord's then standard form, and will pay the Landlord's then current processing charge and solicitor's fees and disbursements for preparing the agreement.

(8) The Tenant further agrees that if the Landlord consents to any assignment or subletting, the Tenant will be responsible for and will hold the Landlord harmless from any and all capital costs for Leasehold Improvements and all other expenses, costs, and charges with respect to or arising out of any the assignment or subletting.

(9) Notwithstanding any consent being given by the Landlord and the assignment or subletting being effected, the Tenant will remain bound to the Landlord for the fulfilment of all the terms, covenants, conditions, and agreements in this Lease.

(10) Any consent by the Landlord to any assignment or subletting will not constitute a waiver of the requirement for consent by the Landlord to any subsequent assignment or subletting by either the Tenant or any assignee or subtenant.

10.3 Terms of Consent

(1) If the Landlord consents in writing to an assignment or sublease as contemplated in this Article, the Tenant may complete the assignment or sublease subject to the following covenants and conditions:

- (a) no assignment or sublease will be valid and no assignee or subtenant will take possession of the Leased Premises or any part of them until an executed duplicate original of the assignment or sublease has been delivered to the Landlord; and
- (b) all Excess Rent, as defined, derived from the assignment or sublease will be payable to the Landlord. The Excess Rent will be deemed to be and will be paid

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by the Tenant to the Landlord as Rent. The Tenant will pay the Excess Rent to the Landlord immediately as and when the Excess Rent is receivable by the Tenant.

(2) As used in this Article, Excess Rent means the amount by which the total money and other economic consideration to be paid by the assignee or subtenant as a result of an assignment or sublease, whether denominated as rent or otherwise, exceeds, in the aggregate, the total amount of Annual Base Rent and Additional Rent that the Tenant is obligated to pay to the Landlord under this Lease, pro-rated for the portion of the Leased Premises being assigned or sublet, less the reasonable costs paid by the Tenant for additional improvements installed in the portion of the Leased Premises subject to the assignment or sublease by the Tenant at the Tenant's sole cost and expense for the specific assignee or subtenant in question, reasonable leasing costs (such as brokers' commissions and the fees payable to the Landlord under clause 10.2) paid by the Tenant in connection with the assignment or sublease, and the amount of Annual Base Rent and Additional Rent the Tenant is obligated to pay the Landlord under this Lease, pro-rated for the portion of the Leased Premises being assigned or sublet that is not occupied or used by the Tenant, until the date of the assignment or sublease.

(3) In determining the amounts to be deducted from Excess Rent in each monthly payment period in respect of the Tenant's costs of assigning or subleasing, the costs will be amortized without interest over the Term (in the case of an assignment) or term of the sublease (in the case of a sublease) on a straight line basis.

10.4 Change in Control of Tenant

- (a) If the Tenant is a corporation but none of its shares are traded on any public stock exchange or in any public stock market, and if by operation of law or by the sale, bequest, or other disposition of its shares or securities the control or the beneficial ownership of the corporation is changed at any time during the Term of this Lease, the change will be deemed to be an assignment of this Lease within the meaning of clause 10.2. If the control or beneficial ownership is changed without the prior written consent of the Landlord, the Landlord, at its option, may cancel this Lease upon giving 60 days' notice to the Tenant of its intention to cancel, and this Lease and the Term will be cancelled.
- (b) Upon request of the Landlord from time to time, a Tenant that is a corporation will make available to the Landlord for inspection or copying or both, all books and records of the Tenant that, alone or with other data, will identify the ownership, from the commencement of the Term or the date of earlier execution of this Lease up to the date the books and records are made available to the Landlord.

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11. FIXTURES AND IMPROVEMENTS

11.1 Installation of Fixtures and Improvements

(1) Except as permitted by the provisions of Schedule E, the Tenant will not make, erect, install, or alter any Leasehold Improvements or trade fixtures in the Leased Premises, any safe or special lock in the Leased Premises, or any apparatus for illumination, air-conditioning, cooling, heating, refrigerating, or ventilating the Leased Premises, without having requested and obtained the Landlord's prior written approval, which the Landlord will not unreasonably withhold.

(2) In making, erecting, installing, or altering any Leasehold Improvements or trade fixtures, the Tenant will comply with the tenant construction guidelines as established by the Landlord from time to time, will obtain all required building and occupancy permits, will not alter or interfere with any installations that have been made by the Landlord without the prior written approval of the Landlord, and will not alter or interfere with window coverings installed by the Landlord on exterior windows.

(3) The Tenant's request for any approval under this clause will be in writing and accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications of the work.

(4) Any out-of-pocket expense incurred by the Landlord in connection with any approval will be deemed incurred by way of Additional Services.

(5) All work to be performed in the Leased Premises will be performed by competent contractors and subcontractors of whom the Landlord will have approved (the approval not to be unreasonably withheld, but provided that the Landlord may require that the Landlord's contractors and subcontractors be engaged for any mechanical or electrical work) and by workers whose labour union affiliations are compatible with those of workers employed by the Landlord and its contractors and subcontractors.

(6) All work will be subject to inspection by and the reasonable supervision of the Landlord as an Additional Service and will be performed in accordance with any reasonable conditions or regulations imposed by the Landlord and completed in good and workmanlike manner in accordance with the description of the work approved by the Landlord.

11.2 Liens and Encumbrances on Fixtures and Improvements

(1) In connection with the making, erection, installation, or alteration of Leasehold Improvements and trade fixtures, and all other work or installations made by or for the Tenant in the Leased Premises, the Tenant will

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(a) comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45, as amended or substituted from time to time (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks),

(b) permit the Landlord to take all steps to enable the Landlord to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, will promptly pay all accounts relating to those provisions.



(2) Except for equipment over which the Tenant had prior to the Completion Date granted a security interest, and any equipment over which a security interest is granted due to the equipment being financed, the Tenant will not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, as amended or substituted from time to time, or other encumbrance in respect of its Leasehold Improvements or trade fixtures, or permit any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Leased Premises.

(3) If and when any builders' or other lien for work, labour, services, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims for such a lien arise or are filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance attaches, the Tenant will within 20 days after receipt of notice of it procure the discharge of it, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies under this Lease avail itself of its remedy under clause 15.1. The Landlord may make any payments required to procure the discharge of any the liens or encumbrances, and will be entitled to be reimbursed by the Tenant as provided in clause 15.1, and its right to reimbursement will not be affected or impaired if the Tenant then or subsequently establishes or claims that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off, or defence.

(4) The Tenant acknowledges that the Lands may be subject to registered charges and encumbrances and that the Landlord may register other charges and encumbrances. The Landlord will give the Tenant notice of any charges or encumbrances and any terms of which the Tenant must comply. The Tenant must comply with the Landlord's obligations under any charges and encumbrances.

11.3 Removal of Fixtures and Improvements

(1) All Leasehold Improvements in or upon the Leased Premises will immediately upon affixation be and become the Landlord's property without compensation to the Tenant. Except as otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements, trade fixtures, furniture, or equipment will be removed by the Tenant from the Leased Premises either during or at the expiration of the Term, except that:

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- (a) the Tenant may at the end of the Term remove its trade fixtures;
- (b) the Tenant will at the end of the Term remove the Leasehold Improvements and trade fixtures which the Landlord requires to be removed; and
- (c) the Tenant will remove its furniture and equipment at the end of the Term, and also during the Term where furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting new furniture and equipment.

(2) Notwithstanding anything else in this clause 11.3, where the Landlord gives the Tenant notice of early termination of this Agreement, the Tenant may not remove any trade fixtures, furniture or equipment without the Landlord's consent

(3) The Tenant will, in the case of every removal during or at the end of the Term, or upon early termination by the Landlord, immediately make good any damage caused to the Leased Premises by the removal.

11.4 Alterations by Landlord

The Landlord reserves the right from time to time to:

- (a) make any deletions, changes, and additions to the equipment, appliances, pipes, plumbing, wiring conduits, ducts, shafts, structures, and facilities of every kind throughout the Building, including the Leased Premises;
- (b) alter the location and nature of common areas of the Building, including Service Areas, make reductions to it, erect additions to it, and extend any part of it; and
- (c) make alterations and additions to the Building;

and in exercising any of the rights, the Landlord will take reasonable steps to minimize any interference caused to the Tenant's operations in the Leased Premises, but by exercising its rights, the Landlord will not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease, nor will the Tenant be entitled to any abatement of rent or other compensation from the Landlord.

12. INSURANCE AND INDEMNITY

12.1 Landlord's Insurance

The Landlord will take out and keep in force, all risks, property insurance on the building, and such other forms of insurance as the Landlord reasonably considers necessary. In spite of any contribution by the Tenant to the Landlord's insurance through the Operating Costs, the Tenant is not relieved of any liability arising from its acts, fault, negligence, or omissions, and no insurable interest is conferred on the Tenant under the Landlord's policies, nor does the Tenant have the right to receive any proceeds under the policies.

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12.2 Tenant's Insurance

The Tenant, at its expense, will provide and maintain in force, during the Term, the following insurance:

- (a) Commercial General Liability insurance concerning the Leased Premises and the Tenant's business, of not less than \$10,000,000, or in such other amount as may be reasonably required by the Landlord; the insurance will include, without limitation, liability for personal injury or death, contractual liability, property damage, and contingent employer's liability, and will name the Landlord as additional insured's;
- (b) All Risks (including flood, sewer back-up, water damage, earthquake, and sprinkler leakage) property insurance on insurable property including merchandise, furniture, fixtures, equipment, and leasehold improvements, to full replacement value, with a deductible approved by the Landlord;
- (c) Insurance for all glass and plate glass on the Leased Premises, whether installed by the Landlord, or the Tenant;
- (d) Broad comprehensive boiler and machinery insurance on all objects owned or operated by the Tenant, or others on behalf of the Tenant, on the Leased Premises with deductibles not exceeding \$1,000;
- (e) All Risks Tenant's legal liability insurance for the actual cash value of the Leased Premises;
- (f) Business Interruption insurance providing coverage for 24 months loss of insurable gross earnings, or profit; and
- (g) Any other form of insurance, and with whatever higher limits that the Landlord may reasonably require.

12.3 Insurance Terms

Any policy of insurance under clause 12.2, will name the Landlord as additional insured, contain a waiver of subrogation against the Landlord, and contain a clause requiring the insurer not to cancel, or change the insurance, without first giving the Landlord 30 days prior written notice, and further, to provide the Landlord with copies of the insurance policies required by this Lease.

12.4 Tenant's Contractor's Insurance

The Tenant will require any contractor performing work on the Leased Premises, to carry and maintain, at no expense to the Landlord, Commercial General Liability insurance and other insurance in amounts, and on terms reasonably determined by the Landlord, and to provide the Landlord with satisfactory proof of that insurance from time to time.

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12.5 Landlord's Right to Insure

If the Tenant does not provide, or maintain in force, the insurance required under this Lease, or provide proof of the insurance when requested by the Landlord, the Landlord may take out the necessary insurance, and pay the premiums, and the Tenant will pay to the Landlord, as Additional Rent, the amount of such premium on the next succeeding Rent payment date.

12.6 Acts Conflicting with Insurance

The Tenant will not do, or permit to be done, any act or thing that may render void, or conflict with any policy of insurance, including any applicable regulations of fire insurance underwriters, by which the Leased Premises or the Building are insured.

12.7 Indemnity by Tenant

The Tenant will indemnify the Landlord, and save it harmless from and against all claims, actions, damages, liabilities, costs, and expenses, in connection with loss of life, personal injury, or damage to property arising from any occurrence on the Leased Premises, or occupancy, or use of the premises, or occasioned wholly, or in part, by an act or omission of the Tenant, its officers, employees, agents, customers, contractors, or other invitees. The provisions of this clause will survive the expiry or sooner termination of this Lease.

12.8 Indemnity by Landlord

The Landlord will indemnify the Tenant, and save it harmless from and against all claims, actions, damages, liabilities, costs, and expenses, in connection with loss of life, personal injury, or damage to property arising from any occurrence on the Leased Premises, or occupancy, or use of the premises, or occasioned wholly, or in part, by a grossly negligent act or omission of the Landlord, its officers, employees, agents, customers, contractors, or other invitees. The provisions of this clause will survive the expiry or sooner termination of this Lease.

13. SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES

13.1 Tenant's Covenants

The Tenant agrees with the Landlord that:

13.2 Sale or Financing of Building

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The rights of the Landlord under this Lease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the Landlord under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Building or the Leased Premises, the Tenant agrees to attorn to and become the tenant of the purchaser, mortgagee, or trustee under the terms of this Lease.

13.3 Subordination and Attornment

(1) If required by any mortgagee or the holder of any trust deed or trust indenture, this Lease and all rights of the Tenant under this Lease will be subject and subordinate to all mortgages, trust deeds, or trust indentures now or hereafter existing that may now or hereafter affect the Building and to all renewals, modifications, consolidations, replacements, and extensions of them.

(2) The Tenant, whenever required by any mortgagee (including any trustee under a trust deed or trust indenture), will attorn to the mortgagee as the tenant upon all of the terms of this Lease. The Tenant agrees to execute and deliver promptly whenever requested by the Landlord or by the mortgagee an instrument of subordination or attornment, as the case may be, as may be required of it, and if the Tenant fails to do so within seven days after receiving the instrument, the Tenant irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the instrument on behalf of, in the name of, and as agent of, the Tenant.

(3) Upon request the Landlord will provide the Tenant with a non-disturbance agreement from any current or subsequent mortgagee, in a form acceptable to the parties.

13.4 Registration

Upon request, the Landlord will be obliged to deliver this Lease to the Tenant in a short form registrable under the *Land Title Act*, R.S.B.C. 1996, c. 250.

13.5 Certificates

(1) The Tenant agrees with the Landlord that the Tenant will promptly whenever requested by the Landlord execute and deliver to the Landlord and, if required by the Landlord, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Landlord) a certificate in writing as to the status of this Lease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the Rent payable under this Lease and the state of the accounts between the Landlord and Tenant, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the Landlord requests a certificate.

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(2) If the Tenant fails to do so within fifteen days after the Tenant receives the form of certificate, the Tenant irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the certificate on behalf of, in the name of, and as agent of, the Tenant.

13.6 Assignment by Landlord

If the Landlord sells the Building or a portion of it containing the Leased Premises or the Landlord assigns this Lease or any interest of the Landlord under this Lease, and to the extent that the purchaser or assignee has assumed the covenants and obligations of the Landlord under this Lease, the Landlord, without further written agreement, will be freed and relieved of liability upon the covenants and obligations.

14. OCCURRENCE OF DEFAULT

14.1 Unavoidable Delay

Except as expressly provided in this Lease, if and whenever and to the extent that either the Landlord or the Tenant is prevented, delayed, or restricted in the fulfilment of any obligations under this Lease in respect of the supply or provision of any service or utility, the making of any repair, the doing of any work or any other thing (other than the payment of Rent) by reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfil the obligation or by reason of any statute, law, or regulation or inability to obtain any permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting the fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of the obligation will be extended during the period in which the circumstance operates to prevent, delay, or restrict the fulfilment of it, and the other party to this Lease is not entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor will Rent abate; but nevertheless the Landlord will use reasonable efforts to maintain services essential to the use and enjoyment of the Leased Premises.

14.2 No Admission

The acceptance of any Rent from or the performance of any obligation under this Lease by a person other than the Tenant will not be construed as an admission by the Landlord of any right, title, or interest of the person as a subtenant, assignee, transferee, or otherwise in the place and stead of the Tenant.

14.3 Part Payment

The acceptance by the Landlord of a part payment of any sums required to be paid under this Lease will not constitute waiver or release of the right of the Landlord to payment in full of the sums.

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Landlord <i>[Handwritten Initials]</i>	Tenant <i>[Handwritten Initials]</i>

15. TENANT'S DEFAULT, REMEDIES OF LANDLORD, AND SURRENDER

15.1 Remedying by Landlord, Non-payment, and Interest

In addition to all the rights and remedies of the Landlord available to it for the Tenant's default under this Lease, either by any other provision of this Lease or by statute or the general law, the Landlord:

- (a) may remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Leased Premises to do any work or other things in them, and all expenses of the Landlord in remedying or attempting to remedy the default together with an administrative charge equal to 15% of the total of the expenses will be payable by the Tenant to the Landlord promptly upon demand;
- (b) has the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent;
- (c) if the Tenant fails to pay any Rent promptly when due, is entitled, if it demands it, to interest at a rate of 3% per annum in excess of the Prime Rate; and
- (d) is entitled to be reimbursed by the Tenant, and the Tenant will promptly pay the Landlord, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor-and-own-client basis) incurred by the Landlord in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies to which the Landlord is or may be entitled under this Lease.

15.2 Remedies Cumulative

The Landlord may resort to any or all of the rights and remedies available to it in the event of any default under this Lease by the Tenant, either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions under this Lease as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or the general law.

15.3 Right of Re-entry on Default

If and whenever

- (a) the Rent or other moneys payable by the Tenant or any part of it, whether lawfully demanded or not, are unpaid and the Tenant has failed to pay the Rent or

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other moneys within five days after the Landlord has given to the Tenant notice requiring the payment; or

(b) the Tenant breaches or fails to observe and perform any of the covenants, agreements, provisos, conditions, rules, or regulations and other obligations on the part of the Tenant to be kept, observed, or performed under this Lease and the breach or failure continues for 10 days after the Landlord has given the Tenant notice of it; or

(c) without the written consent of the Landlord the Leased Premises are used by any persons other than the Tenant, its invitees, members, licensees, or its permitted assigns or subtenants or for any purpose other than that for which the Leased Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or

(d) the Leased Premises are vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or

(e) any of the goods and chattels of the Tenant are at any time seized in execution or attachment; or

(f) a receiver or receiver-manager is appointed for the operation or property of the Tenant; or

(g) the Tenant makes any assignment for the benefit of creditors or any bulk sale, becomes bankrupt or insolvent or takes the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) takes any steps or permits any order to be made for its winding-up or other termination of its corporate existence; or

(h) any policy of insurance upon the Building from time to time effected by the Landlord is cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Leased Premises by the Tenant or any assignee, subtenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Leased Premises and the Tenant after receipt of notice in writing from the Landlord fails to take the immediate steps in respect of the use or occupation as enables the Landlord to reinstate or avoid cancellation of (as the case may be) the policy of insurance; or

(i) the Landlord becomes entitled to terminate this Lease or to re-enter the Leased Premises under any provision of it; or

(j) the Services Agreement dated Feb. 7, 2013 between the Tenant and the City is terminated

in every case the Landlord may enter into and upon the Leased Premises or any part of them in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease to the contrary notwithstanding. The Landlord may use the force as it may deem necessary for the purpose of gaining admittance to and re-taking possession

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of the Leased Premises and the Tenant releases the Landlord from all actions, proceedings, claims, and demands whatsoever for and in respect of any forcible entry or any loss or damage in connection with it.

15.4 Time to Cure

Notwithstanding anything in this section, in the event that the Landlord becomes entitled to re-enter the Leased Premises under subsections 15.3(b), (c) or (d) and the Tenant has commenced and is diligently pursuing remedying the situation that led to the right to re-enter, the Landlord's right to re-enter and associated rights will be suspended for a period of 30 days, and if such remedy is achieved, the Landlord will have no further rights under this section.

15.5 Termination and Re-entry

If and whenever the Landlord becomes entitled to re-enter upon the Leased Premises under any provision of this Lease, the Landlord, in addition to all other rights and remedies, may terminate this Lease by giving to the Tenant or by leaving on the Leased Premises notice in writing of termination. Thereupon, this Lease and the Term will terminate, and the Tenant will immediately deliver up possession of the Leased Premises to the Landlord.

15.6 Certain Consequences of Termination and Re-entry

If the Landlord re-enters the Leased Premises or if this Lease is terminated by reason of any event set out in clause 15.3, without prejudice to the Landlord's other rights and remedies:

- (a) the provisions of this Lease that relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions that occurred prior to the termination, will all survive termination;
- (b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three months will immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and
- (c) the Tenant or person then controlling the affairs of the Tenant will pay to the Landlord on demand the reasonable expenses the Landlord has incurred, and a reasonable estimate by the Landlord of expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Leased Premises in good

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order, and the expenses of repairing the Leased Premises and preparing them for re-letting.

15.7 Waiver of Distress and Bankruptcy

(1) The Tenant waives the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that despite any statute none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term will be exempt from levy by distress for rent in arrears.

(2) The Tenant will not sell, dispose of, or remove any of the fixtures, goods, or chattels of the Tenant from or out of the Leased Premises during the Term without the consent of the Landlord, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is disposing of individual items that have become excess for the Tenant's purposes; and the Tenant will be the owner of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance, except to the extent already granted and permitted under 11.2(2).

(3) Without the Landlord's consent the Tenant will not resiliate or disclaim, or attempt to resiliate or disclaim, or seek any order to permit it to resiliate or disclaim this Lease in any bankruptcy, insolvency, reorganization, or other proceeding or court application, and, if required by the Landlord, waives in favour of the Landlord the benefit of s. 65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, and any provision of similar import.

15.8 Surrender on Termination



(1) Immediately upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant will vacate and deliver up possession of the Leased Premises in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Leased Premises, but subject to the Tenant's rights and obligations in respect of removal in accordance with clause 11.3.

(2) At the same time the Tenant will surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices that provide access to the Leased Premises, the Building, or any part of them and will inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Leased Premises.

16. MISCELLANEOUS

16.1 Notices

(1) Any notice required or contemplated by any provision of this Lease will be given in writing, and

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Landlord 	Tenant 

(a) if to the Landlord, either delivered to an officer of the Landlord or delivered or mailed (by prepaid registered mail) to the Landlord at the address set out in subclause 1.1(a), or if the Landlord has given the Tenant notice of another address in Canada to which notices to the Landlord under this Lease are to be given, then to the last address of which the Tenant has been given notice; or electronically to the e-mail address given by the Landlord; and

(b) if to the Tenant, either delivered to the Tenant personally (or to an officer of the Tenant), delivered or mailed (by prepaid registered mail) to the Tenant at the Leased Premises or electronically to the e-mail address given by the Tenant.

(2) Every notice will be deemed to have been given when delivered or, if mailed as provided, on the third business day after the day of mailing in Canada. If there is a mail strike, slowdown, or other labour dispute that might affect delivery of the notice between the time of mailing and the actual receipt of notice, the notice will only be effective if actually delivered.

16.2 Extraneous Agreements

(1) The Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease or the Leased Premises except as expressly set out in this Lease and in any agreement to lease in writing between the Landlord and the Tenant pursuant to which this Lease has been executed. If there is a conflict between the terms of this Lease and the agreement to lease, the terms of this Lease will prevail.

(2) This Lease is the entire agreement between the parties and may not be modified except by an agreement in writing executed by the Landlord and the Tenant.

(3) Notwithstanding the foregoing, the parties acknowledge that the following two documents also deal with the operation of the Leased Premises:

(a) Services Agreement between the Y and the City of Langford for the operation of the Recreation Centre dated FEBRUARY 7/13 (the "Services Agreement"); and

(b) Tri-partite agreement between the Landlord, the Tenant, and the City of Langford dated FEBRUARY 7/13 relating to the transition of services for the Recreation Centre in the event the Lease is terminated prior to the expiry of the Term or extension thereof (the "Tri-partite Agreement").

16.3 Time of Essence

Time is of the essence of this Lease.

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16.4 Area Determination

Subject only to subsection 4.2(c), the Rentable Area of any premises (including the Leased Premises) or the Building will be determined by the Landlord's subject matter expert from time to time appointed for the purpose. The determination will be conclusive.

16.5 Successors and Assigns

(1) This Lease and everything in it will enure to the benefit of and be binding upon the successors and assigns of the Landlord and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Tenant.

(2) References to the Tenant will be read with the changes in gender as may be appropriate, depending upon whether the Tenant is a male or female person or a firm or corporation.

(3) If the Tenant is comprised of more than one person or entity, then each person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Tenant and any notice given or deemed to have been given at any time to any person or entity will be deemed to have been given at the same time to each other person and entity.

16.6 Frustration

Despite the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue that, but for this clause, would frustrate or void this Lease, and notwithstanding any statutory provision to the contrary, the obligations and liabilities of the Tenant will continue in full force and effect as if the event or circumstance had not occurred or existed.

16.7 Waiver

(1) No condoning, excusing, or overlooking by the Landlord or Tenant of any default, breach, or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso, or condition in this Lease will operate as a waiver of the Landlord's or the Tenant's rights under this Lease in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant in this Lease in respect of any continuing or subsequent default or breach.

(2) No acceptance of rent by the Landlord subsequent to a default by the Tenant (whether or not the Landlord knows of the default) will operate as a waiver by the Landlord, and no waiver will be inferred from or implied by anything done or omitted by the Landlord or the Tenant except an express waiver in writing.

INITIALS	
Landlord <i>[Handwritten Initials]</i>	Tenant <i>[Handwritten Initials]</i>

16.8 Governing Law and Severability

(1) This Lease will be governed by and construed in accordance with the laws in force in British Columbia. The venue of any proceedings taken in respect of or under this Lease will be Victoria, BC as long as the venue is permitted by law. The Tenant will consent to any application by the Landlord to change the venue to Victoria, BC of any proceedings taken elsewhere.

(2) The Landlord and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing the covenants and agreements were used in each separate clause of it. If any provision or provisions of this Lease are found to be illegal or not enforceable, it or they will be considered separate and severable from the Lease and its remaining provisions will remain binding upon the parties as though the illegal or unenforceable provision or provisions had never been included.

16.9 Captions

The captions in this Lease have been inserted as a matter of convenience and for reference only and do not define, limit, or enlarge the scope or meaning of this Lease or of any provision of it.

16.10 Acceptance

The Tenant accepts this Lease of the Leased Premises, to be held by it as tenant, and subject to the conditions, restrictions, and covenants specified in this Lease. The acceptance of possession of the Leased Premises will be conclusive evidence as against the Tenant that at the Completion Date the Landlord had duly completed all work required to be completed by the Landlord prior to the Completion Date of the Term and the Leased Premises were in good order and satisfactory condition for the commencement of the work and operation of the Tenant. Upon request by the Tenant, the Landlord agrees to provide to the Tenant's Expert immediately prior to the Tenant taking possession of the Leased Premises, a list of all outstanding deficiencies.

16.12 Expropriation

(1) If at any time during the Term, the interest of the Tenant under this Lease or the whole or any part of either the Leased Premises or any other part of the Building is taken by any lawful power or authority by the right of expropriation, the Landlord, at its option, may give notice to the Tenant terminating this Lease on the date when the Tenant or Landlord is required to yield up possession to the expropriating authority.

(2) Upon the termination, or upon termination by operation of law, as the case may be, the Tenant will immediately surrender the Leased Premises and all its interest in them, Rent will abate and be apportioned to the date of termination, the Tenant will promptly pay to the

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Landlord <i>[Signature]</i>	Tenant <i>[Signature]</i>

Landlord the apportioned Rent and all other amounts that may be due to the Landlord up to the date of termination, and clause 15.8 will apply.

(3) The Tenant will have no claim upon the Landlord for the value of its property or the unexpired Term of this Lease, but the parties may separately advance their claims for compensation for the loss of their respective interests in the Leased Premises. The parties will each be entitled to receive and retain the compensation as may be awarded to each respectively.

(4) If an award of compensation made to the Landlord specifically includes an award for the Tenant, the Landlord will account for it to the Tenant.

(5) In this clause the expropriation includes a sale by the Landlord to an authority with powers of expropriation, in lieu of or under threat of expropriation.

17. SPECIAL PROVISIONS

17.1 Option to Extend

(1) The Landlord covenants with the Tenant that if

- (a) the Tenant gives notice to the Landlord that the Tenant wishes to obtain an extension of this Lease, the notice to be given not later than 12 months prior to the expiry of the initial Term;
- (b) at the time of giving the notice the Tenant is not in breach of any covenant or condition contained in this Lease or if in breach is remedying the breach in a timely manner if permitted time to remedy under section 15.3; and
- (c) the Tenant has duly and regularly throughout the initial term observed and performed the covenants and conditions in this Lease;

the Landlord will grant to the Tenant at the Tenant's expense an extension lease of the Leased Premises for a further term to be agreed to by the parties upon the same terms and conditions in this Lease, except this covenant to extend and except the Annual Base Rent that will be the greater of the Current Market Rent for the Leased Premises with its Leasehold Improvements (having regard to the duration of the extension term) and the sum of the Annual Base Rent payable for the last year of the initial term, and except any rent-free periods, tenant allowances, or other inducements.

(2) If the Landlord and the Tenant are unable to agree upon the Current Market Rent, at least three months before the expiry of the initial term, the determination of the Current Market Rent will be referred to a single arbitrator if the parties agree upon one. If the parties are unable to agree, the determination will be referred to a board of three arbitrators, one to

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be appointed by each of the Landlord and the Tenant and a third arbitrator to be appointed in writing by the first two-named arbitrators.

(3) If the Landlord or the Tenant refuses or neglects to appoint an arbitrator within seven clear days after the other has served a written notice upon the party so refusing or neglecting to make the appointment, the arbitrator first appointed, at the request of the party appointing the arbitrator, will proceed to determine the rent as if he or she were a single arbitrator appointed by both the Landlord and Tenant for the purpose.

(4) If two arbitrators are appointed within the time prescribed and they do not agree upon the appointment of the third arbitrator within a period of seven days from the date of appointment of the second arbitrator, upon the application of either the Landlord or the Tenant, the third arbitrator will be appointed by a Judge of the Supreme Court in accordance with the procedure set out in the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55 as amended from time to time, or a similar statute then in force in BC. The third arbitrator will chair the arbitration.

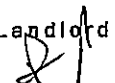

(5) The determination made by the arbitrators or the majority of them, or by the single arbitrator, as the case may be, will be final and binding upon the Landlord and the Tenant and their respective successors and assigns.

(6) The Landlord and Tenant will share equally the costs of the arbitration and the arbitrator(s). The provisions of this clause will be deemed to be a submission to arbitration within the provisions of the *Commercial Arbitration Act* but any limitation on the remuneration of the arbitrators imposed by the legislation will not be applicable.

17.2 Parking

(1) The Tenant shall lease from the Landlord underground parking stalls, the number of and cost of which are to be determined by the parties prior to the end of the Financing Stage.

(2) The parties acknowledge that a train station and associated park and ride (the "Train Facilities") may be constructed in the vicinity of the Building. Prior to the Train Facilities being constructed and in use, the Tenant shall be entitled to the use of a minimum of 200 above-ground parking stalls, which may or may not be paved but which will be comprised of an appropriate surface for parking, close to the Building (the "Above-ground Parking Stalls") which can be used free of charge by the Tenant's employees, customers and invitees in common with other users of the Above-ground Parking Stalls under such rules and regulations as may be posted or otherwise communicated by the Landlord to the Tenant. Should the Train Facilities be constructed and used on lands near the Building, the Tenant acknowledges that there may be a charge to its employees, customers and invitees for use of the Above-ground Parking Stalls. Should the Train Facilities be constructed and used, the Landlord agrees to explore with the Tenant whether a pass system can be put in place to allow the Tenant's employees, customers and invitees to park in the Above-ground Parking Stalls at

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certain times of day to the exclusion of others. In addition, if the Train Facilities are constructed and used, the Landlord agrees to reserve, for the exclusive use of the Tenant, 50 above-ground parking stalls within 500 metres of the Building (the "Reserved Stalls"). The Reserved Stalls will be licensed to the Tenant at a cost that is the market rate at the time the parking stalls are being licensed, and the parties agree that the Landlord will license the Reserved Stalls to the Tenant and the Tenant will license them from the Landlord for the remainder of the Term, with increases in the license fee as required to stay current with market rate. Should the Landlord so require, the Tenant will enter a license agreement with respect to the Reserved Stalls, on terms and conditions acceptable to the Landlord, acting reasonably, provided that the terms and conditions shall not require the Tenant to pay a rate for the Reserved Stalls that is more than market rate, as indicated above.

(3) The Landlord will use its reasonable efforts to encourage the City of Langford to provide on-street passenger drop off and loading areas in roadways adjacent to the Building.

17.4 Potential lease area

(1) The Tenant is aware that the Landlord has an agreement with the City of Langford to lease to it an area of approximately 4000 square feet (the "City Lease Area") for a period of 5 years from the Completion Date.

(2) The Tenant wishes to have the first right to rent the City Lease Area when the City's lease terminates and the Landlord agrees to offer it for rent to the Tenant prior to offering it to any other potential tenant.

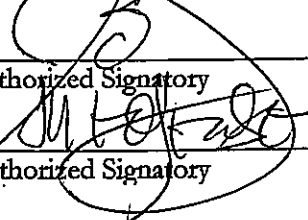
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Landlord 	Tenant 

17.5 Non-competition clause

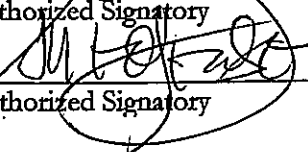
The Landlord agrees that it shall not, during the time this agreement and any renewals hereto are in force, lease space in the Building to any tenant that is in the business of providing the following: gym workout facilities, group fitness classes and personal training. The Tenant acknowledges that the Landlord is not, by virtue of this section, precluded from leasing space to other tenants involved in other aspects of health and wellness, including medical, dental, alternative medicine, massage, physiotherapy, counselling and nutrition.

IN WITNESS WHEREOF the parties have executed this Lease.

YMCA - YWCA OF GREATER VICTORIA by its authorized signatories:

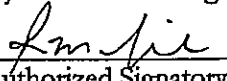


Authorized Signatory JOHN BISMY, CHAIR BOARD OF DIRECTORS

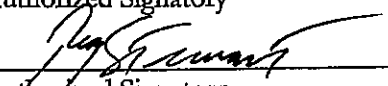


Authorized Signatory JENNIE EDACOURSE, CEO


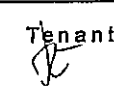
WESTHILLS LAND CORP.
by its authorized signatories:



Authorized Signatory



Authorized Signatory

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SCHEDULE A

To Lease of Premises at Victoria, British Columbia

DEFINITIONS

In this Lease:

Additional Rent means all sums of money to be paid by the Tenant, whether to the Landlord or otherwise under this Lease, except for Annual Base Rent and GST/HST payable by the Tenant.

Additional Services means the services and supervision supplied by the Landlord and referred to in clause 9.2 or in any other provision of this Lease as Additional Services; any other services that from time to time the Landlord supplies to the Tenant and that are additional to other services that the Landlord has agreed to supply under this Lease and to like provisions of other leases of the Building, or that the Landlord may elect to supply as included within the standard level of services available to tenants generally and in addition to those normally supplied; the provision of labour and supervision in connection with the moving of any furniture or equipment of the Tenant; the making of any repairs or alterations for the Tenant; and the provision to the Tenant or the Leased Premises of maintenance or other services not normally furnished to tenants or other leasable premises generally; and "Additional Service" means any such service.

Annual Base Rent means the annual rent specified in subclause 1.1(f) and payable by the Tenant as specified in subclause 4.1(a).

Aquatic Facility means that area of the Recreation Centre comprising a reception area and food service area, a 25 metre pool, warm pool with movable floor, hot tubs and saunas, lazy river, water slide, wave pool, health & fitness areas, a gymnasium, including change rooms, multi-purpose rooms, administration areas, and public areas for programs and services.

Basic Terms means those terms set out in clause 1.1, some of which are more particularly defined in this Schedule.

Building means that certain building and those certain areas and improvements to be constructed on the Lands and all additions and replacements to it.

Common Area: means the areas approximately shown on Schedule B and labelled as common area.

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Cost of Additional Services means in the case of Additional Services provided by the Landlord a reasonable charge made for them by the Landlord that will not exceed the cost of obtaining the services from independent contractors, and in the case of Additional Services provided by independent contractors the Landlord's total cost of providing Additional Services to the Tenant including the cost of all labour (including salaries, wages, and fringe benefits) and materials and other direct expenses incurred, the cost of supervision and other indirect expenses capable of being allocated to them (the allocation to be made upon a reasonable basis) and all other out-of-pocket expenses made in connection with them including amounts paid to independent contractors, plus an administration fee equal to 15% of each component thereof.

Current Market Rent means that rent that would be paid for improved recreation and office space in buildings of similar age and location in Langford, BC as between persons dealing in good faith and at arm's length, without reduction for any cash payment, leasehold improvement allowance, rent-free period or other inducement.

Goods and Services or Harmonized Tax means and includes any and all goods and services taxes, sales taxes, value added taxes, business transfer taxes, or any other taxes imposed on the Landlord or the Tenant from time to time in respect of the Rent payable by the Tenant to the Landlord under this Lease or the rental of the Leased Premises or the provision of any goods, services, or utilities whatsoever by the Landlord to the Tenant under this Lease, whether characterized as a goods and services tax, sales tax, value added tax, business transfer tax, or otherwise.

Insured Damage means that part of any damage occurring to any portion of the Leased Premises for which the Landlord is responsible, of which the entire cost of repair is actually recoverable by the Landlord under a policy of insurance in respect of fire and other perils from time to time effected by the Landlord, or, if and to the extent that the Landlord has not insured and is deemed to be a co-insurer or self-insurer under clause 12.1, would have been recoverable had the Landlord effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured.

Lands means that parcel of land, in Langford, BC approximately as shown on Schedule G.

Landlord means the corporation executing this Lease and includes its successors and assigns. In the definition of Operating Costs, references to "Landlord" include the owner of the Lands and Building as registered in the applicable land title office and any and all beneficial owners of the Lands and Building.

Lease Year means, in the case of the first Lease Year, the period beginning on the Completion Date and terminating 12 months from the last day of the calendar month in which the

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Landlord <i>[Handwritten Signature]</i>	Tenant <i>[Handwritten Signature]</i>

Completion Date occurs (except that if the Completion Date occurs on the first day of a calendar month, the first Lease Year will terminate on the day prior to the first anniversary of the Completion Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year.

Leased Premises means that portion of the Building located on those floor(s) set out in subclause 1.1(c), containing the aggregate number of square feet, more or less, of Rentable Area that is set out in subclause 1.1(d), plus the outdoor area which is not included in the calculation of Rentable Area, and having the appropriate location and configuration shown on the plan(s) attached as Schedule B. The exterior face of the Building and any space in the Leased Premises used for stairways or passageways to other premises, stacks, shafts, pipes, conduits, ducts, or other Building facilities, heating, electrical, plumbing, air conditioning, and other Building systems supplied by the Landlord for use in common with other tenants are expressly excluded from the Leased Premises.

Leasehold Improvements mean all fixtures, improvements, installations, alterations, and additions now or from time to time made, erected, or installed, whether by the Tenant, the Landlord or anyone else, in the Leased Premises or in other premises in the Building with the exception of trade fixtures and furniture and equipment not of the nature of fixtures, but includes all partitions however fixed (including movable partitions) and includes all wall-to-wall carpeting with the exception of carpeting laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage.

Normal Operating Hours means 24 hours per day, seven days per week.

Operating Costs mean, subject to the exclusions and deductions set out below, the total, without duplication, of the costs, expenses, fees, rentals, disbursements, and outlays (in this definition referred to collectively as "costs") of every kind paid, payable, or incurred by or on behalf of the Landlord on an accrual basis consistent with generally accepted accounting principles and fully chargeable in the year in which they were incurred (except as expressly set out below) in accordance with generally accepted accounting principles in the maintenance, repair, operation, administration, and management of the Lands and Building. Without limiting the generality of the foregoing, Operating Costs will include:

- (1) all salaries, wages, fringe benefits, paid to or for all personnel, including supervisory personnel and managers,, to the extent that they are employed by the Landlord (or a person with whom it does not deal at arm's length) in connection with the maintenance, repair, operation, administration, or management of the Lands and Building or any part of them, and amounts paid to professionals and independent contractors, including any management companies, for any services provided in connection with the maintenance, repair, operation, administration, or management of the Lands and Building or any part of them;

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- (2) costs of providing security, supervision, traffic control, janitorial, landscaping, window cleaning, waste collection, disposal and recycling, and snow removal services, and the costs of machinery, supplies, tools, equipment, and materials used in connection with the operation, administration, or management of the Lands and Building or any rentals of them;
- (3) costs of providing electric light and power, fuel, water, telephone, steam, gas, sewage disposal, and other utilities, and costs of replacing Building-standard electric light fixtures, ballasts, tubes, starters, lamps, light bulbs, and controls;
- (4) costs of all insurance that the Landlord is obligated or permitted to obtain under this Lease;
- (5) sales, goods and services, and excise or other taxes on goods and services provided by or on behalf of the Landlord in connection with the maintenance, repair, operation, administration, or management of the Building net of input tax credits, refunds, or rebates (to the extent the Landlord receives and uses them);
- (6) taxes levied against the Lands and Building to the extent not charged to the Tenant under subclauses 4.1(b) and 8.2(b) and to other tenants of the Building under lease provisions similar to subclauses 4.1(b) and 8.2(b); and costs (including legal and other professional fees and interest and penalties on deferred payments) incurred by the Landlord in contesting, resisting, or appealing any Taxes;
- (7) capital tax, if applicable, being the applicable amount (as hereinafter defined) of any tax or taxes imposed on the Landlord by any governmental authority based upon or computed by reference to the paid-up capital or place of business of the Landlord as determined for the purposes of the tax or taxes; and for the purpose of this paragraph the phrase "applicable amount" of the tax or taxes means the amount of tax that would be payable if the Lands and Building were the only property of the Landlord, and the portion as the Landlord allocates, acting reasonably, to the Lands and Building of any large corporations tax, minimum corporate tax, or other tax imposed on the Landlord by any governmental authority to the extent the tax is not actually credited against any income tax payable by the Landlord;
- (8) a reasonable amount, as determined by the Landlord from time to time, of costs incurred by or on behalf of tenants in the Building with whom the Landlord may have agreements whereby in respect of their premises those tenants perform any cleaning, maintenance, or other work or services that, if directly incurred by the Landlord, would have been included in Operating Costs;
- (9) costs of repairs, alterations, and replacements to the Building (including those required to comply with applicable laws or the requirements of the Landlord's insurers that become effective or are imposed after substantial completion of the original construction of the relevant structure) except as excluded herein, to the extent

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Landlord <i>[Signature]</i>	Tenant <i>[Signature]</i>

reasonably allocated by the Landlord to any fiscal period; and amortization of the cost of any repairs, alterations, or replacements except to the extent charged in accordance with the foregoing provisions of this paragraph, in the case of each item of repair, alteration, or replacement to be calculated on a straight line basis over the period the Landlord determines is reasonable having regard to the nature of the repair, alteration, or replacement, or 15 years, whichever is less;

- (10) depreciation (excluding depreciation on the costs of original components of the electrical, mechanical, and other systems installed as part of the original construction of the Building) of the costs of machinery, equipment, facilities, furniture, furnishings, systems, and property (in this paragraph called "machinery") installed in or used in connection with the Building (except to the extent that the costs are charged fully in the fiscal period in which they are incurred):
- (a) if a principal purpose of the machinery is to conserve energy, reduce the cost of other items included in Operating Costs, or comply with applicable laws or requirements of the Landlord's insurers that become effective or are imposed after substantial completion of the Building, or the machinery is used for normal maintenance of the Building; or
 - (b) if, as in the case of the electrical, mechanical, and other systems, the machinery by its nature requires periodic or substantial replacement;

in the case of each item of machinery to be calculated on a straight line basis over its useful life or 15 years, whichever is less;

- (11) interest on the unamortized or undepreciated portion of the costs referred to in paragraphs (9) and (10) of this definition, calculated monthly, from the date on which the relevant costs were incurred, at an annual rate of interest that is 0.5% above the Prime Rate in effect on the first day of the fiscal period in which the relevant costs were incurred (the applicable rate of interest to be adjusted by the Landlord on the first day of each fiscal period to the annual rate of interest that is 0.5% above the Prime Rate then in effect);
- (12) the fair market rental value (having regard to rent being charged for similar rentable space including additional rent for operating costs and property taxes) of space not already included in Rentable Area used by the Landlord, acting reasonably, in connection with the maintenance, repair and operation of the Lands and Building; and
- (13) management fees or management agent fees and administrative charges of a management company, if any, for the Lands and Building or any part of it or, if the Landlord chooses to manage the Lands and Building or any part of it through itself or through a company or other person with whom it does not deal at arm's length, a management fee to the Landlord in an amount comparable to that which would be

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Landlord S	Tenant D

charged by a first-class real estate management company for management of similar buildings but in any event no greater than 5% of gross rent;

excluding therefrom the following (except as specifically included above):

- (14) depreciation;
- (15) capital costs of constructing the Building, of replacements of parts of the Building, and of additions to the Building to comply with all bylaws, regulations, and orders made by any governmental authority with respect to the Building and the operating systems of the Building;
- (16) debt service costs;
- (17) any taxes on the income or profits of the Landlord to the extent they are not imposed in lieu of Taxes;
- (18) costs incurred by the Landlord in leasing the Building, including commissions, advertising costs, and tenant inducement payments;
- (19) costs of correcting defects in or inadequacy of the initial design or construction of the building, cost of repairs covered by warranty and costs of repairs necessitated by structural defects;
- (20) costs to benefit or as a result of specific tenant(s), including but not limited to costs of repairs, alterations or improvements of the premises of other tenant(s);
- (21) depreciation, interest and principal payments on capital costs, mortgages, ground rent and other debt costs, if any;
- (22) legal fees, space planner's fees, real estate broker's leasing commission, lease take-over costs, advertising and marketing expenses, costs of improving, renovating or inducing tenants into the Building and all other leasing expenses;
- (23) unrecovered expenses directly resulting from the negligence of the Landlord, its agents, servants or employees or any bad debt loss, rent loss or reserves for bad debts or rent loss;
- (24) repairs to the footings, foundations, structural columns and beams, structural subfloors, bearing walls, exterior walls and windows, and roofs of the Building made within the first two years after substantial completion of the Building to remedy construction or design defects identified by the Landlord's architect;
- (25) costs associated with the operation of the business of the entity which constitutes the Landlord as the same are distinguished from the costs of operation of the building including accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of the Tenant may be an issue), costs of selling, syndicating, financing mortgaging or hypothecating any of the Landlord's interest in

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the building, costs of any disputes between Landlord and its employees (if any), disputes of Landlord with building management, or fees or costs paid in connection with disputes with other tenants;

- (26) the salaries and benefits of any officers above the level of building managers of the Landlord, if any;
- (27) attorney's and lawyer's fees, accounting fees and expenditures incurred with negotiations, disputes and claims of other tenants or occupants of the building or with other third parties;
- (28) fines, penalties and interest thereon except if the fines, penalties and/or interest are the direct result of the Tenant;
- (29) taxes, tax assessments or fees incurred in connection with the development of the building. In addition, income taxes and wealth taxes shall be excluded from operating costs;
- (30) any damage or loss resulting from any casualty which the Landlord covenanted to insure against or necessitated by the negligence or wilful misconduct of the Landlord including but not limited to any repair, rebuilding or other work necessitated by condemnation, fire, windstorm or other insured casualty or hazard;
- (31) the amount of any sales tax, goods and services tax, value added tax or any similar tax ("Sales Tax") paid or payable by the Landlord on the purchase of goods and services included in operating costs which are available to and claimed by the Landlord as a credit in determining the Landlord's net tax liability or refund on account of Sales Tax but only to the extent the Sales Tax is included in the operating costs;
- (32) cost of acquiring sculptures, paintings and other objects of art;

and deducting therefrom the following:

- (33) net recoveries by the Landlord from the tenants of the Building in respect of and to the extent (but only to the extent) of costs that have been charged as Operating Cost, other than recoveries from the Tenant under paragraph 4.1(b)(ii) and from other tenants under lease provisions similar to paragraph 4.1(b)(ii);
- (34) net insurance proceeds received by the Landlord to the extent (but only to the extent) that the proceeds reimburse the Landlord for costs that have been charged as Operating Costs;
- (35) net recoveries by the Landlord in respect of warranties or guarantees relating to the construction of the Building to the extent (but only to the extent) that the repair costs

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in respect of the work covered by the warranties or guarantees have been charged as Operating Costs; and

- (36) amounts paid by the operator, if any, of the parking garage forming part of the Building to the extent (but only to the extent) of costs that have been charged as Operating Costs, or, if there is no operator, the costs that the Landlord determines, acting reasonably, would normally be paid by an operator, such as the costs of sweeping and providing attendants and the operator's standard equipment;

and in computing Operating Costs, if less than 100% of the Rentable Area of the Building is completed or occupied during any period for which a computation must be made, the amount of Operating Costs will be increased by the amount of the additional costs determined by the Landlord, acting reasonably, that would have been incurred had 100% of the Rentable Area of the Building been completed or occupied during that period.



Prime Rate means that rate of interest declared from time to time by the main branch in Victoria, British Columbia, of the *Royal Bank of Canada* to the Landlord as the annual rate of interest used by the bank as its reference rate in setting interest rates for commercial loans of Canadian dollars in Canada and commonly referred to by the bank as its "prime rate" and, if and during any period when no rate is declared by the bank, means 18% per annum.

Rent includes the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the Landlord under this Lease except for goods and services tax payable by the Tenant.

Rentable Area, whether in the case of a whole floor of the Building or in the case of premises comprising part of a floor of the Building, will be determined by the Landlord's architect or land surveyor according to the American National Standard Method for Measuring Floor Areas in Office Buildings ANSI/ BOMA Z65.1-2010 Office Standard as published by the *Building Owners and Managers Association International* and in effect at the Completion Date.

Service Areas mean the area of corridors, elevator lobbies, service elevator lobbies, refuse areas, washrooms, air-cooling rooms, fan rooms, janitor's closets, telephone, meter, mechanical, and electrical closets, and other closets on the floor serving the Leased Premises and other premises on the floor if the floor is a multiple-tenancy floor.

Taxes mean all taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, that are levied, imposed, or assessed against or in respect of the Building, the Lands, or upon the Landlord in respect of them, or that are from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, including those levied, imposed, or assessed for education, schools, and local improvements, and includes all costs and expenses (including legal and other professional fees and interest and penalties on

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deferred payments) incurred by the Landlord in contesting, resisting, or appealing any taxes, rates, duties, levies, or assessments, but excludes taxes and licence fees in respect of any business carried on by tenants and occupants of the Building and taxes upon the income of the Landlord to the extent the taxes are not levied in lieu of taxes, rates, duties, levies, and assessments against the Building or the Lands or upon the Landlord in respect of them.

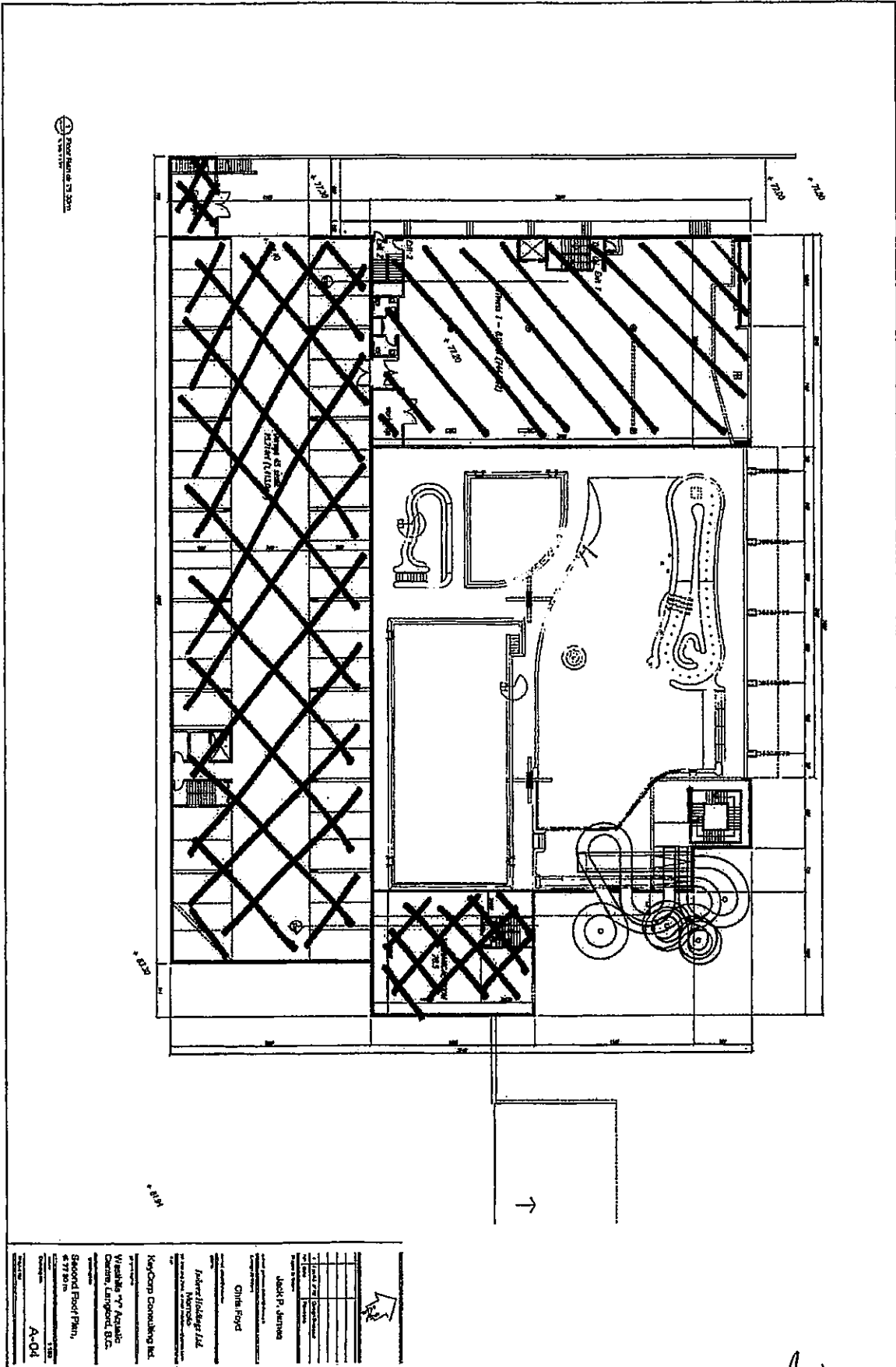
Tax Cost for any calendar year means an amount equal to the aggregate, without duplication, of all Taxes in respect of the calendar year.


Tenant's Share means the fraction, the numerator of which is the Rentable Area of the Leased Premises and the denominator of which is the Total Rentable Area.

Term means the term of this Lease specified in subclause 1.1(e) and any renewal or extension of it and any period of permitted overholding.

Total Rentable Area means the total Rentable Area of the Building, whether rented or not, calculated as nearly as possible as if the Building were entirely occupied by tenants renting whole floors. The Common Area in the Building will be excluded from the foregoing calculation. The calculation of the Total Rentable Area, whether rented or not, will be adjusted from time to time to give effect to any structural change in the Building.

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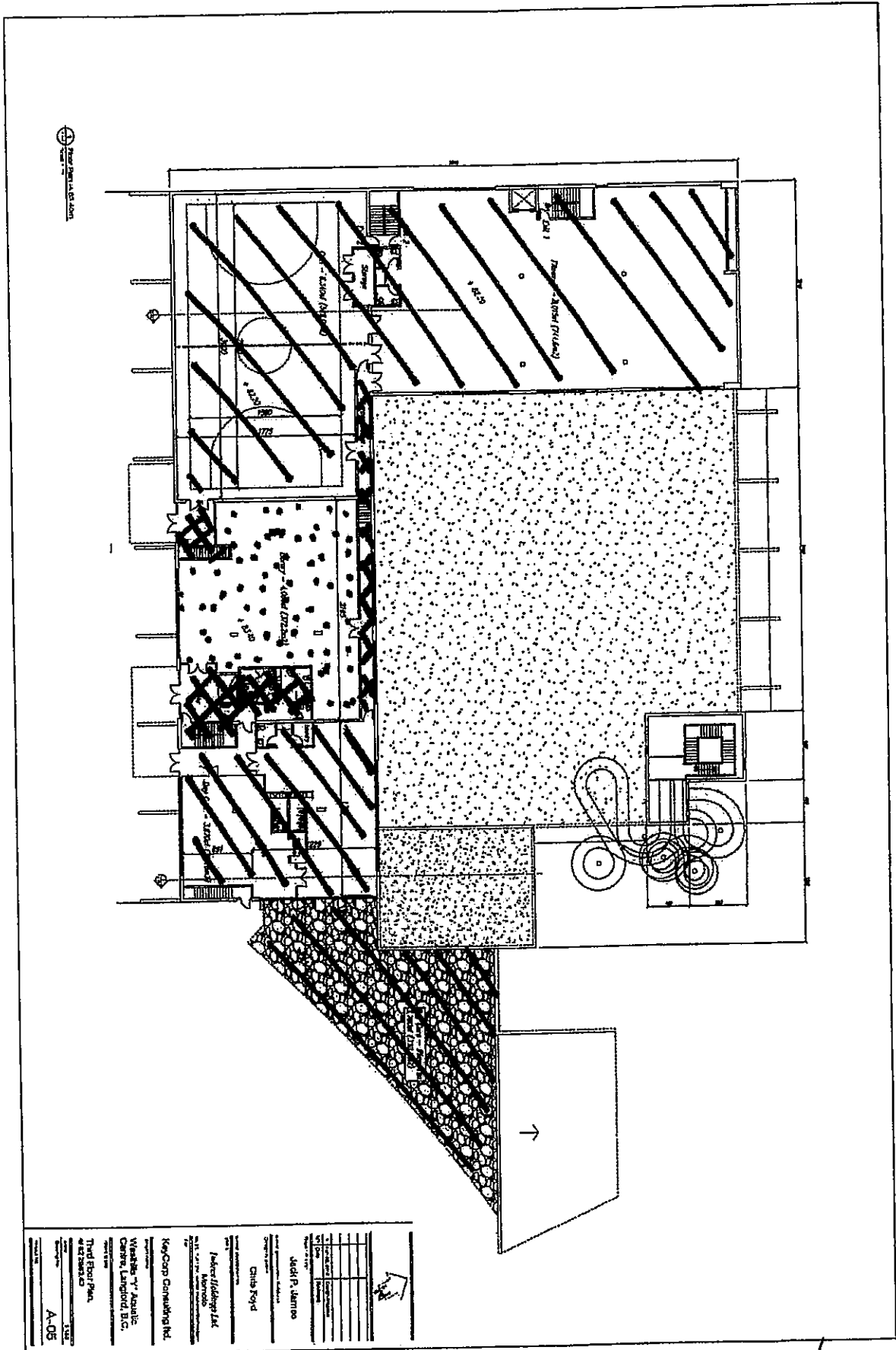




 NORTH
 1/8" = 1'-0"

Project: Wesley - 4th Acoustic Wesley, Maryland, DC	Architect: KeyCorp Consulting Inc. 1300 4 th Floor 477 80 St	Designer: Robert P. Dennis	Date: 01/16/10
Project: Wesley - 4th Acoustic Wesley, Maryland, DC	Architect: KeyCorp Consulting Inc. 1300 4 th Floor 477 80 St	Designer: Robert P. Dennis	Date: 01/16/10
Project: Wesley - 4th Acoustic Wesley, Maryland, DC	Architect: KeyCorp Consulting Inc. 1300 4 th Floor 477 80 St	Designer: Robert P. Dennis	Date: 01/16/10

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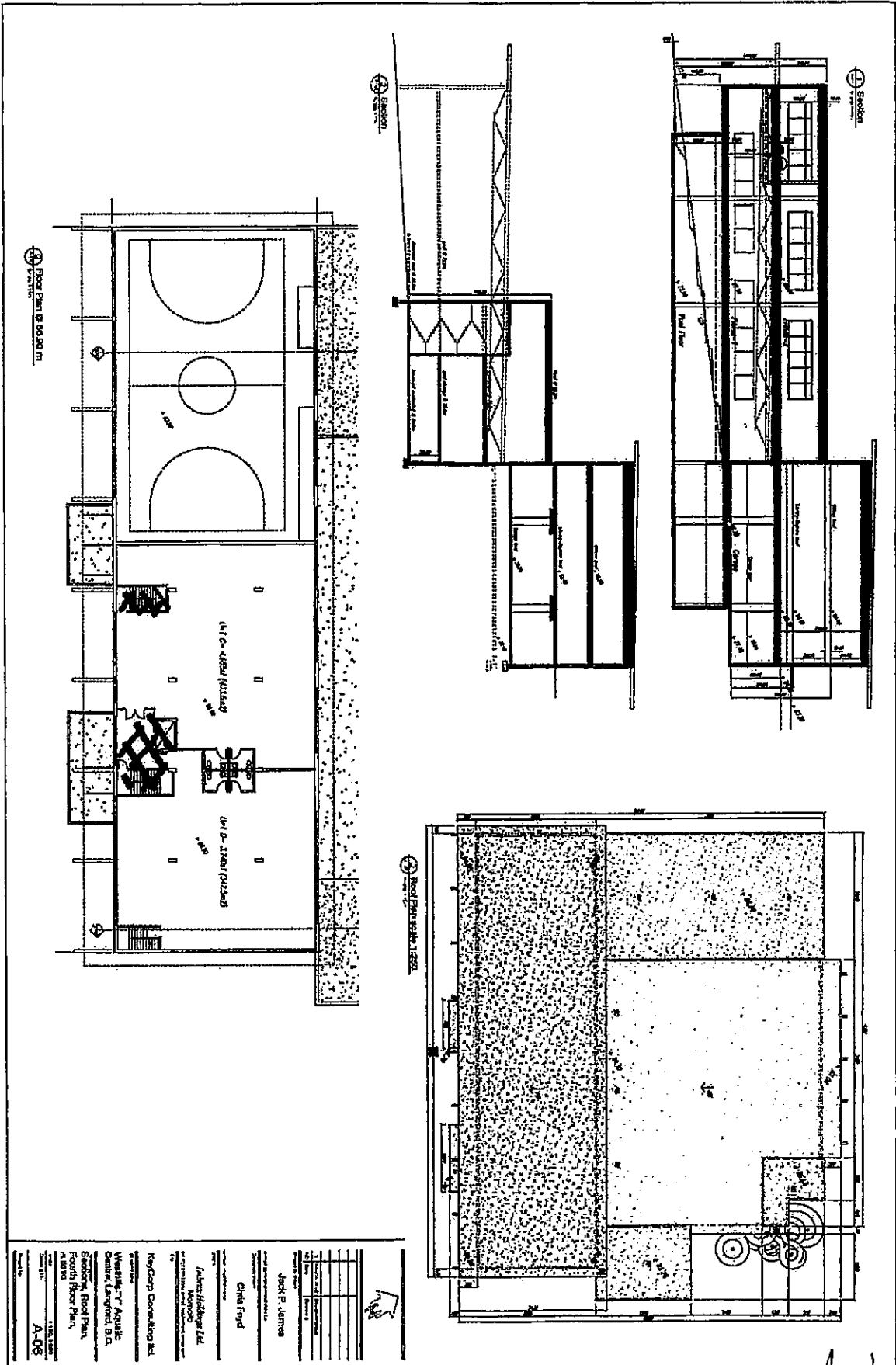



 North
 0° 00' 00"

Project Name Project No. Date Scale Drawing No.	Client Design Team Architect Structural Engineer Mechanical Engineer Electrical Engineer Civil Engineer Landscape Architect Other	Design Stage Design No. Design Date Design Scale Design No.	Design Team Architect Structural Engineer Mechanical Engineer Electrical Engineer Civil Engineer Landscape Architect Other
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Project Name	Washington Aquatic Center, Langford, B.C.
Client	City of Langford
Architect	Archi-Design Ltd.
Project No.	11-01-001
Scale	1/8" = 1'-0"
Date	11/10/2011
Sheet No.	A-06

SCHEDULE C

DISCIPLINE	CONSULTANT	DRAWINGS	DATE
Civil	Westhills	001-65-C01 to C03	3 February 2012
Architectural	Jack P James	A-01 to A -07	3 February 2012
Architectural - Aquatics	VDA	P1 to P3	3 February 2012
Structural	RJC	S1.01 to S1.02 S2.01 to S2.06 S3.01 to S3.02	3 February 2012
Mechanical	AME	M2.1 to M2.4 M3.1 to M3.4 M5.1 to M5.2 M6.1 to M6.4	3 February 2012
Electrical	AES	E100 E200 to E205 E300 to E306	3 February 2012

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SCHEDULE D

RULES AND REGULATIONS

The Tenant will observe the following Rules and Regulations (as amended, modified, or supplemented from time to time by the Landlord as provided in the Lease):

- (1) The Tenant will not use or permit the use of the Leased Premises in such manner as to create any objectionable noises, odours, or other nuisance or hazard, or breach any applicable provisions of municipal bylaw or other lawful requirements applicable to them or any requirements of the Landlord's insurers, will not permit the Leased Premises to be used for cooking (except with the Landlord's prior written consent) or for sleeping, will keep the Leased Premises tidy and free from rubbish, will deposit rubbish in receptacles that are either designated or clearly intended for waste, and will leave the Leased Premises at the end of each day of operation in a condition so as to facilitate the performance of the Landlord's janitorial services in the Leased Premises.
- (2) The Tenant will not abuse, misuse, or damage the Leased Premises or any of the improvements or facilities in them, and in particular will not deposit rubbish in any plumbing apparatus or use it for other than purposes for which it is intended, and will not deface or mark any walls or other parts of the Leased Premises.
- (3) Except for fund-raising activities, the Tenant will not perform, patronize, or (to the extent under its control) permit any canvassing, soliciting, or peddling in the Building, may install in the Leased Premises vending machines dispensing refreshments or merchandise, and, except in its café/concession will not permit food or beverages to be brought to the Leased Premises except by the means, at the times, and by the persons as authorized by the Landlord.
- (4) The entrances, lobbies, elevators, staircases, and other facilities of the Building are for use only for access to the Leased Premises and other parts of the Building and the Tenant will not obstruct or misuse the facilities or permit them to be obstructed or misused by its agents, employees, invitees, or others under its control.
- (5) Except the movement of the Tenant's program equipment in the usual course of its delivery of services, due to loading limits in the Building and within the Leased Premises, no heavy equipment or safe will be moved into or about the Building by or for the Tenant unless the consent of the Landlord is first obtained and unless all due care is taken. The equipment will be moved on or in the appropriate steel-bearing plates, skids, or platforms and subject to the Landlord's direction, and at the times, by the means, and by the persons as the Landlord has approved. No furniture, freight, or bulky matter of any description will be moved in or out of the Leased Premises or carried in the elevators except during the hours the Landlord has approved. Hand-trucks and similar appliances will be equipped with rubber tires and other safeguards

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approved by the Landlord, and will be used only by prior arrangement with the Landlord.

- (6) The Tenant will permit and facilitate the entry of the Landlord, or those designated by it, into the Leased Premises for the purpose of inspection, repair, window cleaning, and the performance of other janitorial services, and will not permit access to main header ducts, janitorial and electrical closets, and other necessary means of access to mechanical, electrical, and other facilities to be obstructed by the placement of furniture or otherwise. The Tenant will not place any additional locks or other security devices upon the doors of the Leased Premises without the prior written approval of the Landlord and subject to any conditions imposed by the Landlord for the maintenance of necessary access.
- (7) The Landlord may require that all or any persons entering and leaving the Building at any time other than the Normal Operating Hours satisfactorily identify themselves and register in books kept for the purpose, and may prevent any person from entering the Leased Premises unless provided with a key to them and a pass or other authorization from the Tenant in a form satisfactory to the Landlord, and may prevent any person removing any goods from them without written authorization.
- (8) The Tenant will refer to the Building only by the name from time to time designated by the Landlord for it and will use the name only for the address of the Leased Premises and not for any promotion or other purpose, except after consultation with the Landlord.
- (9) The Tenant will not interfere with window coverings, if any, installed upon exterior windows, and will close or (if the window coverings are remotely controlled) permit to be closed the window coverings during the hours from dusk to dawn as the Landlord may require, and will not install or operate any interior drapes installed by the Tenant so as to interfere with the exterior appearance of the Building.

The foregoing Rules and Regulations, as from time to time amended, are not necessarily of uniform application, but may be waived in whole or in part in respect of other tenants without affecting their enforceability with respect to the Tenant and the Leased Premises, and may be waived in whole or in part with respect to the Leased Premises without waiving them as to future application to the Leased Premises, and the imposition of Rules and Regulations will not create or imply an obligation of the Landlord to enforce them or create any liability of the Landlord for their non-enforcement.

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SCHEDULE E
Tenant's Works

1. The Tenant's Works include any and all improvements, installations and works required by the Tenant to properly operate the Recreation Centre and not the responsibility of the Landlord under Schedule A.

2. Without limitation, the Tenant's Works include
 - (a) Program Related Equipment
 - Gym and fitness related equipment
 - Playground equipment and any specialised surfacing
 - Pool related equipment
 - (b) Interior and exterior YMCA signs
 - (c) Concession area
 - fit-out and associated permanent seating
 - Temporary seating

3. The Tenant's Works listed in section 2 of this Schedule remain the property of the Tenant and are Trade Fixtures of the Tenant.

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SCHEDULE F
Maintenance Responsibilities

1. The Landlord and the Tenant have responsibility for maintaining the Recreation Centre. To facilitate this process, the Landlord and the Tenant will meet monthly commencing at the first month of the Term, or at a frequency as mutually agreed to by the parties, to tour the Recreation Centre, discuss general building conditions, and jointly plan for maintenance/repair/replacement and refurbishment requirements.

Landlord Responsibilities

2. In addition to any responsibilities set out in this Lease, the Landlord must repair or replace when necessary any major structural components of the Recreation Centre, including the roof, the elevators, and all exterior walls.

3. The Landlord must maintain, repair and replace when necessary components of the HVAC system (heating, ventilation and air conditioning).

4. The Landlord must maintain, repair and replace when necessary electrical and plumbing components of the Recreation Centre.

Tenant Responsibilities

5. In addition to any responsibilities set out in this Lease, the Tenant must repair or replace when necessary the major components of the swimming pool including the pump, and the surface only of any walls, the bottom of the pool and any water slides.

6. The Tenant must regularly maintain all mechanical systems and plumbing components of the swimming pools, regularly testing the pools and providing appropriate reporting.



7. The Tenant must provide annual cleaning of the major components in the pool areas, the fitness areas and change rooms.

8. The Tenant must employ an adequate number of staff to meet its maintenance obligations and must ensure that staff assigned to the Recreation Centre meet the following minimum staffing qualifications:

a) Building Services Manager Qualifications

- Post-secondary Education in a related discipline
- Minimum 6 years' experience in skilled trades and / or building maintenance, in one or more of the following areas:
 - Electrical/plumbing
 - Operating Engineering/Pneumatics
 - Mechanical HVAC
 - Pool Filtration/Water Chemistry
- Minimum 3 years supervisory experience
- Familiarity with computerised Facility Management applications

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- Knowledge and experience in ensuring compliance with related legislation
- BCRPA Pool Operators Certificate Level 1 and 2
- WHMIS and Transportation Dangerous Goods certification
- Current CPR AND First Aid, CRC

b) Building Services Worker Qualifications

- Minimum 2 years building maintenance experience or related trades experience
- BCRPA Pool Operators Certificate Level 1 and 2
- WHMIS and Transportation Dangerous Goods certification
- Current CPR AND First Aid, CRC

c) Janitorial staff – Desirable qualifications include formal cleaning education with 2 years' experience in relative field of scope, WHMIS, CPR and 1st aid, and Transportation of Dangerous Goods (TDG).

9. The Tenant must create maintenance and procedure manuals specific to the Recreation Centre, to ensure appropriate standards for safe operations are maintained. At a minimum, this maintenance manual could include the following categories:

- A. Water systems
- B. Fitness & Conditioning Equipment
- C. General
- D. Log, registering any incidents that occur from business operations.

10. The Tenant must supply full janitorial services within the Leased Premises, including all consumable materials, supplies and equipment and labour to maintain the Recreation Centre in good clean condition to a standard to comply with the B.C. *Health Act* and as would a prudent occupier of a customer service oriented Recreation Centre.

11. The Tenant is responsible for full operations of the swimming pool water circulations systems, safe operating procedures, inspections, water testing procedures, equipment and supplies, to meet requirements under the B.C. *Health Act* and the *Safety Standards Act* and the *Elevating Devices Safety regulation* to ensure optimal performance is continually achieved. The swimming pool water systems include

- a) the 25 metre pool, whirl pools, water slides, wave pool, spray pool, and any water spray features;
- b) all water chemical treatment equipment, including gas chlorine systems, ultra violet light fixtures and apparatus, water chemistry control sensors, injectors, pumps, hoppers, pipes, valves, thermometers, controllers;
- c) all water circulation systems, water balancing and surge tanks, filtration systems, boilers and heat exchangers.

6)

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12. The Tenant is responsible for full operations of all the pool natatorium building equipment to meet requirements under the B.C. *Health Act* and *Safety Standards Act*, and all regulations thereunder, and to ensure optimal performance.

13. The Tenant must maintain, repair and replace all office furnishings and equipment, exercise equipment, lockers and all aquatic furnishing and equipment in the Recreation Centre.

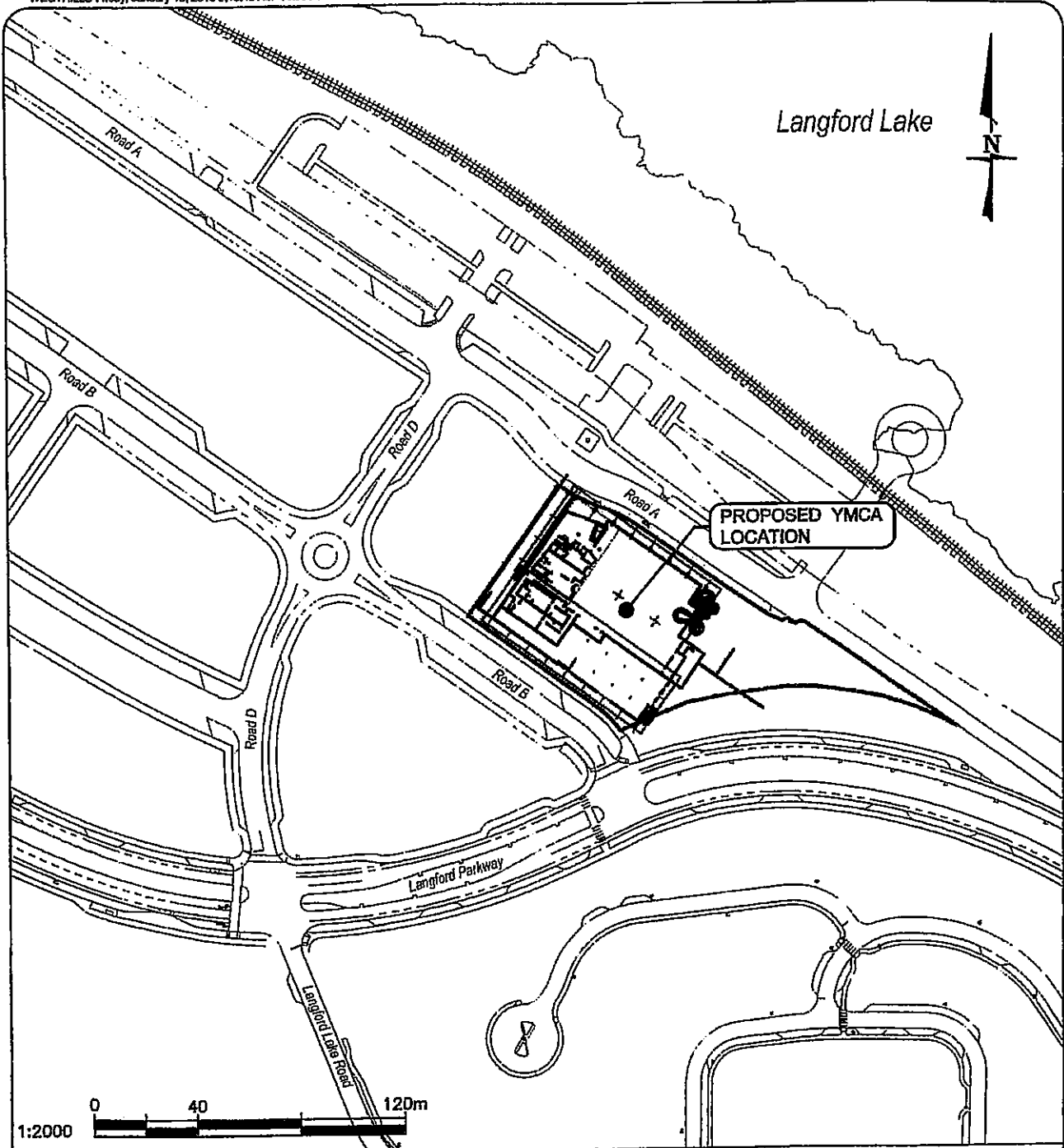
14. The Tenant is responsible for all aspects of security at the Recreation Centre and must take reasonable steps to ensure the Recreation Centre is secure at all times and to ensure that the Tenant's staff, the public and others at the Recreation Centre are safe, including maintaining and repairing security alarm systems, surveillance camera (indoor and outdoor) system, door access control devices and for providing door key management to secure the Recreation Centre.



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Landlord <i>[Signature]</i>	Tenant <i>[Signature]</i>

Schedule G

WESTHILLS Friday, January 18, 2013 9:18:43 AM F:\001 WESTHILLS\001-65-YMCA\03 DRAWINGS AND CAD\DESIGN DRAWINGS\001-65-YMCA_PRELIM.LOC.DWG



	 Version Control	DESIGNED: ATS	<p align="center">YMCA PRELIMINARY LOCATION PLAN SCHEDULE G</p>	WESTHILLS ENG. PROJECT No. 001-65
		DRAWN: ATS CHECKED: MLP REVIEWED: MLP DATE: 2012/01/17 SCALE: 1:1000		GOVERNING AUTHORITY FILE No.
				WESTHILLS ENG. DRAWING No. 001-65-SK002 REV. 1

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SERVICES AGREEMENT

THIS AGREEMENT dated for reference February 7th, 2013

BETWEEN:

THE CITY OF LANGFORD
877 Goldstream Avenue, 2nd floor,
Victoria, BC V9B 2X8
(the "City")

OF THE FIRST PART

AND:

THE YMCA – YWCA OF GREATER VICTORIA
(Inc. No. S-0006088)
851 Broughton Street,
Victoria BC V8W 1E5
(the "Y")

OF THE SECOND PART

WHEREAS:

- A. Certain lands in the City of Langford have been identified as desirable for a community recreation centre to include an aquatic and fitness centre with a 25 metre pool; a warm pool with a movable floor; hot tubs and saunas and a wave pool, health & fitness areas, a gymnasium, a child minding area, and an outdoor play area for children, with offices (the "Recreation Centre");
- B. The aquatic and fitness centre will consist of a reception area and food service area, a 25 metre pool, warm pool with movable floor, hot tubs and saunas, lazy river, water slide, wave pool, health & fitness areas, a gymnasium, including change rooms, multi-purpose rooms, administration areas, and public areas for programs and services (the "Aquatic Facility");
- C. The land identified by the City for the Recreation Centre is owned by Westhills Land Corp. ("WLC"), the lands being a portion of Part of Block I, Sections 86, 87, 88, 89 and 90, Esquimalt District, and Section 87 Metchosin District, Plan 1139, which will be subdivided for the construction of the Recreation Centre (the "Lands");
- D. Upon completion of the Aquatic Facility, and subject to the conditions herein contained, the Y agrees to lease the Aquatic Facility from WLC and further agrees to manage and operate the Aquatic Facility and provide services to the City in accordance with the terms of this Agreement;
- E. In consideration of the Y entering into this agreement to operate and manage the Aquatic Facility and to provide services to the City utilizing its expertise and experience in operating community facilities of a similar nature, the City agrees to purchase the services with an annual payment set forth in this Agreement (the "Purchase Commitment");
- F. This Agreement sets out the terms and conditions for the purchase of services from the Y in its operation of the Aquatic Facility;

NOW THEREFORE WITNESSETH that in consideration of the premises and mutual covenants and agreements herein contained, and other good and valuable consideration (the receipt and sufficiency of which each party acknowledges), the City and the Y agree as follows:

PART 1 – GUIDING PRINCIPLES

- 1.1 The parties agree to the guiding principles in the performance of this Agreement, as set forth in Schedule “A” attached hereto and forming part of this Agreement.

PART 2 - DEFINITIONS

- 2.1 For purposes of this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:
- (a) “**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;
 - (b) “**Force Majeure**” means any act of God, major storms, civil disturbance or any similar major event or occurrence not within the control of a party and which by the exercise of due diligence by such party could not have been prevented, but lack of funds on the part of such party shall not be deemed to be a Force Majeure;
 - (c) “**Lease**” means the lease agreement between the Y and WLC for the **Aquatic Facility** dated effective _____;
 - (d) “**Opening Day**” means the first day the **Aquatic Facility** is open to the public for use;
 - (e) “**Report**” means the statistical summary prepared by the Y of the usage of the **Aquatic Facility** including programs, activities, events and services; membership numbers, and any notable accomplishments, challenges or trends during the year;
 - (f) “**Services**” means all of the activities and services necessary and incidental to the performance of the Y in operating and managing the **Aquatic Facility** and offering programs to the public under this Agreement, including but not limited to, the obligations set forth herein and any other direction by or obligation to the City arising from this Agreement;
 - (g) “**Services Agreement**” means the within Agreement whereby the City agrees to purchase services from the Y for its operation of the **Aquatic Facility**;
 - (h) “**Substantial Breach**” means:
 - a. any event which will, as a result, have a material adverse effect upon the delivery of the **Services** or the performance of the Y under this Agreement, including but not limited to:

- i. temporary or permanent closure of any part of the Aquatic Facility where the consent of the City has not been obtained in writing;
- ii. failure to maintain accurate books and records in the operation of the Aquatic Facility;
- iii. the petitioning into bankruptcy of the Y or the making of any assignment for the benefit of his creditors;
- iv. the institution of proceedings for the dissolution or winding-up of the Y.

b. termination of the Lease.

PART 3 –TERM OF AGREEMENT

- 3.1 The term of this Agreement is 25 years, commencing on the day that is two months after the Completion Date and expiring on the 25th anniversary of that date unless the Agreement is earlier terminated in accordance with the provisions of this Agreement.
- 3.2 The parties may at any time prior to the expiry of the initial 25-year term agree to renew this Agreement for an additional agreed upon term of not less than 1 year.
- 3.3 The Y must perform all of its obligations under this Agreement at its own cost, subject to the City's Purchase Commitment.

PART 4 – OBLIGATIONS OF THE Y

- 4.1 The Y agrees that it will ensure due diligence and good stewardship in managing and operating the **Aquatic Facility**.
- 4.2 The Y will develop, implement, advertise, promote and operate all programming in the **Aquatic Facility** that meet the shared mission and vision of the Y and the City of Langford.
- 4.3 The Y will provide the arrangements for Langford residents as set forth in Schedule "B".
- 4.4 The Y will provide adequate staff, equipment and supplies to operate the **Aquatic Facility** and programming.
- 4.5 The Y will provide and supervise all Human Resource functions as they relate to the **Aquatic Facility** and employ all personnel working at the **Aquatic Facility**.
- 4.6 The Y will maintain all records pertaining to the **Aquatic Facility**.
- 4.7 The Y will maintain liability insurance as set forth in Part 5 hereunder.
- 4.8 The Y will, on a bi-annual basis, provide the City with the Report relating to the operation and management of the **Aquatic Facility**. The Reports shall be for the period January 1 –

June 30 of each year and July 1- December 31 of each year. The Report shall be given to the City within thirty days of the end of the Report period. The City and the Y will jointly own all Reports. The Y may assign its interest in the Reports to the City without compensation therefore.

- 4.9 The Y shall at its own expense comply with all laws, bylaws, ordinances, regulations and the directive of any public authority having jurisdiction affecting the operation of the **Aquatic Facility** or its use by the Y.
- 4.10 The Y shall immediately notify the City of any occurrence of a Substantial Breach, or any event which could reasonably be expected to expose the City to material liability of any kind, whether under this Agreement or otherwise.

PART 5 – OBLIGATIONS OF THE CITY

- 5.1 The City's **Purchase Commitment** is \$750,000.00 annually. The **Purchase Commitment** may increase every two years by a percentage amount equal to the percentage increase in the population of the City during that period, to a maximum **Purchase Commitment** of \$950,000.00 annually.
- 5.2 The annual **Purchase Commitment** will be paid in equal monthly instalments to the Y during each year of the Term. The City and the Y may, at any time, mutually agree to alter the payment schedule as may be appropriate in the circumstances.
- 5.3 The City may, in its sole discretion, increase its **Purchase Commitment** at any time to not more than the maximum amount.
- 5.4 The City agrees that it shall provide to the **Lands and Recreation Centre** an annual property tax exemption for all taxes, including school and provincial levies that may be assessed against the **Lands and Recreation Centre** for the term of this Agreement. In the event the City is unable or unwilling to grant such exemption, the City agrees that it will increase the **Purchase Commitment** to include the cost of the Y's tax obligation to WLC for the **Aquatic Facility** under the **Lease**, in which case the amount of the maximum **Purchase Commitment** shall be increased by the amount of the Y's tax obligation.
- 5.5 The City agrees to work with the Y in considering further recreational and social needs of the community based on population growth and trends within the City.
- 5.6 The City agrees to promote and advertise the **Recreation Centre** and **Aquatic Facility** through displays, advertisements in any City recreation program guides and on its web site, and to create web links from the City's website to any specific website for the **Recreation Centre** and **Aquatic Facility** during the Term.
- 5.7 The City agrees to refer to the **Recreation Centre** and **Aquatic Facility** in any of its programs or advertising by the name given to it by consensus among the Y, the City and WLC under the Tri-partite Agreement.

PART 6 – INSURANCE

- 6.1 The Y shall, without restricting the generality of Section 6.1 hereof, throughout the Term at its sole cost and expense, take out and keep in full force and effect the following insurance pursuant to this Agreement:
- a. comprehensive general liability insurance with inclusive limits of not less than Ten Million (\$10,000,000.00) Dollars per occurrence;
 - b. automobile liability insurance on all vehicles owned or operated by the Y with limits of not less than Two Million (\$2,000,000.00) Dollars inclusive per occurrence for bodily injury, death and damage to property; and
 - c. any other form of insurance as the Y or the City may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent operator of a similar **Aquatic Facility** under similar circumstances and risks would insure.
- 6.2 The Y shall cause each insurance policy referred in to subsection 6.1 to name the City as an additional named insured with respect to the operations and activities of the Y in providing the Services and such policies will contain:
- a. a waiver of any subrogation rights which the Y's insurers may have against the City;
 - b. a severability of interests clause or a cross liability clause;
 - c. a clause stating that the Y's insurance policy will be considered as the primary insurance and shall not call into contribution any other insurance that may be available to the City; and
 - d. an undertaking by the insurers to notify the City in writing of any material change, cancellation or termination of any provision of any policy, not less than thirty (30) days prior to the material change, cancellation or termination thereof.
- 6.3 The Y shall cause all policies to be taken out with insurers registered in the Province of British Columbia and in such form and content as acceptable to the City acting reasonably.
- 6.4 Certified copies of each such insurance policy, will be delivered to the City on demand.
- 6.5 The acquisition and maintenance by the Y of the insurance policies required pursuant to this Agreement shall not, in any manner whatsoever, limit or restrict the liability of the Y to the City under this Agreement or the ability of the City to enforce their rights as against the Y under this Agreement.

PART 7 – LIABILITY AND INDEMNITY

7.1 Indemnity by the Y

The Y shall at all times and without limitation, indemnify and save harmless the City and its councillors, directors, officers, employees, agents and representatives from and against all liabilities, losses, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind which the City or their respective councillors, directors, officers, employees, agents and representatives may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, with respect to any occurrence, event, incident or matter caused by, and/or arising as a direct or indirect result of:

- a. the misconduct, negligent action or negligent failure to act, as the case may be, of the Y and/or any persons for whom the Y is responsible at law (including, without limitation, any of its employees or subcontractors); or
- b. any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition or agreement in this Agreement set forth and contained on the part of the Y to be fulfilled, kept, observed or performed, as the case may be; or
- c. any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or failure to act of the Y and/or any persons for whom the Y is responsible at law (including, without limitation, any of its employees or subcontractors).

The City shall give to the Y written notice of any liability, loss, costs, damage, legal fees, disbursements, fines, penalties, expenses, actions, claims, demands and proceedings for which the Y may be liable under this Section 7.1 within a reasonable period of time after the City becomes actually aware of same. The Y shall be entitled, at its expense and acting reasonably (as determined by the City) to participate in any negotiations, to assume the defense of any action or proceeding and to settle for monetary damages any claim in respect of which indemnification is sought under this Section 7.1. The Y shall not settle or compromise any such claim without the prior written consent of the City. The provisions of this Article 7 are in addition to and shall not prejudice any other rights of the City and their respective councillors, directors, officers, employees, agents and representatives at law or in equity.

7.2 Indemnity by the City

The City shall at all times and without limitation, indemnify and save harmless the Y and its directors, officers, employees, agents and representatives from and against all liabilities, losses, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind which the Y or its directors,

officers, employees, agents and representatives may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, with respect to any occurrence, event, incident or matter caused by, and/or arising as a direct or indirect result of:

- a. the misconduct, negligent action or negligent failure to act, as the case may be, of the City and/or any persons for whom the City is responsible at law (including, without limitation, any of its employees or subcontractors); or
- b. any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition or agreement in this Agreement set forth and contained on the part of the City to be fulfilled, kept, observed or performed, as the case may be; or
- c. any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or failure to act of the City and/or any persons for whom the City is responsible at law (including, without limitation, any of its employees or subcontractors).

The Y shall give to the City written notice of any liability, loss, costs, damage, legal fees, disbursements, fines, penalties, expenses, actions, claims, demands and proceedings for which the City may be liable under this Section 7.2 within a reasonable period of time after the Y becomes actually aware of same. The City shall be entitled, at its expense and acting reasonably (as determined by the Y) to participate in any negotiations, to assume the defense of any action or proceeding and to settle for monetary damages any claim in respect of which indemnification is sought under this Section 7.2. The City shall not settle or compromise any such claim without the prior written consent of the Y. The provisions of this Article 7 are in addition to and shall not prejudice any other rights of the Y and their respective directors, officers, employees, agents and representatives at law or in equity.

7.3 The indemnities given in this Part 7 shall survive termination or expiry of this Agreement.

PART 8 – DEFAULT AND TERMINATION

8.1 The City may, in its sole discretion, terminate this Agreement in the event of a Substantial Breach by the Y that has not been cured within the time required in this Agreement.

8.2 The Y may, in its sole discretion, terminate this Agreement in the event the City fails to pay the Purchase Commitment for a period of three consecutive months.

8.3 The City or the Y will give the owner of the Aquatic Facility written notice of its intention to terminate this Agreement for failure to cure and the reasons therefore.

8.4 In the event of termination of this Agreement for any reason:

- a. The Y is released from any obligations or liabilities under this Agreement save and except for any breach of the Agreement that occurred prior to the date of

termination;

- b. The City may, at its sole discretion and without any obligation to do so, purchase any or all of the equipment and furnishings used by the Y in operating and managing the Aquatic Facility as of the date of termination, other than equipment or furnishings acquired through sponsors donations, and provided that equipment and furnishings being purchased are free and clear of all encumbrances.

PART 9 – REPRESENTATIONS AND WARRANTIES OF THE PARTIES

9.1 Each of the parties represents and warrants as follows:

- a. Each of the parties has the full legal right, power and authority to enter into and perform its obligations under this Agreement;
- b. This Agreement has been duly authorized, executed and delivered by all necessary actions of each of the parties and constitutes a legal, valid and binding obligation of the City and the Y in accordance with its terms;
- c. The execution and delivery of this Agreement by the parties and the performance of the obligations by the City and the Y does not conflict with or violate or result in a material breach of law, regulation or by-law or conflict with, violate or result in a material breach of any term or condition of any order, judgement, decree, agreement or other instrument to which either is a party;
- d. Neither the City nor the Y has received written notice of any action, law suit or proceeding before any court or government agency that is pending or threatened, in which an unfavourable decision could reasonably be expected to have a material adverse effect on the ability of either party to carry out its obligations under this Agreement; and
- e. The Y will abide by its Constitution, Bylaws and other *Society Act* requirements and will remain in good standing as a society in British Columbia.

PART 10 – FORCE MAJEURE

10.1 Neither party shall be liable to the other for default or delay in performance of any of its obligations under this Agreement (except an obligation to make payment when due) in the event of a Force Majeure. Such party shall be excused from performance only during the period and to the extent that the affected party, acting with all due diligence and dispatch, is prevented from performing by Force Majeure.

PART 11 - DISPUTE RESOLUTION

11.1 In keeping with the Guiding Principles set forth in Schedule “A”, the parties agree to use their best efforts in resolving any dispute promptly and in an amiable manner through discussion. In the event a dispute cannot be resolved, the dispute resolution process will be as follows:

- a. The parties will continue to perform their obligations during any dispute resolution unless this Agreement is lawfully terminated or expires;
- b. If a dispute cannot be resolved by mutual agreement within a time period satisfactory to the party raising the dispute, that party may submit the dispute for mediation. Where a matter is referred to mediation, the parties shall agree upon a mediator within a reasonable period of time, which shall be a member of the mediators and arbitrators society of British Columbia;
- c. During a mediation process, no action will be taken by either party to commence arbitration;
- d. No proposal or concession made by a party during mediation may be used by either party in any subsequent proceedings. The mediator may not be called as a witness in any subsequent proceedings by either party;
- e. The parties will equally share the cost of the mediator;
- f. Should mediation fail to result in a resolution of the dispute within fifteen (15) days after the first meeting with the mediator, either party may submit the dispute for arbitration;
- g. Arbitration shall be conducted in accordance with the following terms:
 - i. the party initiating arbitration shall nominate one (1) arbitrator and shall notify the other party in writing. The notice shall include a description of the matter submitted for arbitration;
 - ii. The receiving party may accept the arbitrator as a single arbitrator or nominate a second arbitrator. The two (2) arbitrators shall then select a chairman to act jointly with them;
 - iii. If the receiving party fails to nominate an arbitrator within ten (10) days after receiving notice of arbitration, that party will be deemed to have accepted the single arbitrator;
 - iv. The parties will act in good faith in selecting arbitrators who are objective and suitably qualified to deal with the arbitration matters;
 - v. If two (2) arbitrators are selected and are unable to agree on a chairman, either arbitrator may apply to the court of competent jurisdiction to have the chairman appointed;
 - vi. The arbitration shall take place in the City of Langford;
 - vii. The decision of the arbitrator or arbitration panel, as the case may be, shall be a final determination of the issues and be binding upon the parties. Any

written award or decision of the arbitrators shall not repeat or recite any evidence which is proprietary or confidential to either party;

- viii. the cost of the arbitration shall be borne by the parties as may be specified in the arbitrator's decision, or if no apportionment is specified, then the parties shall share in the cost of the arbitration equally;
- ix. except as modified herein, the provisions of the *Commercial Arbitration Act* applicable to the arbitration shall govern the arbitration process.

PART 12 – NOTICE

- 12.1 All notices required or permitted to be given under this Agreement must be in writing and may be delivered by hand, sent by facsimile or forwarded by registered mail to the addresses shown on the first page or any other address of which notice in writing is given. The City may provide notice using any of the foregoing methods or by providing such notice to the Y administrative office within the **Aquatic Facility**.
- 12.2 If the Y gives notice to the City, the notice must be marked to the attention of the City Administrator or as directed in writing by the City.
- 12.3 Any notice delivered or sent by hand or by facsimile is deemed to be given and received at the time of sending. Any notice mailed is deemed to have been given and received on the expiration of 3 days after it is posted, provided that if there is a mail strike, slow down or other labour dispute between the time of mailing and the actual receipt of the notice, the notice will be effective only when it has been delivered.

PART 13 – GENERAL PROVISIONS

- 13.1 The parties have entered into this agreement at arm's length for the provision of services as set out in this Agreement, and the Y acknowledges it is an independent contractor and not an employee of the City. Further, nothing in this Agreement makes the City and the Y joint venturers.
- 13.2 The parties agree that the execution and delivery of the **Services Agreement** is conditional upon the parties entering into a tripartite agreement (the "**Tripartite Agreement**") among the Y, the City and WLC establishing additional terms and conditions agreed to by all of those parties for the lease and operation of the **Aquatic Facility**.
- 13.3 Nothing in this Agreement gives the Y any authority, as agent or otherwise, to enter into on behalf of the City, or bind the City in any way to, any contracts or other legal obligations and no contracts or other legal obligations entered into by the Y will affect or bind the City unless the City has signified its intention to be bound by an instrument in writing signed by the authorized signatory signatories of the City.
- 13.4 The Y shall not indicate, represent or otherwise suggest in its dealings with any person, contractually or otherwise, that the Y is acting as agent of the City or has any authority to bind the City in any way.

- 13.5 During the Term, each party will appoint a representative for the purpose of coordinating all matters and obligations of the parties as required by this Agreement. Each party will advise the other party in writing of the name, telephone number and facsimile number of its representative and each party may change its representative by notice in writing to the other.
- 13.6 Neither this Agreement nor any of the terms hereof may be terminated, amended, modified, waived or supplemented orally, but only with an instrument in writing executed by both parties.
- 13.7 The failure of the City to insist upon the strict performance of any covenant of this Operator Agreement shall not waive that covenant, and the waiver by the City of any breach of any covenant of this Operator Agreement shall not waive that covenant in respect of any future or other breach.
- 13.8 The Y may not assign this Agreement or its benefits without the prior written consent of the City, at the sole discretion of the City. The City may not assign this Agreement and this Agreement binds any successor of the City.
- 13.9 Time is of the essence respecting this Agreement.
- 13.10 This Agreement replaces the letter of intent between the parties and constitutes the entire agreement between the parties. Subject to the provisions of the Tri-partite Agreement between the City, the Y and WLC, neither the City nor the Y has given or made representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in writing in this Agreement.
- 13.11 In this Agreement:
- a. reference to the singular includes a reference to the plural, and vice versa;
 - b. articles and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - c. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment, is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless expressly provided otherwise;
 - d. the provisions of s. 25 of the *Interpretation Act* for the calculation of time apply;
 - e. all provisions of this Agreement are to be interpreted as always speaking;
 - f. reference to a party is a reference to a party to this Agreement and to their respective successors, permitted assigns, trustees, administrators and receivers;
 - g. reference to a day, month, quarter or year is a reference to a calendar day, calendar

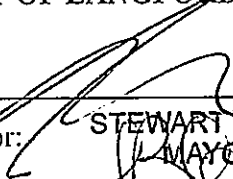
month, calendar quarter or calendar year; and


- h. where the word "including" is followed by a list, the contents of the list are not intended to limit the generality of the preceding expression.

13.12 This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above by their respective authorized representatives.

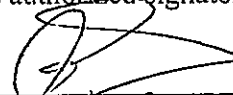
CITY OF LANGFORD, by its authorized signatories:

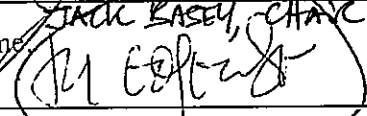


 Mayor: **STEWART YOUNG**
 MAYOR


 Clerk/Administrator **Jim Bowden**
 Corporate Officer

YMCA – YWCA OF GREATER VICTORIA
by its authorized signatories:



 Name: **JACK CASEY, CHAIR BOARD OF DIRECTORS**


 Name: **JENNIE EDGEWOOD, CEO**

SCHEDULE "A"**GUIDING PRINCIPLES OF THIS AGREEMENT**

The relationship between the parties is founded on a spirit of mutual trust and respect.

The parties agree to provide safe and high quality facilities and programs to ensure that the needs of the Langford community, within the framework of this Agreement, are being met.

Subject to the terms of this Agreement, the Y shall have the sole authority to operate the **Aquatic Facility** in keeping with its charitable mission.

Policy and governance issues relating to the operation of the **Aquatic Facility** shall be the domain of the Y.

There shall be open and honest communications between the parties with a view to solving all differences and problems that may arise by way of consensus.

The City acknowledges on-going commitment and support for the provision of community recreation programs and facilities.

The City recognizes that annually the Y will endeavour to acquire charitable donations and raise funds towards specific programs adhering to the philosophy of the YMCA – YWCA, and that the Y may receive contributions and gifts that are specifically designated by the donor to the YMCA-YWCA, and that such contributions or gifts will not affect the **Purchase Commitment** made by the City in this Agreement.

SCHEDULE "B"

With the **Purchase Commitment** given by the City and for so long as the services are purchased, the Y will ensure opportunities for all residents of the City to participate in the use of the **Aquatic Facility** through membership and drop in passes as follows:

- a. **Continuous Monthly Pre-authorized Payment Plan**
 - i. a 10% reduction for City residents, upon proof of residency, in the following categories: Adult, Family, Child, Teen, & Young Adult;
 - ii. City residents who wish to access both the Y's Downtown and Langford facilities will pay the posted rate for joint **Aquatic Facility** membership (after the City resident discount);
 - iii. if City resident membership amounts to 80% of the paid membership at the **Aquatic Facility**, the discount in subsection i. will not apply;
- b. **Drop in Fee**

20% reduction for City residents, upon proof of residency, in the following categories: Adult, Family, Child, Teen, and Young Adult.
- c. **Course Fee**

City residents will be able purchase swim lessons in session blocks. This option is available to City residents only, upon proof of residency.
- d. **Special Events and Holidays**

Designated Free Swims Times will be available at no charge to Langford residents during Langford Days and all Statutory Holidays.

The Y acknowledges that no resident of Langford will be unable to use the **Aquatic Facility** due to an inability to pay the full membership fee. The Y will offer subsidized memberships for individuals and families who are willing but unable to pay the full fee (after the City resident discount)