

## GROUND LEASE

This Ground Lease (this "**Ground Lease**") is entered into as of this 2<sup>nd</sup> day of March, 2017 by and between the Town of Wellesley, a Massachusetts municipal corporation, having a principal place of business at 525 Washington Street, Wellesley, Massachusetts (the "**Town**") and Wellesley Sports Group, LLC, a Delaware limited liability company having a place of business at 41 North Road, Suite 203, Bedford, MA (the "**Tenant**").

### **RECITALS**

WHEREAS, pursuant to vote taken on Article 2 of the June 13, 2012 Wellesley Special Town Meeting as amended by Article 9 of the October 27, 2014 Wellesley Special Town Meeting, the Town acquired the fee interest in a certain parcel of land located at 900-910 Worcester Street, Wellesley, Massachusetts, shown as Parcels No 10 and 10-T on Assessor's Map No. 192 and described in a deed from the Roman Catholic Archbishop of Boston to the Town of Wellesley recorded in the Norfolk County Registry of Deeds in Book 32719, Page 343, containing eight (8) acres, more or less. The Town acquired the property for open space and recreational purposes and other general municipal purposes; and

WHEREAS, pursuant to the Town's Request for Proposals dated March 31, 2016 for the Ground Lease of Property Located at 900 Worcester Street, Wellesley, Massachusetts and the development thereon of a recreational facility (the "**RFP**"), the Town has accepted Tenant's proposal (the "**RFP Proposal**") for a lease of the Premises (as defined in Section 1.1 below) to construct certain improvements for use as a recreational facility, subject to the terms and conditions set forth herein; and

WHEREAS, concurrently herewith, Tenant and the Town have agreed upon Use Schedules for the hockey rinks and pools, as provided in **Exhibits D-1 and D-2**, respectively, and Surface License Agreements for the hockey rinks and pools, the forms of which are attached hereto as **Exhibits E-1 and E-2**, respectively, each of which may be amended from time to time by mutual consent of the parties before or after the effective date of same and are incorporated herein (the "**Use Schedules**" and "**Surface License Agreements**"); and

NOW, THEREFORE, The Town and Tenant agree as follows:

### **ARTICLE 1 PREMISES**

1.1 **Lease of Premises.** The Town, for and in consideration of the rent, terms, covenants, agreements and conditions herein reserved and contained does hereby demise and lease to the Tenant, and the Tenant does hereby take and hire from the Town, upon and subject to the terms, covenants, agreements and conditions herein set forth, the following described premises (hereinafter called the "**Premises**"):

The Premises located at 900 Worcester Street, Wellesley, Massachusetts, consisting of approximately eight (8) acres, more or less, and shown as Parcels No 10 and 10-T

on Assessor's Map No. 192 and described in a deed from the Roman Catholic Archbishop of Boston to the Town of Wellesley recorded in the Norfolk County Registry of Deeds in Book 32719, Page 343.

The Premises include the following appurtenant rights:

(a) The right to permit, construct, use, repair, maintain, replace, and operate indoor hockey rinks, swimming pools and athletic facilities, together with ancillary uses thereto including physical therapy, training, concessions, offices and conference facilities (the "**Facility**") as described herein and the Use Schedules; and

(b) The right to permit, install, use, repair, maintain, replace, and operate water, sewer, gas, data, electric, telephone and communication utilities, parking, landscaping and other related improvements and amenities, including installation of rooftop or other solar panels or alternative energy equipment (subject to limitations of Wellesley Municipal Light Plant agreements with the Tenant from time to time), along with other specified rights, serving the Premises and the Facility and Improvements constructed by the Tenant, subject, however, to:

- (i) any facts that an accurate survey or personal inspection of the Premises would show;
- (ii) easements, covenants and restrictions of record as of the date hereof, to the extent that the same are in force or effect;
- (iii) present and future Legal Requirements (as defined in Section 7.3 below); and
- (iv) all taxes, duties, assessments, special assessments, water charges and sewer rents and other impositions by a Governmental Authority, fixed or not fixed, accrued from and after the Commencement Date.

All of the improvements constructed or to be constructed and operated by Tenant pursuant this Agreement, on, over, in or under the Premises, including without limitation utility lines not owned by the respective utility company, parking areas and fixtures that are now or hereafter located on, installed in, or attached to, the Premises (collectively, the "**Improvements**"), and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Premises, the Facility or the Improvements or the use or occupancy of the Premises, the Facility or the Improvements, whether or not of record, shall be referred to as the "**Project**."

1.2 **Reserved Rights.** The Town reserves the following rights and imposes upon Tenant the following obligations in connection with the Premises: Upon reasonable prior notice to Tenant, the Town shall have the right to access and enter upon the Premises for the purposes of inspection, complying with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions and orders and requirements of all public authorities and exercising any right reserved to the Town by this Ground Lease. The Town shall use

commercially reasonable efforts to minimize interference with or disruption of Tenant, Tenant's business, its occupants, its operators and its lessees.

1.3 Condition of the Premises. Tenant acknowledges that it has leased the Premises and agreed to perform the Project and Improvements after a full and complete examination of the Premises, including, without limitation, any encumbrances, subsurface conditions, existing structures thereon, if any, the presence of any asbestos or other Hazardous Materials (as defined in Section 9.4 below) located on, in or under the Premises or within such structures, legal title, their present uses and non-uses, and laws, ordinances, and regulations affecting the same and the ability of Tenant to use the Premises for their intended purposes, and accepts the same in the same condition in which they or any part thereof now are, and except as otherwise expressly provided in this Ground Lease, waives all rights to object to the condition thereof and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of the Town of Wellesley and any board, commission, or committee of the Town and without recourse to the Town or any board, commission or committee of the Town.

## **ARTICLE 2 TERM**

2.1 Term. This Ground Lease shall be effective as of the date of execution by both parties and approval of the Wellesley Town Meeting and approval of required amendments to the Town of Wellesley Zoning Bylaws by the Attorney General's office as required by law. Notwithstanding the foregoing, the Tenant shall have a license to enter upon the Premises in advance of the effective date of this Ground Lease for purposes of inspection, surveying and testing provided that Tenant adheres to the conditions of this Ground Lease, including without limitation, insurance requirements hereunder for itself and its contractors and to apply for Required Permits. Provided, however, that, the initial term of this Lease shall be fifty (50) years (the "**Term**") commencing on the Term Commencement Date (as hereinafter defined). The Term, if not extended as provided for in this paragraph, shall terminate on the fiftieth (50<sup>th</sup>) anniversary of the Term Commencement Date, unless otherwise terminated as provided in this Lease. This Ground Lease may be extended for up to two (2) additional twenty- (20-) year terms upon mutual consent of the Parties.

2.2 Term Commencement Date. The Term of this Ground Lease shall commence on the Final Completion Date of the Facility and Improvements (all as defined herein).

2.3 Early Termination. Tenant agrees that if construction of the Facility and Improvements has not commenced (as defined in Section 3.1 below) by the Outside Construction Start Date (as defined in Section 3.1 below), the Town may elect to terminate this Ground Lease upon thirty (30) days' written notice to Tenant; provided, however, that if construction of the Facility and Improvements commences within such 30-day period and continues with all due diligence and application, such termination notice shall be null and void and this Ground Lease shall continue in full force and effect.

**ARTICLE 3**  
**TENANT'S FACILITY AND IMPROVEMENTS**

3.1 Project.

(a) Tenant shall commence work on the Project constructing the Facility and Improvements described in **Exhibit A** attached hereto and incorporated herein within ninety (90) days following the later of (i) the receipt by Tenant of all Required Permits, defined below, beyond applicable appeal periods and (ii) the closing on the Initial Project Financing, as such period may be affected by Unavoidable Delay as defined in Section 3.1(b) below (the "**Outside Construction Start Date**"), which permits and financing Tenant shall diligently pursue and which construction Tenant shall thereafter diligently and continuously prosecute to Final Completion (as defined below) in accordance with the Schedule of Performance, provided below. For purposes of this Ground Lease, construction of the Facility and Improvements shall be deemed to have "commenced" upon the commencement of actual physical work (including, without limitation, site work) on the Premises pursuant to a full, unconditional building permit for the Project, and "**Final Completion**" of the Project will be deemed to have occurred upon the issuance of any certificate of occupancy for the Facility and Improvements. The date upon which Final Completion of the Project occurs shall be referred to herein as the "**Final Completion Date**", which shall occur not later than twenty-four (24) months from the later of (i) Receipt of the Required Permits or (ii) the execution of this Ground Lease by all parties unless extended pursuant to Section 3.1(b) due to the occurrence of a Unavoidable Delay or for other reasons described in this Ground Lease.

(b) Notwithstanding anything to the contrary in this Ground Lease, in the event of Unavoidable Delay (as defined below), the commencement of the Project shall be excused for the period of Unavoidable Delay and the Outside Construction Start Date and Final Completion Date shall be extended for an equivalent period but not more than nine (9) months in the aggregate unless otherwise agreed by the parties. For purpose of this Ground Lease, the term "**Unavoidable Delay**" shall mean any delay, obstruction or interference resulting from any act or event whether affecting the Project or the Premises, which has a material adverse effect on the Tenant's rights or duties, provided that such act or event is beyond the reasonable control of the Tenant after pursuing all diligent efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any negligent or willful act or omission of the Tenant or could not have been prevented by reasonable actions on the Tenant's part and the Tenant shall have notified the Town herein not later than thirty (30) days after discovering the occurrence of the Unavoidable Delay enumerated herein and within a reasonable time, including but not limited to, delay, obstruction or interference resulting from: (i) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, war, blockage or insurrection, riot or civil disturbance; (ii) any legal proceeding commenced by any party seeking judicial review of this Agreement or any governmental approvals, or any restraint of law (e.g., injunctions, court or administrative orders, or moratorium imposed by a court, or administrative or governmental authority); (iii) the failure of any utility or governmental entity required by law to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Premises, which are required for the construction of the Project or for other obligations of the Tenant; (iv) any unexpected or

unforeseen subsurface condition at the construction site inconsistent with typical background conditions of a similar site, which shall prevent construction, or require a material redesign or change in the construction of, or materially adversely affect the completion schedule for, the Project, such determination to be made by a qualified engineer; (v) any unexpected or unforeseen subsurface environmental conditions on or from or otherwise affecting the Premises but not readily identifiable by visual inspection and which originated from the Premises; (vi) strikes, work stoppages or other substantial labor disputes; (vii) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by an Unavoidable Delay and/or could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefore; (viii) a change in Tenant Financing which could not have been reasonably anticipated by Tenant; or (ix) any unreasonable delay which is caused or created by a board or officer of the Town from whom a Required Permit (as defined in Section 3.3) is sought, provided that the Tenant shall have timely complied with the reasonable requests and requirements of any governmental authority. The time or times for performance under this Agreement shall be extended for the period of the Unavoidable Delay, and in calculating the length of the Unavoidable Delay, there shall be considered not only actual work stoppages but also any consequential delays resulting from such stoppages as well.

3.2 Schedule of Performance. Subject to Unavoidable Delay, the Facility and Improvements shall be developed by Tenant in accordance with the construction schedule to be provided by Tenant and approved by the Town (the "**Schedule of Performance**"), and attached hereto as **Exhibit B**. Upon written request, Tenant shall submit to the Town on or before each deadline set forth in the Schedule of Performance satisfactory evidence that each deadline has been met. The satisfaction of the matters set forth in the Schedule of Performance by the dates set forth therefor is an essential part of this Ground Lease. In the event that the Town grants an extension of any such date, which the Town may grant or withhold in its reasonable discretion, the Town shall not be deemed thereby to be waiving any other rights hereunder or implying the extension of any other dates.

### 3.3 Required Permits.

(a) Tenant's obligations hereunder are subject to its receipt of and Tenant shall use diligent efforts to obtain, all final permits, approvals and licenses from governmental authorities, including the permits required under Section XVIA. Project Approval of the Zoning Bylaws of the Town of Wellesley, Massachusetts and MEPA Environmental Notification Form if required ("**Required Permits**") required for construction and use of the Facility and all Improvements, and for any other alterations, removals, installations, additions, changes, replacements or improvements to the Premises (collectively, "**Tenant Work**"). Upon full or partial completion of the Project and prior to occupying any part of the Premises for any purpose other than constructing the Facility and Improvements, and upon completion of any other Tenant Work, Tenant shall obtain from each authority granting the final Required Permits or such other evidence of approval ("**Required Approval**") as may be necessary to permit such part of the Premises to be used and occupied for the Permitted Uses (as defined in Section 7.1 below). For Required Permits and Required Approval to be deemed "final," as required herein, all appeal periods applicable to such permits, licenses, approvals, and releases shall have expired without

an appeal having been taken, or if appeal has been taken, after successful resolution thereof and all further appeal periods having expired. In the event that Tenant reasonably determines that such Required Permits and Required Approvals contain conditions or requirements that materially alter the proposed project design or operation of the proposed project in a manner that would materially increase the cost of construction or operation, Tenant shall have the right to terminate this Lease by written notice to the Town. Notwithstanding the foregoing, the Tenant agrees that any permit conditions, requirements and/or costs associated with the traffic light signalization at the driveway to the Premises shall not be grounds for termination of this Ground Lease, provided such cost, including design, permitting and construction, does not exceed \$1,250,000, such cost to be determined prior to receipt of the Required Approvals. Tenant may occupy all or part of the Premises under temporary or conditional certificates of occupancy, but shall not be relieved from the obligation of obtaining permanent certificates of occupancy for the Facility and Improvements or other similar licenses or permits required to permit the Premises to be used and occupied for the Permitted Uses.

(b) The Town shall promptly execute and deliver any reasonable documents which may be necessary to obtain or maintain any Required Permit or Required Approval and shall further cooperate with Tenant in obtaining or maintaining any Required Permit or Required Approval, as Tenant may from time to time reasonably request; provided, however, that with the exception of zoning or other matters, where the Town's execution of petitions, application, appeals or other documents or joinder in proceedings may be required as a condition to Tenant's proposed action, the Town shall in no event be required to join in or become a party to any document or proceeding in which it will oppose the Town of Wellesley or the Commonwealth of Massachusetts or any agency, authority, branch, Town, division, office or subdivision of or for the Town of Wellesley or the Commonwealth of Massachusetts, nor shall the Town be required in connection with any such document or proceeding or otherwise to oppose in any way any policy previously established by the Town nor to take a position inconsistent with a position previously taken and made public by the Town. The Town shall not be required to incur any costs in connection with any documentation under this Section. Tenant agrees to reimburse the Town, in accordance with the customary requirements of applicable boards and commissions during the Required Permit application process within thirty (30) days from the Town's request, for any reasonable third party costs it may incur in connection with the review of such documentation.

(c) Tenant may contest, in good faith and on the same terms and conditions as provided in Section 7.4, the validity or applicability of any Legal Requirement (as defined in Section 7.3 below) which is the basis for any Required Permit or Required Approval.

3.4 Ownership. During the Term, the Facility and Improvements shall be vested in Tenant, and Tenant shall be entitled to any depreciation deductions and investment tax credits thereon for income tax purposes. Upon the expiration or earlier termination of this Ground Lease, title to the Facility and Improvements, including without limitation, utility lines not owned by the respective utility company, parking and loading areas, drainage facilities, and water and septic lines, facilities and equipment that are now or hereafter located on, installed in, or attached to, the Land and used in connection with the Project shall immediately vest in the

Town and shall be surrendered at that time in accordance with Section 12.1 below.

3.5 Manner of Construction; Cost of Project. Tenant shall timely construct the Facility and all Improvements and Tenant Work in a good and workmanlike manner, in compliance with Legal Requirements as defined in Section 7.3 below and good engineering and construction practices. The Facility, Improvements and Tenant Work shall be constructed in material compliance with the Tenant's final plans, the Schedule of Performance, and in material compliance with any Permits. Tenant shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project and Tenant Work, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to properly police same. Dust, noise and other effects of such work shall be controlled using commercially accepted methods customarily utilized in order to control deleterious effects associated with construction projects in a populated, developed, or environmentally sensitive area, all as required by any Permits. Tenant shall pay (or cause to be paid) all costs and expenses associated with any Facility, Improvements or Tenant Work (including, without limitation, all architectural, engineering, construction, legal and consultant fees and costs) and shall defend, indemnify and hold the Town Parties (as defined in Section 6.15 below) harmless from and against any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) (collectively, "**Claims**") attributable to the performance or failure to properly perform any Improvements or Tenant Work.

3.6 Repairs and Maintenance. The Tenant agrees to be solely responsible for maintaining the Premises and each and every part thereof throughout the Term of this Lease, and agrees, without limitation, to (i) ensure that the Premises are in compliance with Laws; and (ii) maintain the Premises in a sightly and safe condition throughout the Term. All work performed by the Tenant shall be done in a good and workmanlike manner consistent with the quality of the original construction and in compliance with all applicable Laws. The Tenant shall not permit or commit any waste. Tenant shall schedule any non-emergency repairs during times that the Facility is not scheduled for use by Town Hockey Users and/or Town Pool Users, both as defined below.

3.7 Tenant's Responsibility to Discharge Liens.

(a) If any mechanic's, laborer's or materialman's lien shall at any time during the Term be filed against the Premises, the underlying fee, or any part thereof with respect to the performance of any labor or the furnishing of any materials to, by or for Tenant or anyone claiming by, through or under Tenant, Tenant, within thirty (30) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the Town may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by the Town and all costs and expenses incurred by the Town in connection therewith, together with interest at the prime rate of interest reported from time to time in the Wall Street Journal or any successor publication plus two percentage points (the "**Default Rate**")

from the respective dates of the Town's making of the payment or incurring of the cost and expense until paid in full by Tenant to the Town on demand.

(b) Notwithstanding the foregoing, Tenant may contest, in good faith by appropriate proceedings, at Tenant's sole expense, the amount or validity in whole or in part of any mechanic's, laborer's or materialman's lien, and may defer the discharge of record thereof, provided that:

- (i) Tenant shall provide the Town with security reasonably satisfactory to the Town or shall bond over to assure payment of contested items;
- (ii) Tenant shall immediately pay or shall bond over such contested item or items if the protection of the Premises or of the Town's interest therein from any lien or claim shall, in the reasonable judgment of the Town, require such payment;
- (iii) The Town shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of the Town. The Town shall not be subjected to any liability for the payment of any loss, costs or expenses in connection with any such proceedings, and Tenant shall defend, indemnify and save the Town Parties harmless from and against any such loss, costs and expenses; and
- (iv) Notwithstanding the provisions of Subsection (iii) above, the Town shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the Town of Wellesley or the Commonwealth of Massachusetts or any agency, authority, branch, Town, division, office or subdivision of or for the Town of Wellesley or the Commonwealth of Massachusetts, nor shall the Town be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the Town nor to take any position inconsistent with a position previously taken and made public by the Town.

Subject to the foregoing, and without cost to it, the Town shall promptly execute and deliver any reasonable documents which may be necessary to permit Tenant so to contest any such lien and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

3.8 No Consent. Nothing contained in this Ground Lease shall be deemed or construed in any way as constituting the consent to payment by the Town, or request of the Town, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Premises or any part thereof.

3.9 No Agency Relationship. Based on (a) the provisions of the Uniform Procurement Act for the disposition by Lease of Town-owned property, and (b) interpretations of the purpose, intent, and scope of the bidding laws for public construction by Massachusetts courts and by the Attorney General's Business and Labor Protection Bureau, the Town and the Tenant separately expect and intend (without any warranty or representation by the other party with respect thereto) that this Ground Lease, including without limitation its provisions applicable to the Tenant's Work on the Facility and Improvements under Article 3, is not subject to bidding laws for public construction, including without limitation M.G.L. c. 149, §§ 44A-44J, M.G.L. c. 30, § 39M et seq., and M.G.L. c. 7C, § 54. In the event that a Court of competent jurisdiction issues a final, binding, conclusive Judgment that such bidding laws for public construction do apply to Tenant's work under Article 3 or other aspects of this Ground Lease, then the Town and the Tenant shall use best efforts to enter into a further written agreement within sixty (60) days (or such additional time as they may agree) from the entry of that Judgment as to how said bidding laws for public construction shall be complied with in conformity with said Judgment. In the event that, despite their best efforts, the parties fail to reach such an agreement within said sixty (60) days (or such additional time as they may agree), then either the Town or Tenant may elect to terminate this Ground Lease upon thirty (30) days' written notice to the other party.

#### **ARTICLE 4 RENT**

4.1 Rent. Commencing on the Term Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to the Town annual Rent as provided in Rent Schedule I. Such annual Rent, as increased in accordance with said Rent Schedule I, shall be paid in monthly installments, payable in advance, on the first day of each month.

4.2 No Release of Obligations.

(a) No happening, event, occurrence or situation during the Term hereof, whether foreseen or unforeseen, and however extraordinary (including, without limitation, the Tenant's failure, refusal or inability for any reason to construct the Facility and Improvements) shall permit the Tenant to quit or surrender the Premises or this Lease or shall relieve the Tenant from its liability to pay the Rent and other charges under this Ground Lease, or shall relieve the Tenant from any of its other obligations under this Ground Lease, and;

(b) The Tenant waives any rights now or hereafter conferred upon, to the extent permitted by law, to quit or surrender the Premises leased hereunder, or any part thereof, or to any abatement, set-off, reduction or suspension of Rent on account of any such act, happening, occurrence or situation, except as otherwise provided herein.

4.3 Payment of Installments of Rent. Each installment of Rent shall be paid by check payable to the "Town of Wellesley, Massachusetts" and shall be delivered to the Town at its address for notice in Section 15.2, or such electronic payment method as shall be reasonably agreed upon by the Town and Tenant.

4.4 Additional Consideration. As further consideration for the Town's agreeing to enter into this Ground Lease, the Tenant shall provide:

(a) Preferred hockey rink use time in favor of the Town of Wellesley, its schools, Wellesley Youth Hockey, Dana Hall School, and any successor organizations (collectively, the "Town Hockey Users") as provided herein and in the Hockey Use Schedule attached hereto as Exhibit D-1. The Town or other Town Hockey Users, as the case may be, shall be charged market rate for use of these facilities, which shall initially be \$330 per hour per sheet of ice and thereafter shall be calculated by taking the mean average of comparable facilities (taking into consideration the age and size of the facilities and their respective community demographics as compared to the rinks provided by Tenant). Initially, the following is a list of applicable comparable facilities: New England Sports Village (Attleboro) and Ice House (Canton). This list of comparable facilities may be changed by the parties upon mutual agreement. The Hockey Use Schedule is established annually on March 15<sup>th</sup> for the following hockey season (for the purposes hereof, a hockey season shall be September 1 through the following March 31 of any given school year) in the following manner: (i) the Town Hockey Users shall be entitled to the same number of hours as the previous year, or fewer if requested by the Town Hockey Users, but shall not be entitled to an increase in hours from the previous season without the approval of the Tenant, such approval not to be unreasonably withheld; (ii) March 15 represents the cut-off date by which the Town Hockey Users may request a change to the Hockey Use Schedule for the next following season; and (iii) if no change is requested by March 15, the previous season's schedule shall remain in place for the following season.

(b) Preferred pool use time in favor of the Town of Wellesley, its schools, the Wellesley Swim Association, and any successor organizations (collectively, the "Town Pool Users") as provided herein and in the Pool Use Schedule attached hereto as Exhibit D-2. The Town or other Town Pool users, as the case may be, shall be charged market rate for use of these facilities, which shall initially be \$30 per hour per lane. The Pool Use Schedule is established annually on March 15<sup>th</sup> for the following swimming season (which swimming season, for the purposes hereof, is defined as September 1 through the following March 31 of each school year) in the following manner: (i) the Town Pool Users shall be entitled to the same number of hours as the previous year, or fewer if requested by the Town Pool Users, but shall not be entitled to an increase in hours from the previous year without the approval of the Tenant, such approval not to be unreasonably withheld; (ii) March 15 represents a cut-off date by which the Town Pool Users may request a change to the Pool Use Schedule for the following season; and (iii) if no change is requested by March 15, the previous year's schedule shall remain in place for the following season.

(c) The Parties' rights and obligations with respect to the Town's use of the hockey rinks and pools are further described and delineated in the Surface License Agreement(s) the forms of which are attached hereto as Exhibits E-1 and E-2, which Agreement(s) may be amended from time to time upon mutual consent of the Parties.

## **ARTICLE 5 TAXES AND UTILITIES**

5.1 Taxes. Tenant shall pay and discharge as they become due, promptly and before

delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatever, including all governmental charges of whatever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge on the Premises or the improvements, or any part of same, or on Tenant's estate which may be a subject of taxation, or on the Town by reason of its ownership of the fee or any easements underlying this Ground Lease, during the entire term of this Ground Lease, saving and excepting only those taxes in this section specifically excepted.

5.2. Assessments. Specifically and without in any way limiting the generality of Paragraph 5.1 of this Section, Tenant shall pay all special assessments or levies or charges made by any municipal or political subdivision for local improvements, and shall pay them in cash as they shall fall due and before they shall become delinquent and as required by the act and proceedings under which any such assessments or levies or charges are made by any municipal or political subdivision. If the right is given to pay either in one sum or in installments, Tenant may elect either mode of payment and its election shall be binding on the Town. If by making any such election to pay in installments any of such installments shall be payable after the termination of this Ground Lease or any extended term of this Ground Lease, such unpaid installments shall be prorated as of the date of termination, and amounts payable after that date shall be paid by the Town. All other taxes and charges payable under this section shall be prorated at the commencement and expiration of the term of this Ground Lease.

5.3 Contest. If Tenant shall in good faith desire to contest the validity or amount of any tax, assessment, levy, or other governmental charge agreed in this Ground Lease to be paid by Tenant, Tenant shall be permitted to do so, and to defer the payment of the tax or charge, the validity or amount of which Tenant is so contesting, until final determination of the contest, on giving to the Town written notice of the contest prior to the commencement of any such contest, which shall be at least twenty-one (21) days prior to delinquency, and shall protect the Town on demand by a good and sufficient surety bond against any such tax, levy, assessment, rate, or governmental charge, and from any costs, liability, or damage arising out of any such contest.

5.4. Rebates. All rebates on account of any such taxes, rates, levies, charges, or assessments, required to be paid and paid by Tenant under the provisions of this Ground Lease shall belong to Tenant. The Town will, on the request of Tenant, execute any receipts, assignments, or other acquittances that may be necessary in order to secure the recovery of any such rebates, and will pay over to Tenant any rebates that may be received by the Town.

5.5 Personal Property Taxes. Tenant shall pay promptly when due all taxes which may be imposed upon personal property (including fixtures taxed as personal property) in, on or within the Premises directly to the assessing party.

5.6 Utilities.

(a) Tenant shall pay, or shall cause to be paid, directly to the utility provider, all charges by any public authority or public utility for electricity, telephone, gas, and other services supplied or rendered to the Premises, and service inspections made therefor, whether called

charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of the Town ("Utility Charges").

(b) The Town agrees to provide reasonable access rights and/or easements over the Premises to utility companies for the purposes of bringing and connecting utility service to the Premises.

(c) As provided above, subject to the approval of the Wellesley Municipal Light Plant, Tenant may, as part of its original construction or otherwise, install rooftop or other solar or alternative energy equipment to provide energy to the project, subject to limitations imposed by the Tenant's arrangements, from time to time, with Wellesley Municipal Light and Power and other permitting requirements in effect from time to time.

5.7 No Liability of the Town. The Town shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam, heat, gas, hot water, electricity, light and power. The Town makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply the Facility and Improvements.

## **ARTICLE 6 INSURANCE AND INDEMNITY**

6.1 Casualty Insurance. During the Term, after Tenant's Builder's Risk Insurance obligations have ceased, Tenant, at its sole cost and expense, shall keep in full force and effect property insurance on the Facility and Improvements and other property installed or used in, on or about any Improvement in amounts sufficient at all times to prevent the Town or Tenant from becoming a co-insurer under the provisions of applicable policies of insurance, but, in any event, at least equal to the full replacement cost thereof (exclusive of cost of excavations, foundations and footings), without deduction for depreciation, against all risks of direct physical loss or damage as may from time to time be included within the definition of an "All Risks Insurance Policy" and extended to include coverage against earthquake, earth movement, flood (including back-up of sewers and drains), sprinkler leakage, breakdown of boilers, machinery and electrical equipment, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke and demolition. Such insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount endorsement satisfactory to the Town.

6.2 Builder's Risk. During the period of any construction or structural alteration of the Premises, the Facility or the Improvements, Tenant shall also keep in full force and effect, at its sole cost and expense, "Builder's All Risk" insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the Town may reasonably require.

6.3 Liability Insurance. Throughout the Term, Tenant shall maintain, for the benefit of the Town and Tenant, and identifying the Town as additional insured, commercial general

liability insurance against claims for personal injury, death, and property damage occurring upon, in or about the Premises, the Facility or the Improvements, and on, in or about the adjoining sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) for at least One Million (\$1,000,000) Dollars per occurrence and Three Million Dollars (\$3,000,000) aggregate, including bodily injury and death and for property damage. If Tenant has other locations that it owns or leases, the policy shall include an aggregate limit per location endorsement. Such liability insurance shall be primary and not contributing to any insurance available to the Town, and the Town's insurance shall be in excess thereto.

6.4 Personal Property Insurance. Throughout the Term, Tenant shall maintain personal property insurance insuring all equipment, trade fixtures, inventory, fixtures and personal property located on the Premises for perils covered by the cause of loss – special form (“special form”). Such insurance shall be written on a replacement cost basis in an amount equal to one hundred percent (100%) of the full insurable replacement value of the aggregate of the foregoing.

6.5 Automobile Liability Insurance. Throughout the Term, Tenant shall maintain, for the benefit of the Town and Tenant, and identifying the Town as additional insured, automobile liability insurance for all owned, hired, and non-owned vehicles in the amount of One Million Dollars (\$1,000,000) Combined Single Limit.

6.6 Umbrella Liability. Prior to the commencement of any construction or structural alteration and thereafter throughout the rest of the Term, Tenant shall maintain, for the benefit of the Town and Tenant, and identifying the Town as additional insured, umbrella liability insurance following the same form as the underlying general liability, automobile liability and employer's liability insurance with limits not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate.

6.7 Insurance Carried by Contractors. During the construction of the Facility and Improvements, Tenant shall require the construction manager and/or general contractor for the Project to maintain (i) for the benefit of Tenant and the Town, as additional insureds, commercial general liability insurance, including products and completed operations coverage, against any claims for personal injury, death and property damage occurring upon, in or about the Premises and on, in and about the adjoining sidewalks and passageways during the construction of the Project for at least One Million (\$1,000,000) Dollars per occurrence and Three Million Dollars (\$3,000,000) in the aggregate; (ii) worker's compensation in amounts required by state statute; (iii) employer's liability insurance with limits of not less than of Five Hundred Thousand Dollars (\$500,000); (iv) automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired or non-owned, in an amount not less than One Million Dollars (\$1,000,000) combined single limit; and (v) umbrella liability insurance following the same form as the underlying general, automobile and employer's liability insurance in an amount not less than Two Million Dollars (\$2,000,000) combined single limit.

6.8 Insurance Carried by Architects and Engineers. During the planning and construction of the Facility and Improvements, Tenant shall require any Engineer, Architect and/or other design professional for the Project to maintain Professional Liability insurance

with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate.

6.9 Insurance Coverage Increases. The minimum coverage stated in this Section 6 shall be reviewed every three (3) years by the Town and Tenant, and shall be increased at such intervals if such increases are reasonably necessary to reflect inflation or changes in the nature or degree of risks insured or to protect against judgments from time to time being awarded in Massachusetts for injury, death and property damage.

6.10 Insurance Carriers, Policies. All insurance provided for in this Section 6 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of "A:X" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the Town and the Tenant. Any deductible amounts under any insurance policies required hereunder shall not exceed Twenty-Five Thousand (\$25,000.00) Dollars. Upon the execution of this Ground Lease, and thereafter not less than fifteen (15) days prior to the expiration dates from time to time of the policies required pursuant to this Section 6, binders of such insurance or, upon written request of the Town, duplicate originals of the policies, shall be delivered by Tenant to the Town.

6.11 Blanket Policy. Nothing in this Section 6 shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Section 6 under a blanket insurance policy or policies covering other properties as well as the Premises, provided, however, that any such policy or policies of blanket insurance (i) shall specify therein, or in a written statement from the insurers under such policy or policies specifying, the amount of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required by this Section 6, and (ii) such amounts so specified shall be sufficient to prevent any of the insureds from becoming a co-insurer within the terms of the applicable policy or policies, and provided further, however, that any such policy or policies of blanket insurance shall, as to the Premises, otherwise comply as to endorsements and coverage with the provisions of this Section 11.

6.12 No Separate Insurance. Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this Section 6 to be furnished by, or which may reasonably be required to be furnished by, Tenant unless the Town and Tenant are included therein as insureds, with loss payable as in this Ground Lease provided. Tenant shall immediately notify the Town of the placing of any such separate insurance and shall cause the same to be delivered as in Section 6.10 hereof required.

6.13 Adjustment. All policies of insurance provided for in Section 6 hereof shall name the Town and Tenant as the insureds as their respective interests may appear. The loss, if any, under such policies shall be adjusted with the insurance companies by Tenant, and shall be payable to Tenant. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of any of the Tenant Parties (as defined in Section 6.15 below) shall affect or limit the obligation of the insurance company so to pay the amount of

any loss sustained.

6.14 Non-cancellation. Each policy or binder issued by an insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least ten (10) days' prior written notice to the Town, Tenant and any Permitted Institutional Mortgagee (as defined in Section 10.2 below) named therein.

6.15 Indemnification.

(a) Tenant shall defend (with counsel reasonably acceptable to the indemnified party), indemnify and save the Town, and all board members, commissioners, employees, agents, servants, and licensees of the Town (collectively the "**Town Parties**") harmless against and from any and all Claims which may be imposed upon or incurred by or asserted against the Town Parties by reason of any of the following occurrences:

- (i) any work or thing done during the Term of this Ground Lease in, on or about the Premises or any part thereof, including during construction of the Improvements and Facility and any other Tenant Work, by Tenant or any other party other than the Town Parties;
- (ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, including any roadway, sidewalk or curb, parking areas, loading areas, drainage facility, or water, septic or sewer line, equipment or facility, appurtenant to or serving the Premises, during the Term of this Ground Lease by Tenant or any other party other than the Town Parties;
- (iii) any negligence or willful misconduct on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, occupants, guests, licensees, operators, or invitees (together with Tenant, the "**Tenant Parties**");
- (iv) any accident, injury or damage to any person or property occurring in, on or about the Premises, the Facility or any Improvement or any part thereof, including any roadway, sidewalk or curb, parking areas, loading areas, drainage facility, or water, septic or sewer line, equipment or facility, appurtenant to the Premises, unless the same occurs solely as a result of the gross negligence or wrongful act of any of the Town Parties; and
- (v) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Ground Lease on its part to be performed or complied with.

(b) The foregoing express obligation of indemnification shall not be construed to

negate or abridge any other obligation of indemnification running to the Town which would exist at common law or under any other provision of this Ground Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Section 6. This Ground Lease is made on the express condition that the Town shall not be liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Premises, specifically including any damage or injury to the person or property of Tenant or any of the Tenant Parties, from whatever cause, in any way connected with the condition, use, occupational safety or occupancy of the Premises, the Facility or the Improvements, unless caused by the gross negligence or willful misconduct of the Town.

(c) The provisions of this Section 6.15 shall survive termination or expiration of this Ground Lease.

## ARTICLE 7 USE OF PREMISES

7.1 Permitted Uses. The Premises and the Improvements shall be used exclusively for purposes of designing, constructing, developing and operating the Facility and Improvements (as described in Exhibit A) and accessory uses and structures which are ancillary thereto such as physical therapy, training, concessions, offices and conference facilities (collectively, the “**Permitted Uses**”).

7.2 Abandonment of Use. Subject to Unavoidable Delays and, except during selection of a developer-operator sub-tenant, permitting and timely construction of the Facility and Improvements and thereafter during reasonable periods of repair, remodeling and/or restoration, Tenant covenants and agrees to continuously and uninterruptedly use the Premises for the Permitted Uses. If at any time after completion of permanent financing with a Permitted Institutional Mortgagee, the Premises shall be abandoned, deserted, or vacated by the Tenant (such decision to abandon, desert, vacate or discontinue construction or operation, the facilities located on the Premises shall be referred to as a decision to “**Discontinue Operations**”), the Town shall have the right, subject to the rights of the Permitted Institutional Mortgagees set forth in this Section 7.2, to terminate the Lease by written notice to Tenant, as provided in Article 10.2, and recover exclusive possession of the Premises. In the event the Town exercises its right to terminate the Lease under this Section 7.2, the Lease shall terminate sixty (60) days after the date of the Town’s notice to Tenant thereof, unless within such sixty (60) day period, the Premises are leased and occupied in accordance with Section 7.1. Each Permitted Institutional Mortgagee shall have the same rights to cure as set forth in Article 10.2(c) and (d).

7.3 Legal Requirements. Throughout the Term of this Ground Lease, Tenant, at its sole expense, shall promptly comply with and shall cause all Tenant Parties to promptly comply with, all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises, the Facility and the roadway, sidewalk or curb, parking areas, loading areas, drainage facilities, adjoining the same, the water, septic or sewer lines, equipment and facilities servicing the

Premises, the Facility and/or the Improvements or to the use or manner of use of the same or to any of the Tenant Parties, whether or not such law, ordinance, rule, regulation or requirement is specifically applicable or related to the conduct of the Permitted Uses, or shall affect the interior or exterior of Facility and/or the Improvements or any Tenant Work, or shall necessitate structural changes or improvements, or shall interfere with the use and enjoyment of the Premises (collectively, "Legal Requirements"). Tenant shall, in the event of any violation or any attempted violation of this Section by any Tenant Party, take steps, immediately upon knowledge of such violation, as Tenant determines to be reasonably necessary to remedy or prevent the same as the case may be.

7.4 Contests. Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to the Town, the validity or application of any Legal Requirement, subject to Tenant providing the Town with written notice thereof on or before the date of contesting same, and further subject to the following:

(a) If, by the terms of any such Legal Requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or the Town to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject the Town to criminal liability or fine, and provided that Tenant (i) bonds over such lien or furnishes to the Town security, reasonably satisfactory to the Town, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence; and

(c) The Town shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the Town of Wellesley or the Commonwealth of Massachusetts or any agency, authority, branch, division, office or subdivision of or for the Town of Wellesley or the Commonwealth of Massachusetts, nor shall the Town be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the Town nor to take a position inconsistent with a position previously taken and made public by the Town.

7.5 Compliance with Insurance Requirements. Throughout the Term of this Ground Lease, Tenant, at its expense, shall observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises, and Tenant shall, without limiting any other requirements of this Ground Lease, in the event of any violation or any attempted violation of the provisions of this Section by any Tenant Party, take all reasonable steps, immediately upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.

## ARTICLE 8 TAKING

8.1 Award. In the event that the Improvements, Premises, Facility, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain (any such matters being herein referred as a “**Taking**”), the Town and Tenant shall have the right to participate in any Taking proceedings or agreement for the purpose of protecting their interests hereunder. Each party so participating shall pay its own expenses therein.

8.2 Termination. If at any time during the Term of this Ground Lease there shall be a Taking of the whole or substantially all of the Facility, the Improvements or Premises, this Ground Lease shall terminate and expire on the earlier of (i) the date upon which the condemning authority takes possession of the real estate subject to the Taking; or (ii) the date title to the real estate is vested in the condemning authority. For the purpose of this Article, “substantially all of the Facility, the Improvements or Premises” shall be deemed to have been taken if the untaken part of the Premises shall be insufficient for the restoration of the Facility and Improvements such as to allow the economic and feasible operation thereof by the Tenant. Tenant’s interest in any Taking award will equal the value to Tenant of the remaining Term of this Ground Lease, the value to Tenant of the use and enjoyment of the Facility and Improvements, and Tenant’s relocation expenses insofar as relocation expenses are paid by the Taking authority (collectively, the “**Tenant’s Share**”). The Town’s interest in any taking by Condemnation will equal the value of its fee interest plus its remainder interest in the Facility and Improvements, if any (the “**Town’s Share**”). All awards from the Taking will be divided between Tenant and the Town in the proportion that the Tenant’s Share bears to the Town’s Share.

8.3 Insubstantial Taking. If a portion of the Premises, Facility or Improvements is taken and Section 8.2 does not apply, then this Ground Lease will automatically terminate on the date of the Taking only as to the portion of the Premises, Facility or Improvements taken and this Ground Lease will continue in full force and effect. In such event, any partial Taking award shall be paid first to the Tenant in an amount equal to the greater of (i) the unamortized cost of any Improvements constructed by Tenant on the portion of the Premises subject to the Taking; or (ii) the amount necessary to discharge or, if such amount is insufficient, to reduce any Permitted Institutional Mortgage. The balance, if any, of the Taking award shall be paid to the Town.

8.4 Temporary Taking. If the whole or any part of the Premises, Facility or Improvements shall be the subject of a temporary Taking of one hundred twenty (120) days or less, this Ground Lease shall remain in full force, and the Tenant shall be entitled to receive the entirety of any award so made for the period of the temporary Taking that is within the Term.

## ARTICLE 9 ENVIRONMENTAL

9.1 Environmental Laws Defined. “**Environmental Laws**” means, collectively, any

federal, state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. (“**CERCLA**”); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“**RCRA**”); the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, M.G.L. c. 21I §§ 1 et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, M.G.L. c. 21J §§ 1 et seq.; or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (as defined in Section 9.4 below) or providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

## 9.2 Tenant’s Environmental Representations, Warranties and Covenants.

Tenant hereby represents, warrants and covenants as follows:

(a) Except as may be permitted by and only in accordance with Environmental Laws, Tenant shall not allow any Hazardous Materials (as defined in Section 9.4 below) to exist or be stored, located, discharged, possessed, managed, processed, or otherwise used or handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises. Without limiting the generality of the foregoing, Tenant is not, and will not become, involved in operations at the Premises involving Hazardous Materials, except as expressly permitted by Legal Requirements.

(b) No activity shall be undertaken on the Premises by Tenant which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

(c) Tenant shall, with all due diligence, at its own cost and expense and in accordance with Environmental Laws (and in all events in a manner reasonably satisfactory to the Town), take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises including all removal, containment and remedial actions. Tenant shall pay or cause to

be paid at no expense to the Town all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Premises.

(d) Tenant, upon execution of this Ground Lease, shall furnish the Town with a copy of any Material Safety Data Sheets and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to M.G.L. c. 111F which Tenant is required to prepare, file or maintain pursuant to said chapter for any substances used or stored on the Premises. If said Material Safety Data Sheets or lists should be changed or updated during the Term of this Ground Lease, Tenant shall promptly furnish a copy of such updated or changed Material Safety Data Sheets or list to the Town.

9.3 The Town's Environmental Representations, Warranties and Covenants. The Town hereby represents, warrants and covenants as of the date of the execution of this Ground Lease as follows:

(a) Except for Existing Contamination (hereinafter defined), neither the Town nor, to the Town's knowledge, the Premises (i) has received notice of any private or governmental lien or judicial or administrative notice, order or action relating to Hazardous Materials or environmental liabilities or violations with respect to the Premises, or (ii) is in, or with any applicable notice or lapse of time, or failure to take certain curative or remedial actions, will be in, either direct or indirect violation of any Environmental Laws. For purposes hereof, "**Existing Contamination**" shall mean any and all pollution or contamination caused by any Hazardous Material that previously existed or exists in, or was released onto the Premises as of the Commencement Date, the types and quantities of which have been disclosed in the Updated Due Diligence Investigation Results Report and the Permanent Solution Statement (both attached hereto as **Exhibit C**), along with their accompanying attachments, which are on file in Wellesley Town Hall.

(b) No activity shall be undertaken on the Premises by the Town which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

9.4 Hazardous Materials Defined. For purposes of this Ground Lease, "**Hazardous Materials**" shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials which are included under or

regulated by any Environmental Law.

9.5 Notices.

(a) Tenant shall provide the Town with copies of any notices of releases of Hazardous Materials which are given by or on behalf of Tenant to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to the Town concurrently with mailing or delivery to the governmental agencies or authorities. Tenant also shall provide the Town with copies of any notices of responsibility or any other notices received by or on behalf of Tenant from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials or substances located on or about the Premises. In addition, in connection with any litigation or threat of litigation affecting the Premises, Tenant shall deliver to the Town any documentation or records as the Town may reasonably request and which are in Tenant's possession and may be lawfully delivered to the Town, and the Town shall deliver to Tenant any documentation or records as Tenant may reasonably request and which are in the Town's possession and may be lawfully delivered to Tenant.

(b) Tenant or the Town shall immediately notify the other party in writing should Tenant or the Town become aware of (iii) any release or threatened release of Hazardous Materials or the occurrence of any other environmental problem or liability with respect to the Premises or any real property adjoining or in the vicinity of the Premises or such other property which could subject the Town, Tenant or the Premises to a Claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws; (iv) any lien filed, action taken or notice given of the nature described in Sections 9.2(b) or 9.3(b) above; (v) any notice given to Tenant from any occupant of the Premises or any notice from any governmental authority with respect to any release or threatened release of Hazardous Materials; or (vi) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Premises.

9.6 Environmental Indemnity. Tenant hereby presently, unconditionally, irrevocably and absolutely agrees to pay, indemnify, defend with counsel acceptable to the Town and save harmless the Town Parties for, from and against any and all Claims (including, without limitation attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of CERCLA), of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of the Town Parties and arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described herein, relating to the Premises, or as a consequence of the Tenant's interest in or operation of the Premises, including, without limitation, matters arising out of any breach of Tenant's covenants, representations and warranties. Tenant does further agree and covenant that except as otherwise set forth in this Ground Lease, none of the Town Parties shall assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions

made or taken by the Town on such property or as a result of any re-entry by the Town onto the Premises or otherwise. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive termination of this Ground Lease. In addition, the covenants and indemnities of Tenant contained herein shall survive any exercise of any remedy by the Town or Town Parties under the Lease. Tenant agrees that the indemnification granted herein may be enforced by any of the Town Parties; provided, however, that nothing contained herein shall prevent the Town from exercising any other rights under the Lease.

## ARTICLE 10 TRANSFER OF TENANT'S INTEREST

10.1 Assignment by Tenant. Tenant shall not assign this Ground Lease or any interest in this Ground Lease or sublet or permit any other person to occupy or use the Premises or any portion thereof except as provided herein:

(a) Tenant may assign or sublet this Ground Lease or any interest therein upon written consent of the Town, which may not be unreasonably withheld, conditioned or delayed. For purposes hereof, the term assignment shall include a reorganization, dissolution or merger of Tenant or its general partner, whether by operation of law or otherwise, the admission of any new general partner or the withdrawal of its current general partner, or a transfer of fifty percent (50%) or more of the ownership interests in Tenant. Notwithstanding the foregoing, Tenant may enter into one or more leases with the following occupants of the facilities without the consent of the Town: (i) one or more concessions; (ii) physical therapy; and (iii) training. Any such sublease shall be made expressly subject to this Ground Lease and to the conditions hereof and provided that Town is provided with a copy of said sublease or other occupancy agreement and that such occupant carries insurance covering liability to property and persons of at least \$1,000,000 per occurrence and names the Town as an additional insured.

(b) Tenant shall not otherwise assign this Ground Lease or any interest in this Ground Lease or sublet or permit any other person, to occupy or use the Premises or any portion thereof without the prior written consent of the Town, which consent may be withheld in the Town's reasonable discretion, subject to the foregoing provisions.

10.2 Leasehold Mortgages.

(a) Notwithstanding anything to the contrary contained in this Ground Lease, Tenant may, upon written notice to the Town, given prior to closing, from time to time, encumber, hypothecate, assign or mortgage its interest in the Premises with one or more mortgages, assignments of leasehold interest or any other security instruments in favor of an institutional lender or lenders, a state agency lender, or other lenders, as partial security for a loan or loans (collectively, a "Permitted Institutional Mortgage"; the holder of such Permitted Institutional Mortgage, is referred to as a "Permitted Institutional Mortgagee".) Each such Permitted Institutional Mortgage shall be expressly subject to the terms and conditions of this Ground Lease. Tenant shall promptly deliver to the Town a true copy of the Permitted Institutional Mortgage and any assignment thereof. Tenant shall notify the Town of the address of the Permitted Institutional Mortgagee to which notices may be sent. The Town

and Tenant hereby agree that there shall be no cancellation, surrender or any modification of this Ground Lease that would adversely affect such Permitted Institutional Mortgagee's rights hereunder without the prior consent in writing of the Permitted Institutional Mortgagee. The Town will sign such consents and estoppel agreements and related documents in connection with said Mortgage(s) as may be reasonably required by any such Mortgagee(s).

(b) Permitted Institutional Mortgages not Assignment. For the purpose of this Section 11, the making of a Permitted Institutional Mortgage shall not be deemed to constitute an assignment or transfer of this Ground Lease, nor shall any Permitted Institutional Mortgagee, as such, be deemed an assignee or transferee of this Ground Lease or of the leasehold estate hereby created so as to require such Permitted Institutional Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of the leasehold interest created by this Ground Lease in any proceedings for the foreclosure of any Permitted Institutional Mortgage, or the assignee or transferee of such leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Institutional Mortgage, shall be deemed to be an assignee or transferee (without requiring the consent of the Town pursuant to Section 10.1) and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, and shall execute a written instrument assuming Tenant's obligations hereunder promptly upon request by the Town.

(c) Permitted Institutional Mortgagee Cure Rights. In the event of any default in the payment of money, Permitted Institutional Mortgagee, without being under any obligation to do so, shall have the right to cure such monetary default within ninety (90) days after the giving of notice to it by the Town. In the case of any default by the Tenant other than in the payment of money hereunder, the Town will take no action pursuant to Article 11 hereunder by reason of any such default without first giving to the Permitted Institutional Mortgagee notice thereof simultaneously with notice given to Tenant, and the right, but not the obligation, for a period of one hundred twenty (120) days after notice of such Tenant default, to cure such default, or, if such default cannot reasonably be cured within such one hundred and twenty (120) days, such longer period as is required to cure such default, including such period of time as may reasonably be required for Permitted Institutional Mortgagee to obtain possession of the Premises or title to the Tenant's leasehold estate created hereby, provided, that the Permitted Institutional Mortgagee shall have commenced cure or appropriate measures to obtain possession of the Premises or title to the Tenant's leasehold estate created hereby, within such one hundred and twenty (120) day period and thereafter continues diligently to effect such cure, or obtain such possession or title. The Permitted Institutional Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Tenant; provided, further, that nothing herein shall preclude the Town from exercising any rights or remedies under this Ground Lease with respect to any other default by Tenant during any period of such forbearance, provided the exercise of such rights or remedies are subject to the same cure rights of the Permitted Institutional Mortgagee as set forth herein. Upon the expiration of any applicable cure period, the Town shall notify the Permitted Institutional Mortgagee whether or not Tenant has effectuated a cure within said cure period. The provisions of this Section 10.2(c) are conditioned on the following provisions:

(i) Acquisition of Possession. The Permitted Institutional Mortgagee shall, within sixty (60) days after notice of such Tenant non-monetary default, notify the Town of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Institutional Mortgage or otherwise to obtain ownership of Tenant's interest in this Ground Lease. Such notice from the Permitted Institutional Mortgagee shall be accompanied by an instrument in writing wherein such Permitted Institutional Mortgagee agrees that:

(A) during the period that such Permitted Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this Ground Lease shall terminate or such proceeding shall be discontinued, it will pay or cause to be paid to or on behalf of the Town all sums from time to time becoming due hereunder during such period and shall comply with all obligations of the Tenant under this Ground Lease; and

(B) if delivery of possession of the Premises shall be made to such Permitted Institutional Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Permitted Institutional Mortgagee shall, promptly following such delivery of possession, perform all the covenants and agreements thereafter arising and herein contained on Tenant's part to be performed. Nothing in this subclause (B) shall be construed to require such Permitted Institutional Mortgagee to perform any of the Tenant's obligations hereunder accruing after such Permitted Institutional Mortgagee ceases to be in possession.

(d) Additional Rights of Permitted Institutional Mortgagee and Town's Covenants. In addition to the matters set forth above, the Town agrees, for so long as a Permitted Institutional Mortgage is outstanding, as follows:

(i) Notwithstanding anything to the contrary contained in this Ground Lease, in the event that the Town would otherwise have the right to terminate this Ground Lease by reason of any Event of Default by Tenant which cannot be cured by a Permitted Institutional Mortgagee, e.g., an Event of Default under Section 11.1(e), or if a Permitted Institutional Mortgagee, its successors or assigns shall acquire Tenant's interest in this Ground Lease, the Town will enter into an amendment or other agreement naming the Permitted Institutional Mortgagee or its nominee as Tenant hereunder for the remainder of the Term effective as of the date of such termination, upon the same terms, provisions, covenants, and agreements as herein contained, provided the Permitted Institutional Mortgagee or its nominee shall make written request upon the Town for such amendment or other agreement within sixty (60) days

after the later of (a) the date of such termination or acquisition, or (b) date notice of the termination is given;

- (ii) The Town and Tenant shall not (i) consent to any action taken or to be taken, the result of which would diminish or impair the priority of a Permitted Institutional Mortgage; or (ii) subordinate or consent to the subordination of this Ground Lease to any subsequent, underlying lease or mortgage. If this Ground Lease is rejected or disaffirmed by the Town or Tenant pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law, the Town shall offer the Permitted Institutional Mortgagee a new lease upon the same terms and conditions within ten (10) days after the date of such rejection; and
- (iii) The fee title to the Premises and the leasehold estate of Tenant therein shall not merge but shall remain separate and distinct notwithstanding the acquisition of said fee title by the Town, Tenant, or any third party by purchase or otherwise.

## **ARTICLE 11 TERMINATION AND DEFAULT**

11.1 Events of Default. Each of the following events shall be deemed an “**Event of Default**” hereunder:

- (a) if Tenant shall fail to pay, as and when due, any payment of Rent or other sums payable under this Ground Lease, and such failure shall continue for a period of sixty (60) days after notice from the Town to Tenant;
- (b) if Tenant shall fail to comply with the provisions of Sections 7.1, 7.2 or 8.2 hereof;
- (c) if Tenant shall fail to maintain any insurance required to be maintained by Tenant hereunder following ten (10) days notice to Tenant;
- (d) if Tenant shall fail to perform or comply with any other of the agreements, terms, covenants or conditions in this Ground Lease, other than those referred to in Subsections (a) - (c) of this Section 11.1, for a period of thirty (30) days after notice from the Town to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such thirty (30) day period, within such additional time reasonably necessary provided Tenant commences to cure the same within such 30-day period and thereafter prosecutes the curing of such default with diligence; and
- (e) if Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant’s leasehold estate for whatever reason, or Tenant shall make an assignment for the benefit of creditors, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if

there shall be initiated against Tenant any such proceedings which are not dismissed or stayed on appeal or otherwise within sixty (60) days, or if, within sixty (60) days after the expiration of any such stay, such appointment shall not be vacated or stayed on appeal.

11.2 Remedies. Upon an Event of Default, the Town at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Ground Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice. Upon the date specified in such notice, this Ground Lease and the Term hereby demised and all rights of Tenant under this Ground Lease shall expire and terminate (unless prior to the date specified for termination the Event or Events of Default shall have been cured, in which case this Ground Lease shall remain in full force and effect), and Tenant shall remain liable as hereinafter provided and the Facility and all Improvements shall become the property of the Town without the necessity of any deed or conveyance from Tenant to the Town. Tenant agrees upon request of the Town to immediately execute and deliver to the Town any deeds, releases or other documents deemed necessary by the Town to evidence the vesting in the Town of the ownership of the Facility and all Improvements. Upon such termination, the Town may re-enter the Premises and dispossess Tenant and anyone claiming by, through or under Tenant by summary proceedings or other lawful process.

11.3 Town's Right To Perform Tenant's Covenants.

(a) Upon an Event of Default, the Town may, but shall be under no obligation to, cure such default which cure shall be at Tenant's sole cost and expense. The Town may enter upon the Premises (after five (5) days' written notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

(b) The Town shall not be liable for inconvenience, annoyance, disturbance or other damage to Tenant or any operator or occupant thereof by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, and the obligations of Tenant under this Ground Lease shall not be affected thereby. The Town shall use commercially reasonable efforts to minimize interference with or disruption of Tenant or Tenant's business, occupants, operators and or lessees.

(c) All reasonable sums so paid by the Town and all reasonable costs and expenses incurred by the Town, including reasonable attorneys' fees and expenses, in connection with the performance of any such act, together with interest at the Default Rate from the date of such payment or incurrence by the Town of such cost and expense until the date paid in full, shall be paid by Tenant to the Town on demand. If the Town shall exercise its rights under Section 11.3(a) to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and the Town shall be entitled to exercise any remedy contained in this Ground Lease if Tenant shall fail to pay such obligation to the Town upon demand. All costs incurred by the Town hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear error, or fraud.

11.4 No Waiver. No failure by either the Town or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent or any other charges due during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the Town or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by the Town or Tenant of any breach shall affect or alter this Ground Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

11.5 Injunctive Relief. In the event of any breach or threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Ground Lease, the Town shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Ground Lease.

11.6 Remedies Cumulative. Each right and remedy provided for in this Ground Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Ground Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Town or Tenant of any one or more of the rights or remedies provided for in this Ground Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Ground Lease or now or hereafter existing at law or in equity or by statute or otherwise.

## **ARTICLE 12 SURRENDER; HOLD-OVER**

### 12.1 Surrender.

(a) Tenant shall on the last day of the Term, or upon any earlier termination of this Ground Lease, quit and peacefully surrender and deliver up the Premises, subject to the rights of a Permitted Institutional Mortgagee hereunder, to the possession and use of the Town without delay and in good order, condition and repair (excepting only reasonable wear and tear and damage from a Taking or from a fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant, all as provided under this Ground Lease). Tenant, at Tenant's sole cost and expense shall have the right, but not the obligation, to remove the Facility and the Improvements from the Premises. The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of the Term, those permitted under this Ground Lease or created or suffered by the Town and shall be surrendered without any payment by the Town on account of the Facility and the Improvements. Upon or at any time after the expiration or earlier termination of this Ground Lease, the Town shall have, hold and enjoy the Premises and the right to receive all income from the same.

(b) Tenant shall remove from the Premises all personal property within thirty (30) days after the termination of this Ground Lease and shall repair at Tenant's sole cost any damage to the Premises caused by such removal, unless the Town permits such property to remain.

12.2 **Holdover.** If Tenant or any party claiming by, through or under Tenant, retains possession of the Premises or any part thereof after the expiration or earlier termination of this Ground Lease, then the Town may, at its option, serve written notice upon Tenant that such holding over constitutes (i) an Event of Default under the Lease, or (ii) a month-to-month tenancy, upon the terms and conditions set forth in this Ground Lease, or (iii) the creation of a tenancy-at-sufferance, in any case upon the terms and conditions set forth in this Ground Lease. Tenant shall also pay to the Town all damages sustained by the Town resulting from retention of possession by Tenant. Town shall have the right to charge Tenant rent at the then current market rate for the Premises. The provisions of this Section 12.2 shall not constitute a waiver by the Town of any right of re-entry as set forth in this Ground Lease; nor shall receipt of any Rent or any other act in apparent affirmance of the tenancy operate as a waiver of the Town's right to terminate this Ground Lease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be performed.

### **ARTICLE 13 ESTOPPEL CERTIFICATES**

The Town and Tenant promptly shall execute and deliver to each other or to any Permitted Institutional Mortgagee, within fifteen (15) business days after request, a certificate as to matters customarily requested in connection with estoppel certificates, including, without limitation, whether or not (i) the Lease is in full force and effect, (ii) the Lease has been modified or amended in any respect and describing such modifications or amendments, if any, and (iii) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any and will enter into any other agreements reasonably required by such Mortgagee, including Nondisturbance and Recognition agreements. Any such certificate may be relied upon by the Town, Tenant, any Permitted Institutional Mortgagee, and any transferee or assignee of a Permitted Institutional Mortgagee.

### **ARTICLE 14 NON-DISCRIMINATION COVENANTS**

14.1 **Non-Discrimination.** With respect to its exercise of all rights and privileges granted herein, Tenant agrees that Tenant, its successors in interest, sublessees, licensees, operators, and assigns shall not discriminate against any person, employee, or applicant for employment because of race, color, creed, religion, national origin, age, sex, sexual orientation, marital status, handicap, veteran status or any other basis prohibited by law in Tenant's use of the Premises, including the hiring and discharging of employees, the provision or use of services, and the selection of suppliers and contractors.

14.2 **Non-Compliance.** Tenant shall defend, indemnify and hold the Town Parties harmless from and against any and all claims of third persons resulting from Tenant's non-

compliance with any of the provisions of this Article 14.

**ARTICLE 15  
MISCELLANEOUS**

15.1 Amendments to Lease. This Ground Lease may not be amended, modified, supplemented or extended except by a written instrument executed by the Town and Tenant.

15.2 Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Ground Lease or pursuant to law or otherwise, shall be in writing and shall be delivered by hand, nationally recognized overnight express commercial service such as "Federal Express" (in either case with evidence of delivery or refusal thereof) or by registered or certified mail, return receipt requested, addressed if to Tenant to:

Tenant:

Wellesley Sports Group, LLC,  
41 North Road, Suite 203,  
Bedford, MA 01730

With a copy to:

Philip Lombardo, Esq.  
Lombardo, DeVellis & Smith, LLP  
41 North Road, Suite 203  
Bedford, MA 01730

or to such other address as Tenant may from time to time designate by written notice to the Town, or if to the Town addressed to:

Blythe C. Robinson, Executive Director  
Town of Wellesley  
525 Washington Street  
Wellesley, MA 02482

With a copy to:

Thomas J. Harrington, Esq.  
Miyares and Harrington LLP  
40 Grove Street • Suite 190  
Wellesley, MA 02482

or to such other address as the Town may from time to time designate by written notice to Tenant, or to such other agent or agents as may be designated in writing by either party. The

earlier of: (i) the date of delivery by overnight express commercial service, or (ii) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt shall be deemed to be the date such notice or other submission was given.

15.3 Severability. If any term or provision of this Ground Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Ground Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

15.4 WAIVER. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS OR ASSIGNS UNDER OR CONNECTED WITH THIS GROUND LEASE OR ANY OF ITS PROVISIONS, ANY NEGOTIATIONS IN CONNECTION THEREWITH, OR TENANT'S USE OR OCCUPATION OF THE PREMISES.

15.5 Quiet Enjoyment. Tenant, upon paying the Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Ground Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Ground Lease without hindrance by anyone claiming by, through or under the Town, subject, however, to the exceptions, reservations and conditions of this Ground Lease and matters of record. The foregoing shall not create any liability on the part of the Town for any defects in or encumbrances on the Town's title existing as of the date hereof.

15.6 Integration. All prior understandings and agreements between the parties with respect to this Ground Lease are merged within this Ground Lease, which alone fully and completely sets forth the understanding of the parties.

15.7 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of the Town, its successors and assigns, and Tenant, its successors and assigns.

15.8 Notice of Lease. The Town and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable form with respect to this Ground Lease, which shall be recorded forthwith with the Registry of Deeds, and agree to execute, upon termination of this Ground Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with said Registry of Deeds.

15.9 Enforcement of the Town's Liability. Anything contained in this Ground Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, the Town's liability under this Ground Lease shall be enforceable only out of the Town's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against, the Town, nor shall there be any personal liability on the part of the Town or any Town Parties, with respect to any obligations to be performed hereunder. Without limitation of the foregoing, the Town shall not be liable for any loss, damage or injury of whatever kind

caused by, resulting from, or in connection with (i) the supply or interruption of water, gas, electric current, oil or any other utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or subsurface area or from any part of the Premises, or (iii) other leakage from pipes, appliances, water, sewer or plumbing works therein or from any other place. In no event shall the Town be liable to Tenant for any indirect, special or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Ground Lease.

15.10 No Merger. There shall be no merger of this Ground Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that the Town may acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless the Town executes and records an instrument affirmatively electing otherwise.

15.11 Captions. The captions of this Ground Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Ground Lease nor in any way affect this Ground Lease.

15.12 Table of Contents. The Table of Contents preceding this Ground Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Ground Lease, nor as supplemental thereto or amendatory thereof.

15.13 Massachusetts Law Governs. This Ground Lease shall be governed exclusively by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

15.14 Time of the Essence. Time shall be of the essence hereof.

15.15 Excavation and Shoring. If any excavation shall be made or contemplated to be made by Tenant for building or other purposes upon property or streets adjacent to or nearby the Premises, Tenant shall do or cause to be done all such work as may be necessary to preserve any of the walls or structures of the Facility or Improvements from injury or damage and to support the same by proper foundations. All such work done by Tenant shall be at Tenant's sole cost and expense as may be required under Required Permits.

15.16 No Partnership or Joint Venture. Nothing contained under this Ground Lease shall be construed to create a partnership or joint venture between the Town and Tenant or to make the Town an associate in any way of Tenant in the conduct of Tenant's business, nor shall the Town be liable for any debts incurred by Tenant in the conduct of Tenant's business, and it is understood by the parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

15.17 Tenant Request for Consent. Tenant shall reimburse the Town for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by Tenant for the Town's consent hereunder.

15.18 Brokers. The Town and Tenant each warrants and represents to the other that it has had no dealings or negotiations with any broker or agent in connection with this Ground Lease. Each agrees to pay, and shall hold the other harmless and indemnified from and against any and all costs, expenses (including without limitation counsel fees) or liability for any compensation, commissions and charges claimed by any broker or agent resulting from any such dealings by the indemnifying party with respect to this Ground Lease or the negotiation therefor.

15.19 Covenants Running with the Land. Tenant intends, declares, and covenants, on behalf of itself and all future holders of Tenant's interest hereunder, that this Ground Lease and the covenants and restrictions set forth in this Ground Lease regulating and restricting the use, occupancy, and transfer of the Premises (a) shall be and are covenants running with the Premises, encumbering the Premises for the term of this Ground Lease, binding upon Tenant and Tenant's successors-in-interest; (b) are not merely personal covenants of Tenant; and (c) the benefits shall inure to the Town.

15.20 Authority.

(a) Subject to Town Meeting Approval. This Ground Lease is contingent upon and subject to full approval of this transaction by a duly constituted Town Meeting.

(b) Tenant has full power and authority to enter into and perform this Agreement and all documents, instruments and contracts entered into or to be entered into by it pursuant to this Agreement and to carry out the transactions contemplated hereby. This Agreement is, and all documents to be executed by Tenant and delivered to Town at the Closing will be on the Closing Date, duly authorized, executed and delivered by Tenant and all consents and approvals of third parties will have been obtained. This Agreement is, and all documents to be executed by Tenant and delivered to Town at the Closing will be the legal, valid and binding obligations of Tenant, enforceable in accordance with their respective terms and will not violate any provisions of any contract, judicial order or any other thing to which Tenant is a party or to or by which Tenant is subject or bound. Neither the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement is subject to any requirement that Tenant obtain any consent, license, approval or authorization of, any third party.

15.21 Dispute Resolution. All claims, disputes and other matters in question between the Town and the Tenant arising out of or relating to this Ground Lease or the breach thereof related to the payment or nonpayment of money shall be submitted for resolution to a court of competent jurisdiction in Norfolk County, Massachusetts, unless otherwise agreed by the parties. Notwithstanding the foregoing, the parties agree to negotiate in good faith any claims, disputes or other matters in question during the term of this Ground Lease before resorting to such litigation. As to disputes not involving the payment of money, the parties agree to negotiate in good faith any such claims, disputes or other matters in question, failing which, such claims shall be submitted to arbitration (one arbitrator) to be conducted in accordance with the commercial rules and regulations and procedures of the American Arbitration Association, using expedited procedures. The parties will agree on an arbitrator within one (1) week of a party requesting arbitration hereunder, failing which the parties shall each name an arbitrator and those two (2) arbitrators shall, in turn, select an arbitrator who will rule on such dispute.

EXECUTED as of the date first set forth above.

TOWN OF WELLESLEY

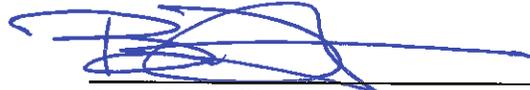
By its Board of Selectmen



Marjorie R. Freiman, Chair, duly authorized

TENANT

Wellesley Sports ~~Group~~, LLC,



Brian DeVellis, Manager, duly authorized