

**BASEBALL TRAINING FACILITY OPERATING LICENSE AGREEMENT
WHITE ROCK**

THIS AGREEMENT dated for reference _____, 20_____, is

BETWEEN:

CITY OF WHITE ROCK

15322 Buena Vista Avenue
White Rock BC V4B 1Y6

(the “**City**”)

AND: **WHITE ROCK / SOUTH SURREY BASEBALL ASSOCIATION**

PO Box 45016
12851 16th Avenue
Surrey BC V4A 1N5

(the “**Association**”)

WHEREAS:

- A. The City owns and maintains Centennial Park established on City-dedicated park lands located at 14600 North Bluff Road in White Rock, British Columbia;
- B. The Association is a non-profit sports association who wishes to operate an indoor Baseball Training Facility (the “**Facility**”) located in Centennial Park;
- C. The City and the Association wish to establish guidelines for the Association’s operation of the Facility; and
- D. The City has agreed to grant to the Association, by way of this Agreement, use of the lands to operate the Facility on the terms and conditions set forth herein.

THIS AGREEMENT is evidence that in consideration of \$1.00 and other good and valuable consideration paid by the Association to the City, the receipt and sufficiency of which the City acknowledges, the parties agree as follows:

Grant of License

- 1. The City grants to the Association and its employees and invitees a non-exclusive right and license to operate the Facility located as shown on Schedule A – Site Plan, attached hereto, and labelled LOCATION OF NEW BASEBALL TRAINING FACILITY (the “**Licensed Area**”) during the Term of this Agreement for the purpose indicated above in Recital B and strictly in accordance with the terms and conditions contained in this Agreement. References herein to Licensed Area include the Licensed Area together with the Facility.

2. The license granted by this Agreement does not create any interest in property, and the City at all times during the Term of this Agreement shall have a priority right to use and occupy any portion or all of the Licensed Area, without notice, to carry out any public service or responsibility that requires use of or access to the Licensed Area, and the Association shall provide to the City free and unhampered access for the same and shall not be entitled to compensation for any inconvenience or nuisance caused thereby.

Term

3. The license granted by this Agreement shall commence upon construction completion of the Facility, and specifically on the date when the Facility construction project is deemed Ready-for-Takeover as such term is defined in the Facility construction agreement between the parties, and continue for a period of ten (10) years, unless otherwise agreed in writing by the City (the "**Term**").
4. All the Association's obligations under this Agreement that are outstanding on the date of expiry of this Agreement shall survive the expiry of this Agreement. For certainty, the Association's obligations to release and indemnify the City shall survive the expiry of this Agreement, but only in respect of events occurring before the expiry of this Agreement.

Option to Renew

5. If the Association has throughout the Term duly and punctually observed and performed all of the Association's obligations under this Agreement up to the time of exercise, then the Association may at its option renew this Agreement for one (1) additional term of ten (10) years (the "**Renewal Term**") in accordance with the following terms:
 - (a) to exercise this right of renewal the Association shall deliver to the City written notice no more than one hundred and eighty (180) days and no fewer ninety (90) days before the expiry of the Term; and
 - (b) this Agreement will apply to the Renewal Term except that there will be no additional right of renewal created as a result.

Dispute Resolution

6. In the event of any dispute between the parties, attempts will be made by City staff and the Association's staff to directly resolve the dispute. If a resolution cannot be agreed, the City Manager of Community Recreation and an Association Director will meet to review the situation and agree to a resolution. If a resolution cannot be agreed, the City Director of Recreation and Culture (or Chief Administrative Officer or his or her designate) and the Association President will meet to review the situation and agree to a resolution. Any dispute between the parties that cannot be resolved by agreement shall be referred to the City of White Rock Council whose decision will be final and binding.

Default and Termination

7. If the Association defaults in the observance or performance of any of the terms and conditions contained in this Agreement, and continues such default for seven (7) days following the City's written notice, then without limiting the City's other remedies at law or equity, the City may:
 - (a) take all such actions on the Association's behalf and at the Association's cost as are reasonably necessary to rectify the Association's default, but the City is in no circumstance liable for not taking such action or its manner of doing so, provided that the City acts reasonably; the Association shall pay to the City all costs the City incurs pursuant to this provision forthwith upon the Association's receipt of an invoice for the same; and
 - (b) terminate this Agreement despite any rule of law or equity to the contrary and the Term will become immediately void and forfeit without compensation to the Association, and the City may recover from the Association all damages the City incurs by reason of the Association's default.
8. If the Association breaches any City bylaw or a provincial or federal statute and continues such default for seven (7) days following the City's written notice, the City may terminate this Agreement in accordance with section 7(b).
9. The City may also terminate this Agreement if:
 - (a) the Association becomes bankrupt or insolvent or takes the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise;
 - (b) a receiver, interim receiver, receiver and manager, custodian or liquidator is appointed for the business, property, affairs, or revenues of the Association;
 - (c) the Association ceases at any time to operate; or
 - (d) the Association or its assets are dissolved, wound-up or liquidated.
10. Upon termination of this Agreement the Association may, by written notice to the City, opt to either:
 - (a) vacate the Licensed Area and abandon in place the Facility and its contents in a condition enabling the City or a third party to immediately resume indoor baseball training facility programming and operations; or
 - (b) decommission and remove the entirety of the Facility from the Licensed Area, repairing any damage to the Licensed Area caused during the removal of the

Facility and returning the surface of the Licensed Area to the condition it was in before any such removal, all to the City's satisfaction.

11. All the Association's obligations under this Agreement that are outstanding at the time that this Agreement is terminated shall survive the termination of this Agreement. For certainty, the Association's obligations to release and indemnify the City shall survive the termination of this Agreement, but only in respect of events occurring before the termination of this Agreement.

Association Obligations

12. The Association shall maintain full operational control and responsibility over the Licensed Area and operate and maintain the Facility in full compliance with all enactments; provincial guidelines; City bylaws, policies, standards, and regulations; and the terms of this Agreement. For clarity, the Association shall specifically comply with the City of White Rock Fire Prevention Bylaw #2507 and the current British Columbia Fire Code Regulations, and the Association agrees to facilitate fire department inspections of the Licensed Area at regular intervals as set and approved by the City's Council. The Association shall also comply with the rules and regulations established by the City from time to time with respect to the use of the Licensed Area and Centennial Park provided that, in the event of a conflict between such rules and regulations and the terms of this Agreement, the terms of this Agreement shall prevail.
13. The Association shall use the Licensed Area only for the purpose of operating Association activities. The Association may rent the Facility to other recreation groups or businesses. The Association acknowledges and agrees that no additional or other use of the Licensed Area is granted to the Association by this Agreement.
14. The Association hereby grants to the City's Recreation and Culture department use of the Facility for programming from 6:00AM to 12:00PM on every Tuesday and Thursday during the Term of this Agreement. The parties may amend the City's programming time by written agreement. The Association shall not charge the City user fees for such Facility use. The City shall not program activities that damage the Facility.
15. The Association shall manage all required scheduling and administration to permit other non-profit associations and sport groups access to and use of the Facility whenever the Facility is not in use by the Association or the City and shall maintain detailed records of such arrangements for the City's inspection on demand. The Association shall grant Facility use priority to non-profit associations and sport groups with more than 60% of their members resident of either the City of White Rock or the neighbourhood of South Surrey (the "**Community Users**"). The Association may not unreasonably deny a request from a Community User to use the Facility. Community User complaints regarding the Association's denial of Facility use shall be arbitrated by the City's Manager of Community Recreation whose decision shall be final and binding.

16. The Association may charge fees for Facility use, but such fees must remain at or below the market user fee rate for similar facilities located in the Lower Mainland. All profits generated by the collection of Facility user fees shall be used by the Association for either the benefit of the Association and its membership, or for the further development and operation of the park under written agreement with the City. The Association shall maintain accurate revenue and expenditure records of the Facility's operation, including how any profits are spent, for the City's inspection on demand.
17. Prior to commencing operations, the Association shall place a permanent sign in a location visible at the entrance of the Facility advising that the Association operates the Facility and that the Facility is available for use by other non-profit associations and sport groups. The Association's contact phone number shall be displayed on the sign for all Facility enquiries. The Association must obtain written approval of the size, content, and design of the sign prior to its installation from the City's Manager of Community Recreation. The Association shall not permit the posting of any advertising signage at the Licensed Area without the prior written consent of the City's Manager of Community Recreation.
18. The Association shall be responsible at its own expense for the provision and compensation of all staff required for its operations.
19. The Association agrees to provide at all times during the Term supervision of invitees to the Licensed Area. The Association shall report to the City any personal injuries or property damage arising from the Association's use or occupancy of the Licensed Area.
20. The Association shall implement a waiver and release program to protect both the Association and the City from liability. The Association shall establish forms of waivers, releases, indemnities, and agreements in forms acceptable to the City for Facility users and the Association shall cause users of the Facility to execute such waivers, releases, indemnities, and agreements, and maintain records of same for the City's inspection on demand.
21. At the end of each operating day, the Association shall return the Facility to a condition of readiness for another use of the space including the lockup of all equipment and valuables. The Association shall maintain the Facility and all furnishings and equipment therein contained in a clean and orderly condition.
22. The Association shall at its own expense and at all times during the Term of this Agreement maintain the Licensed Area including all structural, exterior, and interior maintenance and repair of the Facility, in a state of good repair, and in a clean and orderly condition, all to the City's satisfaction. For clarity, the Association shall promptly repair and restore all vandalism damage to the interior and exterior of the Licensed Area.
23. The Association shall at its own expense maintain all equipment required for its operations. The Association shall at its own expense maintain and repair the interior and exterior of the Facility's storage areas and shall use the storage areas in accordance with

the City's fire code regulations. The Association acknowledges that the Facility's storage areas are for the exclusive use of the Association and hereby agrees it shall not permit third party use of the Facility's storage areas.

24. The Association shall not commence renovation or alteration of the Facility without the prior written approval of the City.
25. The Association shall, at all reasonable times, permit the City to enter the Facility to inspect and confirm it is being maintained in accordance with this Agreement.
26. The Association shall be responsible for all annual utility costs for the Facility.
27. The Association shall not use or permit the use of any part of the Licensed Area for any dangerous, noxious, noisome, or offensive act, trade, business occupation or calling and shall not permit, cause or maintain any annoyance, nuisance, damage, disturbance or interference with the occupants of adjacent property or property proximate to the Licensed Area, or which may constitute a fire hazard.
28. The Association shall not permit any liquor to be brought onto the Licensed Area.

City Obligations

29. Following each iteration of the City's Facility use granted under section 14, the City will return the Facility to a condition of readiness for another use of the space including the lockup of all equipment and valuables, leaving all furnishings and equipment in a clean and orderly condition. Any damage to the Facility caused by the City or its invitees shall be promptly repaired or replaced at the City's expense.

No Liability for Interference

30. The City does not warrant that the use of the Licensed Area by the Association pursuant to this Agreement will be free from interruptions caused or required by strikes, riots, insurrections, labour controversies, accidents, or other causes beyond the commercially reasonable control of the City and the Association releases the City from any loss or expenses arising therefrom.

General Release

31. The Association accepts the Licensed Area on an as-is basis and agrees that it will use the Licensed Area at its own risk; that neither the City nor its officers, directors, elected officials, employees, or agents have made any representations or warranties respecting the condition of the Licensed Area or its suitability for any purpose; and that the City will not be liable in respect of any loss of life, personal injury, damage to property or loss of property suffered by the Association or its employees or invitees arising out of this Agreement or its or their use and occupation of the Licensed Area.

32. The Association agrees that any costs and expenses incurred by the Association in relation to this Agreement are entirely at its own risk. For certainty, the Association waives any claim or action that it has or may have against the City in relation to any costs, expenses, damages, injury, property loss, or suits arising out of or related to this Agreement.

Indemnity

33. The Association hereby indemnifies and saves harmless the City and its officers, directors, elected officials, employees, and agents from and against any and all losses, claims, costs, expenses, damages and liabilities, causes of action, suits and judgments including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration, or permit acquisition and including all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City and its officers, directors, elected officials, employees, agents, and invitees arising, directly or indirectly, out of:
- (a) the use and occupation of the Licensed Area, including access to and from the Licensed Area, by the Association under this Agreement;
 - (b) a breach by the Association of any of the covenants contained in this Agreement;
 - (c) any wrongful act or neglect of the Association on or about the Licensed Area;
 - (d) any damage to property related to the Association's use and occupancy of the Licensed Area; and
 - (e) the death of or injury to any person arising out of or in any way connected with, directly or indirectly, the Association's use and occupancy of the Licensed Area.

This section 33 does not apply to liabilities, damages, costs, claims, suits, or actions arising out of the gross negligence or wilful misconduct of the City and its agents, servants, employees, or contractors.

Insurance

34. The Association shall, during the Term of this Agreement, procure and maintain comprehensive commercial general liability insurance, including a sports participant exclusion endorsement, against claims for bodily injury, death, or property damage arising out of the use and occupancy of the Licensed Area by the Association, in a form acceptable to the Chief Administrative Officer of the City, in the amount of not less than Five Million Dollars (\$5,000,000.00) per occurrence, naming the City, its elected officials, employees, officers, agents and others as additional insured and shall provide the City with a certificate of insurance upon execution of this Agreement. Such insurance shall include a cross liability/severability of interest clause and require the insurer not to cancel or materially change the insurance without first giving the City thirty (30) days prior written notice.

35. The Association shall, during the Term of this Agreement, procure and maintain All Risks property damage insurance, including flood and earthquake endorsements, for the replacement cost of the Facility including its contents and improvements, in keeping with common industry practice and as insured by a prudent owner of reasonably similar facilities.
36. It shall be the sole responsibility of the Association to determine what additional insurance coverage, if any, including but not limited to Workers' Compensation insurance, is necessary or advisable for the protection of the Association or is required by the Association to fulfill its obligations under this Agreement. Such additional insurance shall be maintained and provided at the sole expense of the Association.
37. The City is not responsible for any loss, damage, or theft from the Facility of personal property belonging to the Association.

General

38. The parties will execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.
39. Wherever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural, the feminine, or body corporate or politic where the context or the parties thereto so require.
40. This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement, and this Agreement may not be modified except by subsequent agreement in writing between the parties.
41. Time is of the essence of this Agreement.
42. The section headings have been inserted for reference only and do not define, limit, alter, or enlarge the meaning of any provision of this Agreement.
43. The Association's use of the Licensed Area will under all circumstances be viewed as a license only and will neither create nor be deemed to create any property interest in favour of the Association in the Licensed Area.
44. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
45. Except as expressly set out herein, the rights granted to the Association under this Agreement may not be sublicensed, assigned, or otherwise transferred without the prior written approval of the City which may be arbitrarily withheld.

46. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion will be severed and the decision that it is invalid will not affect the validity of the remainder of this Agreement.
47. Waiver by the City of any default by the Association shall not be deemed a waiver of any subsequent default of the same or any other covenant or condition of this Agreement.
48. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.
49. Nothing contained or implied in this Agreement shall fetter in any way the discretion of the City carrying out any statutory functions as a municipal corporation or the discretion of its Council. Further, nothing contained or implied in this Agreement shall derogate from the obligation of the Association under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the City's discretion, and the rights, powers, duties and obligations of the City under all public and private statutes, bylaws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Licensed Area as if this Agreement had not been executed and delivered by the Association and the City.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

50. This Agreement may be executed in counterparts, in which case the counterparts together shall constitute one agreement and communication of execution by fax or electronic transmission shall constitute good delivery.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first above written.

CITY OF WHITE ROCK

by its authorized signatories:

Print Name:

Print Name:

Date:

WHITE ROCK / SOUTH SURREY BASEBALL ASSOCIATION

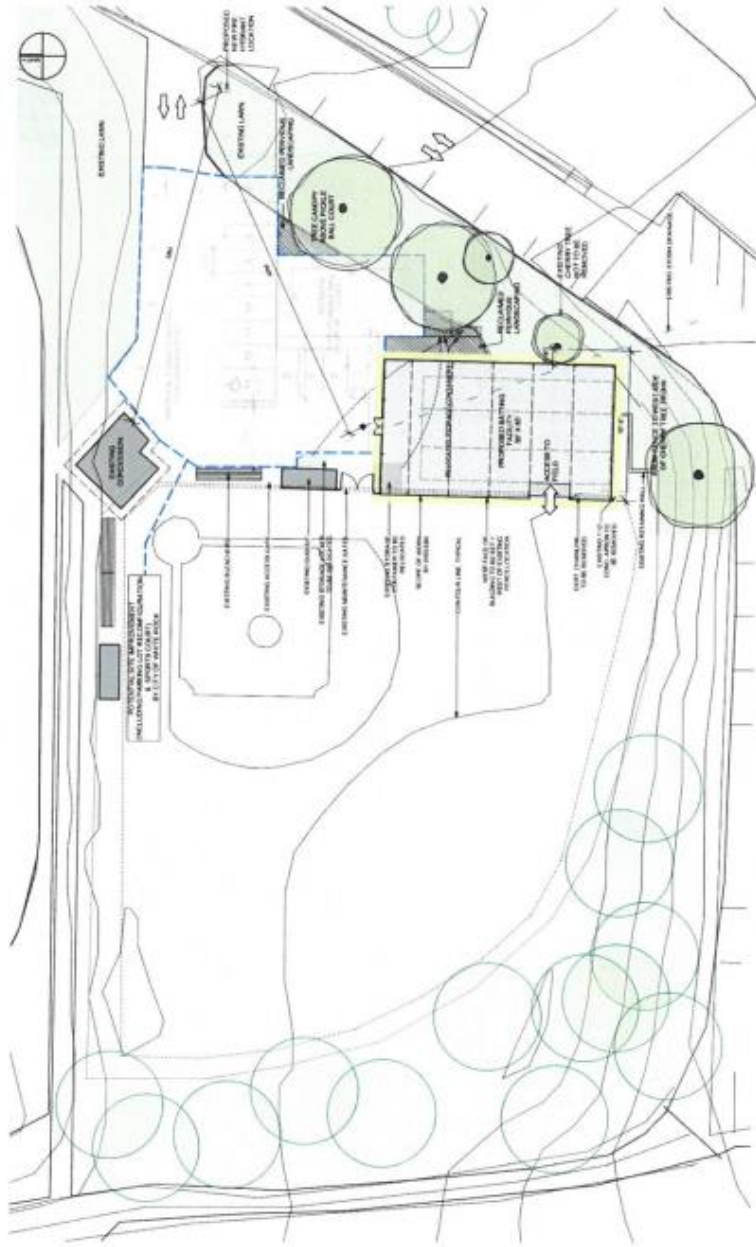
by its authorized signatories:

Print Name:

Print Name:

Date:

Schedule A



SITE PLAN