

**APPENDIX H**

**REQUEST FOR PROPOSALS**

**GROUND LEASE OF PROPERTY**

**FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF AN ICE SKATING RINK**

**DRAFT LEASE** (as of December 10, 2019)

Effective as of this \_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”), it is hereby agreed by and between the Town of Belmont, 455 Concord Avenue, Belmont, MA 02478 (hereinafter designated the Town), by and through the Belmont School Committee, and \_\_\_\_\_, having an address of \_\_\_\_\_, hereinafter designated the Lessee, as follows:

**ARTICLE I**

**PURPOSE OF LEASE**

1. Pursuant to M.G.L. c.30B, the Town solicited proposals for the construction, operation, and maintenance of an ice skating rink. The Town hereby leases to the Lessee the Leased Premises described in Article III below for the purposes of providing for the professional services necessary to construct and for the day-to-day management and operation, in the best interests of the Town of Belmont, of the ice skating rink, and appurtenant facilities, (together, the “Facility”) located in Belmont, MA. Said Facility shall not be used for any other purpose by the Lessee or its employees, agents and representatives without the prior written approval of the Town.
2. It is the intent of the parties hereto that the management and operation of the Facility shall be self-supporting and that all expenses incurred in the course of such operation shall be paid from the revenues derived from the fees charged for programs, goods and services provided by the Lessee. In consideration of the Lessee providing the management and operation services as described in this Lease, any and all surplus revenue remaining after all expenses associated with the operation of the Facility have been paid, and after payments required by this Lease have been made, shall become the property of the Lessee as a management fee. Additionally, any deficit in revenue to operational expenses shall be Lessee’s sole financial responsibility. Notwithstanding any other provisions of this Lease, the Town shall have no obligation to pay any such expenses.
3. The Lessee shall exercise due care and diligence in performing under this Lease in accordance with the applicable professional standards in the eastern Massachusetts area.

**ARTICLE II**

**INCORPORATION OF DOCUMENTS & CONFLICTS AMONG PROVISIONS**

1. The provisions of the Request for Proposals for a Lease to Construct, Manage, and Operate the Facility (the “Request for Proposals”) are attached hereto as Exhibit [ ] and incorporated herein by reference. The Lessee submitted the successful proposal, which is attached hereto as Exhibit [ ] incorporated herein by reference; ~~(the “Lessee’s Proposal”).~~

2. In the event of any conflict among the following Lease documents (the “Documents”), the Documents shall be construed according to the following priorities:

Highest Priority:	Amendments to Lease (if any)
Second Priority:	Lease
Third Priority:	Addenda to the Request for Proposals (if any)
Fourth Priority:	Request for Proposals
Fifth Priority:	Lessee's Proposal.

### **ARTICLE III**

#### **LEASED PREMISES**

1. This Lease shall govern the construction, day-to-day management and operation of the Facility, located at [\_\_\_\_] Concord Avenue, Belmont, MA 02478. Said property upon which the Facility is to be constructed is identified on the plan attached hereto as Exhibit [\_\_\_\_] (the “Plan”) as [“\_\_\_\_\_”] (the “Leased Premises” or the “Premises”).
2. The Town shall have the right of access to and entry upon all portions of the Leased Premises with reasonable notice and at reasonable times. In the event of an emergency the Town will give such notice of such entry as is reasonable under the circumstances.
3. The Town shall deliver the Leased Premises to Lessee as of the Effective Date, in their “as is” condition, for the purpose of performing the Lessee’s Work (as defined below).

### **ARTICLE IV**

#### **TERM OF LEASE**

1. Pursuant to M.G.L. c.40, §3, the initial term of this Lease (as the same may be extended, the “Term”) shall commence on the Substantial Completion Date (as defined below) (the “Commencement Date”), and shall expire on the day that is one day (plus any partial month) before the twentieth (20<sup>th</sup>) anniversary of the Commencement Date (as defined below) (the “Expiration Date”). Upon the Town’s request, Lessee shall execute and deliver an acknowledgment of the actual Substantial Completion Date and Expiration Date.

2. Lessee may, by written notice to the Town at least six (6) months prior to the expiration of the initial then-current Term, request to extend the Term of this Lease. Upon such request, the Town shall have the sole right in its sole discretion, upon at least ninety (90) days prior written notice, to exercise its discretion to extend the Term of this Lease for on two-(2) occasions to extend the Term of this Lease for an additional five (5)-year terms, term (each, an “Option Term”). **NTD: Pending Select Board input.**

3. All agreements, subleases (regardless of tier), contracts, licenses, concessions, occupancy agreements, management agreements, service agreements, and the like, relating to the operation, maintenance, construction, use or any other aspect of the Facility (collectively, “Contracts”) shall be in writing and shall expressly state that the Contract shall automatically terminate if this Lease expires or terminates for any reason, unless before such termination or expiration, the Town elects in writing by notice to the Lessee to assume such Contract as successor-in-interest to Lessee, on behalf of the Town or

a successor designated in writing by the Town, in which case the contracting party under such Contract shall continue perform its duties under such Contract and recognize the Town (or such successor) as a valid party to the Contract. Any Contract without such language shall be void. If the Town or a successor designated by the Town elects to assume any such Contract, neither the Town nor the successor shall have any liability under the Contract for any default by the Lessee under the Contract occurring before the Town (or the successor) elected to assume such Contract. The Lessee shall promptly provide to the Town true, complete copies of all such Contracts.

## **ARTICLE V**

### **INSURANCE**

1. From and after the Effective Date, Lessee will take out and maintain during the Term following insurance with companies and in forms and with deductibles reasonably acceptable to the Town and in adequate amounts as shall protect it, performing work covered by this Lease and the Town of Belmont and their boards, commissions, committees, employees, agents, officers, officials, and assigns from all claims and liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Lease.
2. Except as otherwise stated, the amounts of such insurance shall be for each policy, not less than:
  - A. Workers' Compensation Insurance: as required by the laws of Massachusetts and Employer's Liability Insurance: not less than \$500,000/\$500,000/\$500,000.
  - B. Commercial General Liability Insurance: Written on an occurrence basis including personal injury liability coverage, products - completed operations coverage, premises operations liability coverage, contractor's protective liability and contractual liability insurance, coverage; not less than \$1,000,000 per occurrence and not less than \$3,000,000 aggregate limit. Extraterritorial and guest clause shall be included.
  - C. Contractor's Operation and Professional Services Environmental Liability Insurance: combined single limit not less than \$3,000,000.
  - D. Automobile Liability Insurance: Combined Single Limit not less than \$1,000,000 covering all leased, owned, hired and non-owed vehicles.
  - E. Excess Liability Insurance: Umbrella Form, not less than \$5,000,000 each occurrence and \$5,000,000 aggregate limit. Excess liability insurance, umbrella form shall be following form, which shall provide coverage over Commercial General Liability Insurance, Employer's Liability Insurance under Workers' Compensation Insurance, Contractor's Operations and Professional Services Environmental Liability Insurance, and Automobile Liability Insurance.
3. The Town of Belmont shall be named as an additional insured on each such policy of Commercial General Liability Insurance, Excess Liability Insurance, Umbrella Form, and Automobile Liability Insurance.
4. Lessee shall provide the Town with evidence of such insurance within five (5) days of the Town's written demand therefor.

5. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this Lease and shall operate as a default hereunder.

6. All certificates and policies of insurance required hereunder shall contain the following provision:

"Notwithstanding any other provision herein, should any of the above policies be cancelled or materially amended before the expiration date thereof, the issuing company shall mail thereby 30 days prior written notice thereof to the named certificate holder and to the Superintendent of Schools, Belmont School Administration Building, 644 Pleasant Street, Belmont, MA 02478, before such cancellation or amendment shall take place."

7. Certificates evidencing such insurance in five (5) copies shall be furnished to the Town at the execution of this Lease. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this Lease and shall state that such insurance is as required by this Lease. The Lessee shall make no claims against the Town of Belmont or its officers or employees for any injury to any of its officers or employees or for damage to its equipment arising out of work contemplated by this Lease.

8. The Lessee shall also be required to provide to the Town of Belmont endorsements or riders to the policies of commercial general liability insurance, automobile liability insurance, and excess umbrella liability insurance, umbrella form, which indicate that the Town of Belmont is named as an additional insured on each such policy.

## **ARTICLE VI**

### **INDEMNIFICATION**

1. The Lessee shall compensate the Town of Belmont for all damage to Town property of any nature arising out of the Lessee's performance under the Lease from and after the Effective Date. To the fullest extent permitted by law, the Lessee shall indemnify, defend, and hold harmless the Town of Belmont and all of its officers, employees, boards, commissions, committees, agents and representatives from and against all claims, causes of action, suits, costs, damages, and liability of any kind which arise out of the breach by the Lessee of its obligations under this Lease, or the act or omission of the Lessee, visitors to the Facility, including, without limitation, players, skaters, coaches, officials, instructors, volunteers, parents, and spectators, Lessee's contractors or subcontractors, or their officers, directors, employees, agents or representatives or anyone directly or indirectly employed by them, or anyone for whose acts or omissions they may be liable, regarding the work to be performed by the Lessee under the Lease, or which arise out of the violation of any federal, Massachusetts or Town of Belmont statute, by-law, rule, regulation, order or directive, or which relate to personal injury or property damage suffered by the Lessee or any of its officers or employees regarding the subject matter of this Lease. Said costs shall include, without limitation, reasonable legal costs, collection fees, and counsel fees incurred in defending any claim or suit that may be brought against the Town and any judgment that may be obtained in any such claim, cause of action or suit.

2. Neither the Town of Belmont, nor its officers, employees, boards, committees, commissions, agents and representatives shall be under any personal obligation or incur any personal liability by reason of this Lease, the execution thereof or anything relating thereto which arises out of the breach

or violation of any provision of this Lease, or the violation of any Federal, Massachusetts or Town of Belmont statute, by-law, rule, regulation, order or directive, or which relates to personal injury or property damage suffered by the Lessee or its employees, regarding the subject matter of this Lease.

## **ARTICLE VII**

### **THE LESSEE'S DUTIES**

#### 1. Construction of the Facility.

- A. Lessee and the Town shall develop a mutually agreeable design and construction schedule for the construction of the Facility, consistent with Lessee's Proposal. The Town shall have the right, in its reasonable discretion, to withhold its approval of any such plans to the extent inconsistent with Lessee's Proposal. Failure by the Town to disapprove any submission or resubmission of the draft plans within thirty (30) days after submission or any resubmission shall constitute ~~approval thereof, disapproval thereof, and the Town shall provide a statement of the reasons therefor within a reasonable time thereafter.~~ Any disapproval shall be accompanied by a specific statement of the reasons therefor. Upon any disapproval, Lessee shall resubmit such corrected draft plans within ten (10) days of the Town's disapproval. Such process shall continue until the Town shall have approved Lessee's plans for the construction of the Facility (the "Approved Plans").
- B. ~~Lessee shall diligently~~ Within ninety (90) days of receipt of all Permits (as defined below), Lessee shall commence work to construct the Facility, at its sole cost and expense, pursuant to such Approved Plans ("Lessee's Work"). All of Lessee's Work shall be performed diligently, in a good and workmanlike manner, and in accordance with all ~~applicable present and future~~ applicable present and future laws, ordinances, by-laws, orders, rules, ~~and regulations, using and requirements of all federal, state and municipal governments, departments, boards and officers, which may be applicable to the Leased Premises or Facility or to the use or construction of the same by Lessee or any of its agents, contractors, servants, employees, subtenants, occupants, guests, licensees, operators, or invitees ("Applicable Laws").~~ Lessee's Work shall be performed by contractors approved by the Town in its reasonable discretion. ~~All, and all~~ such contractors shall be required to carry the insurance required of Lessee in Article V, above. ~~Lessee shall be responsible for obtaining all necessary permits and approvals for the Lessee's Work, and for obtaining all necessary approvals and sign-offs following the completion of Lessee's Work.~~
- C. Lessee shall be responsible for obtaining, at its sole cost and expense, all necessary permits and approvals for the Lessee's Work as required by Applicable Laws (collectively, "Permits"), and for obtaining all necessary approvals and sign-offs following the completion of Lessee's Work, as required by Applicable Laws. Lessee shall diligently pursue all such Permits and approvals and sign-offs.
- ~~C.D.~~ Lessee shall promptly pay the entire cost of all Lessee's Work so that the Leased Premises shall be free of liens for labor and materials.
- ~~D.E.~~ The Lessee's Work shall be deemed "Substantially Complete" on the day as of which (i) Lessee's Work has been completed, except for items which can be completed after occupancy has been taken without causing unreasonable interference with Lessee's business operations at the Facility (i.e. so-called "punch list" items), (ii) Lessee has obtained from the Town of Belmont Office of Community Development such sign-offs on the Building Permit

for Lessee's Work as required by ~~applicable~~Applicable Laws, and (iii) Lessee has delivered to the Town "as built" plans for the Facility, a permanent certificate of occupancy for the Facility, and proof of payment for all labor and materials in the form of a final statutory lien waiver from Lessee's contractor. Such date is hereinafter called the "Substantial Completion Date."

E.F. From and after the Commencement Date until the Substantial Completion Date (the "Construction Period") Lessee shall pay to the Town, on the first day of each month during the Construction Period, monthly rent in the amount of Five Thousand Dollars (\$5,000.00) (as the same may be increased pursuant to the terms of this Lease, "Construction Rent"), prorated for any partial month during the Construction Period. If the Lessee's Work is not Substantially Complete on the date that is fifteen (15) months immediately after the date the Town approves of the Approved Plans (the "Estimated Substantial Completion Date"), then for each month during the Construction Period from and after the Estimated Substantial Completion Date, the Construction Rent shall automatically increase by five percent (5%) every month until the Substantial Completion Date.

F.G. Lessee shall have no right to operate the Facility or conduct any business at the Facility until the Substantial Completion Date.

2. Program and Staffing. The Lessee shall provide all aspects of management and operation services, as provided in the Request for Proposals, and the Lessee's ~~proposal to the Town of Belmont dated \_\_\_\_\_ 2019, a copy of which is attached hereto as Exhibit [\_\_\_\_\_] (the "Proposal");~~Proposal, to ensure operation of the Facility so as to maximize the production of revenues while at the same time ensuring the continuation of a well-balanced recreational program in a well maintained and safe environment. Such services shall include, without limitation, the following:

A. Facility Programming and Fees.

1. The Lessee shall develop a program designed to maximize the use of the Facility on a year-round basis. Such program shall include: (i) the rental and scheduling of ice time for ice skating school lessons for various levels of proficiency, (ii) the rental of ice time to schools, organizations, leagues and other private parties for hockey or recreational skating, and (iii) the provision of public skating periods at which time residents of Belmont may utilize the ~~skating rink~~Facility for a nominal charge. Any agreement for rental or scheduling of ice time for a term exceeding six (6) months shall be subject to the prior written approval of the Town.
2. The Lessee may charge reasonable fees for such programs, subject to the approval of the Belmont School Committee, to cover or exceed the costs of operation and maintenance of the facilities. The Lease Oversight Committee ("Committee") may review the program and fees at any time, and shall review them at least annually, to ensure compliance with the terms and intent of this Lease. In the first year of the Term of this Lease, "prime-time" hourly rental rates may not exceed [\_\_\_\_\_] dollars for a fifty (50) minute hour and [\_\_\_\_\_] dollars for a sixty (60) minute hour. Any request for an increase in a rate or a fee for a subsequent year of the Lease Term will be reviewed by the Committee. The Committee's review shall include consideration of then current costs and projected costs for the year in question. The decision whether to approve a rate increase or a fee increase shall be made by the Belmont School Committee.

3. Non-prime time hourly rental rates for the first year of any Lease shall be utilized whenever possible for the following groups; Belmont High School Hockey Teams, Belmont Youth Hockey, and public skating.
4. Throughout the Term of this Lease and any extension or renewal thereof non-prime time hourly rates shall not exceed prime time hourly rates.
5. Any violation of such terms and intent shall constitute a default under this Lease, and shall be cured by the Lessee promptly after written notice from the Belmont School Committee.

B. Staff.

1. The Lessee shall hire and supervise all full and part-time staff, including but not limited to skating instructors, maintenance personnel with a basic knowledge of operation and maintenance of ice making and mechanical equipment, snack bar and pro shop operators, and clerical and financial staff. The Lessee shall be responsible for the supervision and scheduling of its employees and for the preparation and payment of the payroll for all such employees, including without limitation wages and benefits of employees.
2. The Lessee shall be responsible for ensuring that all employees are of good character and further shall undertake all lawful means to ensure that no employee has a criminal record which is inconsistent with his/her responsibilities as an employee of the Lessee.
3. The Town shall have the right to conduct a check of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Criminal History Systems Board, and the Sex Offender Record Information' (SORI) maintained by the Massachusetts Sex Offender Registry Board, for any officer or employee of the Lessee or of a subcontractor of the Lessee who may be at the Arena. Notwithstanding any other provision of this Lease, the Town may refuse to allow any such employee to work in the Arena if the Town, in its sole discretion, determines that such employee is not suitable for work on the project based upon the results of such CORI or SORI. The Town will keep such information in a confidential file.
4. The Lessee shall identify in writing all supervisory personnel who shall be assigned to the operation and maintenance of the Premises, including for each person the name, job title and work schedule. There shall be no material change to these personnel assignments without the prior written consent of the Town.

5. Any provision in any employment agreement, written or oral, between Lessee and its employees or independent contractors restricting such party's ability to continue to work at the Facility in any capacity upon the assignment, expiration, or termination of the Lease, sublease of the Leased Premises, or any other change in circumstances unrelated to the qualifications or job performance of such employee or independent contractor, shall be void.

- C. The Lessee shall provide services under this Lease as an independent contractor with the Town of Belmont and not as an employee of the Town of Belmont. The Lessee and its employees shall not be entitled to receive any benefits of employment with the Town of Belmont, including without limitation salary, overtime, vacation pay, holiday pay, health insurance, life insurance, pension or deferred compensation.

- D. The Lessee may operate the Facility and set any hours of operation, which are acceptable to the Town and which comply with all ~~applicable laws, regulations and Town of Belmont By-Laws-Applicable Laws~~. However, the Facility shall at least operate between the hours of 7:00 A.M. and 10:00 P.M., seven (7) days a week, from September through April, excluding federal holidays. These minimum hours of operation may only be reduced or altered with the express prior written permission of the Town.
- E. The Lessee shall adhere to the following certain initial scheduling requirements for the first Season (or partial Season) of the Term, as provided in the “Initial Schedule” attached hereto as Exhibit [ \_\_\_\_ ]. As used herein, the term “Season” shall mean each period from the last week of November until the third Monday of March during the Term. Following such initial Season (or partial Season), [the Town shall have a right of first refusal upon certain daily blocks of time, to be selected at least ~~—ninety (90) days~~ prior to the start of each Season]; **NTD: Procedure for ROFO to be determined.** The hours set forth in the Initial Schedule and any subsequent schedule may not be reduced or altered without the express prior written permission of the Town. Any change in such schedule shall require the prior approval of the Select Board or its designee.
- F. The Lessee shall ensure that all visitors to the Facility, including, without limitation, players, skaters, coaches, officials, instructors, volunteers, parents, and spectators, shall be treated with respect and shall be able to enjoy the Facility without fear for personal safety or intimidation.
- G. The Lessee shall meet with the Committee on at least a semi-annual basis for the purpose of review of the foregoing priorities and shall provide the Committee with all reports and information necessary for the Committee to perform its oversight responsibility.
- H. The Town shall conduct a review of the Lessee's performance after the first (1<sup>st</sup>) anniversary of the Commencement Date. If in the sole determination of the Town, the Lessee has failed to provide services satisfactory to the Town, such failure shall constitute a default under this Lease, and the Town shall promptly notify Lessee of such failure in writing, including a statement of the reasons such services are unsatisfactory, whereupon Lessee shall cure such default within ten (10) days of such notice, or such longer period as may be reasonably necessary given the nature of such default and provided Lessee commences such cure within such ten (10) day period and diligently prosecutes the same to completion. If Lessee fails to cure such default as provided in the immediately foregoing sentence, Lessee shall be subject to a fine issued by the Town in the amount of [ \$\_\_\_\_\_ ] in each such instance.
- I. In addition, all items set forth in the Lessee's Management and Financial Plan, included with the Lessee's Proposal, ~~which are not set forth in this Lease~~ are incorporated herein by reference.
- J. Lessee may not hold more than one (1) Large Event every quarter during the Term. As used herein a “Large Event” shall mean any event, other than a Belmont High School Hockey Team ~~home game~~ game or an event held or sponsored by the Town of Belmont Recreation or School Departments, where Lessee reasonably anticipates the seating capacity of the Facility to be at or above ninety percent (90%).
3. Maintenance of the Premises and Facility.



- A. Damage by fire Lessee acknowledges and unavoidable casualty excepted, agrees that except as expressly provided in this Lease, Lessee shall be solely responsible for the maintenance, repair, and replacement of the Leased Premises and Facility to ensure the same are in a slightly and safe condition and in compliance with Applicable Laws.
- B. Lessee shall, at its expense, keep the Leased Premises and the Facility and the equipment therein clean, neat and in good order, repair and condition including the replacement of building systems within the Facility when necessary. ~~Except when damaged by fire or other casualty, the~~ Lessee shall keep all glass, including that in windows, doors and skylights, clean and in good condition, and shall replace any glass which may be damaged or broken with glass of the same quality.
- C. The Lessee shall, at its expense, keep the exterior grounds of the Leased Premises, including all parking areas, walkways and entrance areas, and all landscaping, in clean, neat and well-maintained condition. The Town at its expense will remove all snow and ice from the exterior of the Leased Premises, including but not limited to, all of the parking areas, driveways, truck ways, delivery passages and common truck areas, but excluding sidewalk and entrance areas. Once snow and ice have been removed by the Town, the Lessee agrees to maintain such areas in a condition which will assure safe public access to the Facility and shall immediately treat any ice areas with sand or de-icing agents so as to maintain safe access. The Lessee shall remove all snow and ice from the walkways and entrance areas. The Lessee agrees to save the Town harmless from and indemnify the Town against any and all claims, injuries, losses or damages of whatever nature caused by or resulting from or claimed to have been caused by or to have resulted from the Lessee's failure to maintain such safe access.
- D. The Lessee shall employ staff who are trained in the basics of ice making and knowledgeable about the daily maintenance of the mechanical equipment involved in the ice making process. The Lessee may, in addition, enter into a contract with an outside company for the periodic maintenance and servicing of all refrigeration and mechanical systems.
- E. The Lessee shall store all trash and refuse within the Facility and shall attend to the daily disposal thereof in the manner designated by the Town, shall keep all drains inside the Facility clean; shall service and deliver goods and merchandise only in the manner and areas designated by the Town; and shall conform to all reasonable regulations which the Town may make in the management and use of the Facility, requiring such conformance by the Lessee's employees.
- F. The Lessee shall make all repairs, alterations, additions, capital improvements, or replacements to the Leased Premises and Facility, required by law or by-law, or any order or regulation of any public authority, because of the Lessee's use thereof.

The Lessee shall keep the Facility equipped with all safety appliances so required for any such use; and shall comply with the orders and regulations of all governmental authorities, except in the event that the regulation shall be contested by the Lessee in good faith and by an appropriate legal proceeding, but only if the Lessee first provides financial assurance acceptable to the Town to cover any loss, cost or expense which may be incurred by either the Town or the Lessee on account thereof.

- G. The Lessee agrees to pay promptly when due the entire cost of any work to the Leased

Premises or Facility undertaken by the Lessee so that the Leased Premises shall at all times be free of liens for labor and materials. The Lessee also agrees to procure all necessary permits and approvals before undertaking such work and necessary approvals and sign-offs following completion of such work and to do all such work in a good and workmanlike manner, employing materials of good quality and complying with all governmental requirements and the Lessee further agrees to indemnify and hold harmless the Town from all injury, loss, damage, or claims to any person or property occasioned by or growing out of such work.

H. The Lessee shall be responsible for all required permits.

I. The Lessee is responsible for making repairs and completing all maintenance in a timely fashion.

#### 4. Financial Responsibilities

A. Rent. From and after the Effective Date, Lessee shall pay to the Town monthly base rent in the following amounts, in advance on the first day of each month (or prorated for any partial month), without demand:

During Construction Period: Construction Rent (as set forth in Section VII.1.E, above)

Commencement Date to first anniversary of Commencement Date: ~~1\$~~ 1\$ To Be Negotiated (“Base Rent”)

Base Rent shall increase by ~~1%~~ 1\$ To Be Negotiated% on each anniversary of the Commencement Date during the Term.

Base Rent, Construction Rent, and any other amounts due and payable by Lessee to the Town hereunder (“Additional Rent”) are hereinafter referred to as “Rent”.

B. The Lessee shall provide for all bookkeeping services and shall be responsible for the collection of all fees and the payment of all bills, charges and rates which by the terms of this Lease are to be paid by the Lessee, including the preparation and payment of any and all state and Federal taxes.

C. The Lessee shall prepare an annual budget and shall submit the same to the Committee for review and comment at least one (1) month prior to the beginning of each year of the Term of this Lease. In this context "annual budget" shall mean a budget for the period from July 1 through the following June 30.

Said annual budget shall include revenue estimates from all sources, including without limitation rental, public skating events, concessions, snack bar, pro shop, skating schools, and special events; estimated operating costs, including without limitation repairs, maintenance, taxes, insurance, bonds, utilities, overhead and reserves; and payroll and employee costs.

On a semi-annual basis, the Lessee shall submit to the Committee a report which compares the annual budget to the actual costs which have been incurred and the actual revenue which has been generated. The Lessee shall submit said report no later than sixty (60) days after December 31 of each year and sixty (60) days after June 30 of each year.

- D. As part of Lessee's Proposal, Lessee has submitted to the Town a detailed financial plan for each of the first five (5) years of the Term of this Lease. At least one (1) month prior to the start of the third year of the Term of this Lease, the Lessee shall submit to the Town an updated financial plan for the third through the tenth year of the term of this Lease. At the start of any Option Term, the Lessee shall submit to the Town an updated financial plan for the duration of said Option Term.
- E. The Lessee shall cause to have an annual audit for the revenues and expenses of its operations to be prepared by a certified public accountant and shall provide to the Town by March 30th of each year of the Lease Term and any extension or renewal thereof a report on the operations of the Premises including, but not limited to, independently audited financial statements reflecting the prior year's operations, a complete revenue and expense budget for the fiscal year to begin the following July 1, regarding the skating school program, the ice time rental program, marketing, snack bar operations and pro shop operations, sales and inventories.

5. Snack Bar, Pro Shop, Related Facilities

- A. The Lessee shall have the option to operate a snack bar on the Premises for the benefit and convenience of the patrons thereof, or to enter into a subcontract for that operation. The Lessee shall be responsible for the maintenance and repairs of all fixtures, furniture, equipment and appliances utilized in such operation. Any subcontract pursuant to the foregoing sentence shall be subject to the express prior written approval of the Town. The Lessee shall obtain at its expense all licenses, permits and approvals which are required for the operation of such a snack bar.
- B. The Lessee shall have the option to operate a pro shop on the Premises or to enter into a subcontract for that operation. Any such pro shop shall provide services in support of the ice skating operation including, but not limited to servicing and repair of ice skating equipment and the sale or rental of ice skating and hockey equipment and apparel. Any subcontract pursuant to the foregoing sentence shall be subject to the prior express written approval of the Town. The Lessee shall be responsible for the maintenance and repair of said pro shop.
- C. The Lessee shall be responsible for the purchase and maintenance of adequate supplies and inventories to support the efficient operation of the snack bar and pro shop.

6. Equipment, Furniture and Fixtures. The Lessee shall have the right to install at its own expense such equipment and furniture it considers necessary or desirable, and all such equipment and furniture shall remain the property of the Lessee and shall be clearly labeled as property of the Lessee. The Lessee shall annually provide a list of such furniture and equipment to the Town. The Lessee shall keep all equipment, furniture and fixtures clean, neat and in good order, repair and condition. The Lessee shall be responsible for maintaining and repairing such equipment, furniture and fixtures. Upon the expiration of the Term or other termination of this Lease, the Lessee shall have the right to remove all such equipment and furniture provided that the Lessee shall do so without damage to the Leased Premises and if any damages result from such removal, the Lessee shall be liable to the Town for such damages and shall promptly pay the Town for such damages upon demand. Notwithstanding anything herein contained to the contrary, no equipment shall be placed upon the Leased Premises which will violate or breach any other provision of this Lease.

7. Duties at Expiration/Termination. At the conclusion of the Term of this Lease, or any earlier

termination thereof, the Lessee shall vacate and yield up the Leased Premises and all alterations, additions and improvements thereto and all fixtures, furnishings, floor coverings and equipment in the Leased Premises, including the Facility, which shall thereupon become the property of the Town, clean and in good repair, order and condition, and in at least as good condition as they were on the date of this Lease, or, if applicable, the date of their subsequent installation, whichever occurs later, reasonable wear and tear and damage by fire or unavoidable casualty excepted. If Lessee fails to vacate and yield up the Leased Premises in accordance with the requirements of this paragraph, Lessee's tenancy shall be deemed a tenancy at sufferance, such possession shall be subject to immediate termination by the Town at any time, and all of the other terms and provisions of this Lease shall be applicable during such holdover period, except that Lessee shall pay the Town from time to time, upon demand, as Base Rent for the holdover period, an amount each month (or partial month) equal to one hundred fifty percent (150%) of ~~the Construction Rent last in effect, [adjusted by CPI];~~ the Construction Rent last in effect, as increased based on the increase (since the year such Construction Rent was last in effect) in the Consumer Price Index for all Urban Customers, U.S. City Average, all items (1982-84 = 100) as published by the U.S. Department of Labor, Bureau of Labor Statistics. All other payments (including payment of Additional Rent) shall continue under the terms of this Lease. In addition, if Lessee holds over for thirty (30) or more days following the expiration or earlier termination of this Lease, Lessee shall be liable for all damages incurred by the Town as a result of such holding over. No holding over by Lessee, whether with or without consent of the Town, shall operate to extend this Lease except as otherwise expressly provided, and this paragraph shall not be construed as consent for Lessee to retain possession of the Leased Premises.

8. Access of Town for Inspection. The Lessee agrees to permit the Town, its employees or agents to examine and inspect the Leased Premises and Facility, and every part thereof, at reasonable times and after prior notice to the Lessee except in an emergency, to determine the conditions of the facilities and to assure compliance with the terms of this Lease. The Lessee shall provide a staff person to provide access to all areas of the Leased Premises and Facility and to answer any questions regarding the operation thereof.

9. Negative Covenants.

- A. Except as expressly permitted in this Lease, the Lessee agrees not to assign or otherwise transfer its duties and obligations under this Lease without obtaining on each occasion the express prior written approval of the Town.
- B. The Lessee agrees not to: (i) injure, overload, deface or otherwise harm the Leased Premises; ~~not to~~(ii) commit any nuisance; ~~not to~~(iii) permit the emission of any objectionable noise or odor; ~~not to~~(iv) permit the improper storage, handling, transportation or disposal of hazardous materials; ~~not to~~; (v) burn any trash or refuse; ~~not to sell~~(vi) permit the consumption, sale, display, distributedistribution, or givegiving away of any alcoholic liquors or beverages at the Leased Premises or to be brought onto the Leased Premises-~~or to be consumed therein; not to~~, except with the prior written consent of the Town in its sole discretion, and in any event only upon the receipt of all necessary government permits therefor, and with the staffing of adequate security, as determined by the Town in its sole discretion; (vii) make any use of the Leased Premises which is improper, offensive or contrary to any law or ordinance or which will invalidate or increase the cost of any of the Town's insurance-~~not to~~; (viii) use any advertising medium which may constitute a nuisance, such as loudspeakers, sound amplifiers, phonographs or radio or television broadcasts in a manner to be heard outside the Leased Premises; ~~not to~~(ix) do any act tending to injure the

reputation of the building or the Town; ~~not to or (x)~~ sell or display merchandise on, or store or dispose of trash or refuse on, or otherwise obstruct, the driveways, walks, or parking areas outside the Facility.

- C. The Lessee further agrees not to make any alterations or additions to the Leased Premises without on each occasion obtaining express prior written consent of the Town, other than alterations that consist solely of decorative or cosmetic work that do not affect or involve the structural elements of the Facility or its systems, and which do not cost more than Fifty Thousand Dollars (\$50,000) in the aggregate, at any given time (either in a single project or a series of related projects), which shall not require the prior approval of the Town.

## **ARTICLE VIII**

### **TAXES AND UTILITIES**

1. Telephone. The Lessee shall make its own arrangements for telecommunications services and shall promptly pay therefor, including the cost of installation. The Lessee shall indemnify the Town against any liability or damages for such accounts.

2. Heat and Other Utilities. Notwithstanding anything herein to the contrary, the Lessee shall promptly pay all charges for gas, electricity, light, heat, power, water, sewer, and all other utilities and community services used, rendered or supplied upon or in connection with the Premises. The Lessee shall indemnify the Town against any liability or damages for such accounts. The Town shall have no liability for any interruption in utility services at the Leased Premises outside of the Town's reasonable ability to control.

~~4. Taxes. [To be inserted]~~

~~3. Taxes. Lessee 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, or every name, nature, and kind whatsoever, including all government 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 Leased Premises, the Facility or other improvements, or Lessee's personal property thereon, or any part of the same, or on Lessee'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 Lease, during the entire Term.~~

## **ARTICLE IX**

### **TOWN'S DUTIES**

1. Limitation of Town's Duties. The Town shall not be required to supply any service to the Leased Premises except as expressly provided in this Lease, and shall not be liable to anyone for interruption of an agreed service due to any accident, to the making of repairs, alterations or additions, to labor difficulties, to trouble in obtaining fuel, electricity, service or supplies or to any other cause beyond the Town's reasonable control. All personal property from time to time upon the Leased Premises shall be at the sole risk of the Lessee.

## **ARTICLE X**

## **DAMAGE AND DESTRUCTION**

1. In case the Leased Premises or any part thereof shall be damaged or destroyed by fire, or ordered to be demolished by the action of any public authority in consequence of a fire, or damaged by other casualty, this Lease shall, unless it is terminated as provided below in this Section, remain in full force and effect and Lessee shall, subject to receipt of sufficient insurance proceeds, proceed with all reasonable dispatch, repair or rebuild the Leased Premises so as to restore them to the condition they were in immediately prior to such damage or destruction. Lessee:

- a. shall not be responsible for any delay which may result from governmental regulations, inability to obtain labor or any other materials, force majeure, the collection of insurance proceeds, or any other cause beyond Lessee's reasonable control, and
- b. shall not be required to expend in such repair or rebuilding more than the proceeds of insurance, if any, recovered or recoverable with respect to the damage or destruction.

The Lessee shall at its expense, proceed with all reasonable dispatch to repair or replace such of its furniture, furnishings and floor coverings.

2. In the event the Premises and/or the buildings in which the Leased Premises are situated are destroyed (in whole or substantial part) by fire or other casualty, the Town may terminate this Lease at its sole election by notice in writing to the Lessee given as hereinafter provided within seventy-five (75) days after such destruction or damage.

## **ARTICLE XI**

### **DEFAULTS BY THE LESSEE AND REMEDIES**

1. Defaults. This Lease is made on the condition that if any failure to pay any Rent or other amounts due to the Town continues for more than ten (10) days after the due date, or if any default by the Lessee continues for more than thirty (30) days after written notice from the Town, (or such other periods as may be provided in this Lease) or if the Lessee makes any assignment for the benefit of creditors, commits any act of bankruptcy or files a petition under any bankruptcy or insolvency law, or if such a petition filed against the Lessee is not dismissed within ninety (90) days, or if the Lessee's interest in this Lease is taken on execution or other process of law in any action against the Lessee, then the Town may immediately or at any time thereafter and without demand or further notice enter and assume operation of the Premises, without prejudice to any other remedies, and thereupon this Lease shall terminate. In the case of such termination by legal proceedings for default, the Town may remove all the Lessee's property from the Premises forcibly if necessary and without being deemed guilty of any manner of trespass and may store them in any public warehouse, all at the expense and risk of the Lessee, and the Lessee shall pay to the Town upon termination as liquidated damages in one (1) lump sum the total of ~~all monies then in the possession of the Lessee or due and payable to the Lessee under any contract or other Lease executed by the Lessee in the exercise of its duties under this Lease.~~ **NTD: Pending Select Board input on amount of liquidated damages** [\$50,000.]

3.2. Right to Cure Defaults. ~~Either party~~ The Town may, but shall not be obligated to, cure, at

any time, without notice, any default by ~~the other party~~ Lessee under this Lease; and whenever ~~either party~~ the Town so elects, all reasonable costs and expenses incurred by ~~said party~~ the Town in curing a default shall be paid by ~~the other party~~ Lessee on demand. \_

4.3. Effect of Waiver of Default. No consent or waiver express or implied, by either party to or of any breach of any covenant, condition or duty of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant condition or duty.

5.4. The Lessee agrees to pay on demand the Town's reasonable expenses, including without limitation attorney's fees, incurred in enforcing any obligation of the Lessee under this Lease or incurred on account of any default by the Lessee under this Lease.

## **ARTICLE XII**

### **ASSIGNMENT AND SUBLET**

1. The Lessee shall not assign in whole or in part this Lease or in any way transfer any interest in this Lease without the prior express written approval of the Town in its sole discretion. ~~The Lessee shall not assign any money due or to become due to the Lessee unless the Town of Belmont shall have received prior written notice of such assignment. No such assignment shall relieve the Lease of its obligations under this Lease.~~ **[NTD: To be expanded]** For the purposes hereof, the term “assign” shall include a reorganization, dissolution, or merger of Lessee, whether by operation of law or otherwise, or the transfer of fifty percent (50%) or more of the ownership interests of Lessee. Any sublease approved by the Town shall be in writing, and shall be made expressly subject to the terms and provisions of this Lease. Lessee shall pay upon demand the Town’s actual out-of-pocket costs associated with reviewing or processing any such request to assign or sublet, which may include reasonable attorney’s fees. No assignment of this Lease or sublease of the Leased Premises shall relieve Lessee of its obligations hereunder.

2. The Lessee shall not assign any money due or to become due to any party, including without limitation Lessee, other than to an institutional lender to which Lessee has pledged collateral related to the Leased Premises, unless the Town of Belmont shall have received prior written notice of such assignment and approved the same in writing, in its reasonable discretion. No such assignment shall relieve the Lease of its obligations under this Lease.

## **ARTICLE XIII**

### **ENVIRONMENTAL**

#### 1. Definitions.

A. “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. (“SARA”); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. (“TSCA”); 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 Town or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (as defined in Section 12.4 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, storm water drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

B. “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.

2. Lessee’s Environmental Representations, Warranties, and Covenants. Lessee hereby represents, warrants, and covenants as follows:

A. Except as may be permitted by and only in accordance with Environmental Laws, Lessee shall not allow any Hazardous Materials to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Leased Premises and shall strictly comply with all Environmental Laws affecting the Leased Premises. Without limiting the generality of the foregoing, Lessee is not, and will not become, involved in operations at the Leased Premises involving Hazardous Materials, except as expressly permitted by Applicable Laws.

B. No activity shall be undertaken on the Leased Premises by Lessee which would cause (i) the Leased 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 wet premises, 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. Lessee 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 Leased Premises including all removal, containment and remedial actions. Lessee 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 Leased Premises.

3. Town’s Environmental Representations, Warranties, and Covenants. The Town hereby represents, warrants and covenants as follows:

A. The Town, to the best of its knowledge, has not 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 Leased Premises.

B. No activity shall be undertaken on the Leased Premises by the Town which would cause (i) the Leased 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 wet premises, 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.

4. Indemnity. Lessee hereby presently, unconditionally, irrevocably and absolutely agrees to pay, indemnify, defend with counsel acceptable to the Town and save harmless the Town, their employees, contractors, agents, servants, or licensees (the “Town Parties”) for, from and against any and all claims, damages, losses, penalties, costs, expenses and fees (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 Leased Premises, or as a consequence of any of Lessee’s or the Town’s interest in or operation of the Leased Premises or the Facility, including, without limitation, matters arising out of any breach of Lessee’s covenants, representations and warranties. Lessee does further agree and covenant that except as otherwise set forth in this 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 Leased 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 Leased Premises or otherwise. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive the expiration or earlier termination of this Lease. In addition, the covenants and indemnities of Lessee contained herein shall survive any exercise of any remedy by the Town under the Lease. Lessee 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 XIV

## WARRANTIES AND REPRESENTATIONS

1. Lessee warrants and represents, to the best of its knowledge, the following facts and conditions are true as of the date of this Lease and shall remain true during the Term:

- A. Lessee is a duly organized, lawfully existing [ \_\_\_\_\_ ] in good standing under the laws of the Commonwealth of Massachusetts. Lessee has full power and authority to enter into and perform its obligations under this Lease and carry out the transactions contemplated hereby. This Lease is, and all documents to be executed by Lessee in connection with this Lease, shall be, duly authorized, executed, and delivered by Lessee, shall be legal, valid, and binding obligations of Lessee, enforceable in accordance with their respective terms, will not violate any provision of any contract, judicial order, or any other thing to which Lessee is subject or bound, and all necessary consents and approvals of third parties to such instruments will have been obtained.
- B. There is no existing, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Lessee that would materially adversely affect Lessee’s ability to perform its obligations under this Lease.
- C. Lessee is not a “foreign person” within the meaning of United States Internal Revenue Code §1445(f)(3).
- D. Lessee is not a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) or other similar governmental action.
- E. Lessee has had no dealings or negotiations with any broker or agent in connection with this Lease, and shall pay and hold the Town harmless and indemnified from and against any and all costs, expenses, or liability for any compensation, commissions, and charges claimed by any broker or agent resulting from any such dealings.

## ARTICLE XV

### **MISCELLANEOUS PROVISIONS**

2. Energy Conservation. The Lessee agrees to enforce all energy conservation measures which the Town or Town and the Lessee may agree to and to construct the ~~skating rink~~ Facility to the highest energy conservation standards.

3. Notices. Any notice to the Town or to Lessee shall be given in writing and shall be deemed duly served if hand-delivered or if mailed, postage prepaid, by registered mail or certified mail, return receipt requested, addressed, if to the Town, to the Belmont School Committee, School Administration Building, 644 Pleasant Street, Belmont, MA 02478, with ~~a copy to~~ George copies to (i) Town Administrator, Town Hall, 455 Concord Avenue, 1<sup>st</sup> Floor, Belmont, MA 02478, and (ii) George A. Hall, Jr., Anderson & Kreiger, LLP, 50 Milk Street, 21st Floor, Boston, MA 02109, and if to Lessee, to the Leased Premises, or to such other place as either

party may designate by written notice to the other party.

4. Town's Liability. Anything contained in this Lease to the contrary notwithstanding, but without limitation of the Town's equitable rights and remedies, the Town's liability under this Lease shall be enforceable only out of the Town's interest in the Leased Premises, and there shall be no other recourse against, or right to seek a deficiency judgment against, the Town, not 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. In no event shall the Town be liable to Lessee for any indirect, special, or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Lease.

5. Authority. Except as otherwise provided in this Lease, the Town shall be authorized to act pursuant to the terms and provisions of this Lease: (i) until the Substantial Completion Date, upon majority vote of the Town of Belmont Select Board, and (ii) from and after the Substantial Completion Date, upon majority vote of the Town of Belmont School Committee. All such actions shall be subject to all municipal approvals, if and to the extent so required.

6. Time is of the Essence. Time shall be of the essence hereof.

7. Force Majeure. Whenever a period of time is herein prescribed for the taking of any action by the Town or Lessee, as the case may be, the Town or Lessee shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, lockouts, riots, acts of God, shortages of labor or materials, war, civil commotion, fire or other casualty, or catastrophic weather conditions (any of the foregoing being referred to as "Force Majeure"). Force Majeure shall not be deemed to have occurred until the party claiming the benefit or excuse of Force Majeure provides written notice to the other party of the event of Force Majeure. In no event shall any party's financial condition or inability to fund or obtain financing constitute Force Majeure with respect to such party.

4.8. Compliance with Laws. The Lessee shall comply with all provisions of Federal, Massachusetts and Town of Belmont laws applicable to his work including without limitation statutes, by-laws, rules, regulations, orders and directives, as amended, and including, without limitation, the Williams-Steiger Occupational Safety and Health Act, as amended, and related regulations, as amended, in effect throughout the term of this Lease and any extension or renewal thereof. Without limitation, the Lessee shall comply with the provisions of Chapter 149, Sections 26 to 27D of the Massachusetts General Laws, as amended, the so-called Prevailing Wage Law, and the applicable minimum wage rates as determined by the Massachusetts Commissioner of Labor and Industries. This Lease shall be considered to include in their entirety all terms respecting workers' compensation insurance and other terms required to be included in it by Chapter 152 of the Massachusetts General Laws, as amended, and any other laws, as though such terms were set forth in their entirety herein.

5.9. Nondiscrimination. The Lessee shall not discriminate against or exclude any person from participation herein on grounds of race, color, religious creed, national origin, sex, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, gender identity, age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap. The previous sentence shall include, but not be limited to, the following: advertising, recruitment; hiring; rates of pay or other forms of compensation; terms; conditions or privileges of employment; employment

upgrading; transfer; demotion; layoff; and termination. The Lessee shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to race, color, religious creed, national origin, sex, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap.

~~6~~10. Choice of Law. This Lease shall be governed by and interpreted according to the laws of the Commonwealth of Massachusetts. Any action at law or suit in equity instituted by the Lessee as a result of the performance, non-performance or alleged breach of this Lease shall be filed in the Superior Court of the Commonwealth of Massachusetts for Middlesex County, MA, and in no other court or jurisdiction.

~~7~~11. Other Agreements. There are no oral or written agreements between the Town and the Lessee affecting this Lease.

~~8~~12. Table of Contents. The Table of Contents, the titles of the several articles and sections contained herein are for convenience only and shall not be considered in construing this Lease.

~~9~~13. Meaning of Terms. Unless repugnant to the context, the words "Town" and "the Lessee" appearing in this Lease shall be construed to mean those named above, their respective heirs, executors, administrators, successors and assigns, and those claiming through or under them, respectively. Whenever the singular is used and when required by the context it shall include the plural and the neuter gender shall include the masculine and feminine.

~~10~~14. Relationship of Parties. The Town shall not be deemed, in any way or for any purpose, to have become, by the execution of this Lease for any action taken thereunder, a partner of the Lessee in its business or otherwise or a joint venturer or a member of any joint enterprise with the Lessee.

~~11~~15. Joint and Several Obligations. If there be more than one (1) Lessee, the obligations imposed by this Lease upon the Lessee shall be joint and several.

~~12~~16. Amendment. This Lease may be amended only by instrument in writing executed by the Town and the Lessee.

~~13~~17. Binding Effect. The provisions of this Lease shall be binding upon and shall inure to the benefit of the heirs, assigns and successors in interest of the parties.

~~14~~18. Confidentiality. The Lessee shall maintain the confidentiality of information designated by the Town as confidential, unless withholding such information would violate the law or create a risk of significant harm to the public, or unless the Lessee has been required to release such information by final judgment or order of a court of competent jurisdiction, or unless the Town has expressly waived such confidentiality in advance in writing.

~~15~~19. Invalidity/Severability. If any provision, or portion thereof, of this Lease shall be adjudged to be invalid or unenforceable by final judgment or order of a court of competent jurisdiction the remaining provisions shall continue in effect to the extent permitted by law.

~~16.20.~~ Media Relations. The Lessee shall not represent or purport to represent that it speaks for the Town vis-a-vis the media or the public at-large without the Town's express, written consent in advance.

~~17.21.~~ No Boycott. The Lessee shall not participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 15IE of the Massachusetts General Laws.

~~18.22.~~ No Waiver. The failure of either party to insist upon the strict performance of any provision of the Lease shall not constitute a waiver of compliance with the remaining provisions of this Lease.

~~19.23.~~ No Warranties. The Lessee hereby acknowledges that it has not been influenced to enter into this Lease, nor has the Lessee relied upon any warranties or representations not set forth in this Lease, including the Request for Proposals.

~~20.24.~~ Non Collusion. By entering into this Lease the Lessee certifies under penalties of perjury that ~~its~~ Lessee's Proposal was made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

~~21.25.~~ Tax Compliance and Other Statutory Certifications.

- A. By entering into this Lease, the Lessee hereby certifies, pursuant to M.G.L.c.62C, §49A, that it is in compliance with all laws of the Commonwealth of Massachusetts pertaining to taxes, to the reporting of employees and contractors, and to the withholding and remitting of child support.
- B. By entering into this Lease, the Lessee acknowledges that the Massachusetts Conflict of interest Law, Chapter 268A of the Massachusetts General Laws, applies to the Lessee with respect to its performance under this Lease. The Lessee and its officers, employees, agents, contractors, subcontractors and affiliated agencies shall not participate in any activity which constitutes a violation of the Massachusetts Conflict of Interest Law or which creates an appearance of a violation of the Massachusetts Conflict of Interest Law.
- C. By entering into this Lease, the Lessee hereby certifies that, pursuant to M.G.L. c.7, §40J, it shall make any required disclosure of beneficial interest in real property.
- D. To the extent that any of the foregoing sections required by Massachusetts law are **inconsistent with other, non-statutory sections in this Lease, any statutorily-mandated provisions contained herein shall control.**

*[Signature Page Follows]*

This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**LESSOR:**  
TOWN OF BELMONT,  
a Massachusetts municipal corporation

**LESSEESSEE:**  
~~X~~  
~~X[Awarded Bidder]~~

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID#:-----