

APPENDIX C

Issues and Financial Matters Specific to Association

11. For greater certainty, the Association is an independent society under the *Societies Act*, and the Association represents that it is not a “member funded society” as defined in the *Societies Act* nor does it operate a business for the purpose of profit or gain. The Park Board acknowledges that if the Association has Retained Earnings or a budget surplus that shall not constitute a breach or default under Section 4.2 of the Agreement.
12. The Park Board recognizes that the Association conducts a variety of different activities to serve the local community and the public and confirms that it shall not constitute a breach or default under Section 4.2 of the Agreement if the Association carries on programs or initiatives in addition or ancillary to the provision of Programming and other services within the Community Centre Network including but not limited to, providing paid parking lots or Licensed Childcare.
13. For greater certainty with regard to Section 4.2(d) of the Agreement, the Park Board acknowledges that the Association is an independent society under the *Societies Act* and must comply with applicable law and answer to its members. With that recognition of the Association’s other legal obligations, the parties wish to clarify that the question of whether the Association has adopted bylaws and/or governance procedures that conflict with the terms of this Agreement or do not permit the Association to carry out its roles and responsibilities under this Agreement, should this question arise, shall be determined on an objectively reasonable standard, is not in the sole discretion of the Park Board, and, if the parties disagree on whether the Association has adopted bylaws and/or governance procedures that conflict with the terms of this Agreement or do not permit the Association to carry out its roles and responsibilities under this Agreement, either party may invoke the dispute resolution mechanism set out in Section 18.1 and proceed to arbitration under Section 18.1A. The parties agree that the interpretation of whether or not a particular bylaw or governance procedure is in conflict with the terms of this Agreement may be determined by arbitration because Section 4.2(d) deals with the Association’s internal bylaws and governance procedures. Bylaws or governance procedures adopted by the Association shall in no way exempt the Association from its obligation to comply with Public Policy, as it may be amended, replaced or updated from time to time.
14. For greater certainty with regard to Section 6.1 of the Agreement, the Park Board acknowledges that the Association is an independent society under the *Societies Act* and must comply with applicable law and answer to its members. With that recognition of the Association’s other legal obligations, the parties wish to clarify that while the Association is required under this Agreement to adopt and adhere to certain internal policies and standards, as described in the first two paragraphs of Section 6.1 of the Agreement, the question of whether the Association’s policies and standards meet the criteria of the first two paragraphs of Section 6.1 of the Agreement, should this question arise, shall be determined on an objectively reasonable standard, and not in the sole discretion of the Park Board, and, if parties disagree on this point, either party may invoke the dispute resolution mechanism set out in Section 18.1 and proceed to arbitration under Section 18.1A. The parties agree that the question of whether the Association’s policies and standards meet the criteria of the first two paragraphs of

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Section 6.1 of the Agreement may be determined by arbitration because the first two paragraphs of Section 6.1 deal specifically with the Association's internal policies and standards.

15. The Park Board acknowledges that the Association currently uses Retained Earnings to pay for initiatives which are for the benefit to the community. In addition to the uses specified in Section 14.3 of the Agreement, the Park Board acknowledges and agrees that the Association may make expenditures from Retained Earnings for:
- (a) capital improvements or enhancements to public recreation facilities in the community served by the Association, including parks, playfields or other recreational improvements or facilities;
 - (b) bursaries and scholarships for community involvement, leadership or volunteering;
 - (c) donations to support the provision of public community events or initiatives; ~~and or~~
 - (d) professional services (including legal services) relating to: (i) the implementation and administration of the Agreement; (ii) Programming, services and community building initiatives offered by the Society at or from the Jointly Operated Facilities; (iii) planning for physical improvements to or capital projects within the Community Centre Network; or (iv) capacity building initiatives of the Association for the purposes of enhancing the provision of services to the community.

The Park Board acknowledges that these initiatives are of benefit to the community and agrees that they are an appropriate use for Retained Earnings. Furthermore, for greater clarity with regard to Section 14.3(e) of the Agreement and Retained Earnings, the parties understand and agree that the Association must incur certain expenses in order to provide the Programming and other services within the Community Centre Network and, as set out in Section 14.3(e), the Association may spend or use its Retained Earnings as an operating contingency for such purposes.

16. The Park Board and the Association agree that, during the last year of the Term, the System-wide Planning Sessions will be used by the parties to discuss the ongoing relationship of the parties after the Term and what changes may be required to this Agreement prior to the parties entering into a new joint operating agreement for a new term, should both parties wish to continue joint operation of the Jointly Operated Facilities after such discussions. If the parties consider it prudent, they may schedule additional sessions in addition to the System-wide Planning Sessions to ensure fulsome good faith discussions about the continuing relationship of the parties after the Term.

For the purposes of this section, the parties agree that "fulsome" will mean "abundant and encompassing of all aspects".

17. For the purposes of Section 20.1 of the Agreement, the parties agree that if the Park Board determines that the Association is or has been in sustained breach of the

Agreement or if the Park Board holds reasonable concerns regarding the Association's ability to operate the new space in a safe, professional and compliant manner such that the new space is not automatically included in the scope of the Jointly Operated Facilities, the decision about whether or not to include the new space within the scope of the Jointly Operated Facilities shall be determined on an objectively reasonable standard and on an objectively reasonable basis. If the Association disagrees with whether the Association is or has been in sustained breach of this Agreement or whether the decision to include or exclude the new space from the scope of the Jointly Operated Facilities has been determined on an objectively reasonable standard and on an objectively reasonable basis, then the Association may invoke the dispute resolution mechanism set out in Section 18.1 of the Agreement and, if the matter is not resolved after proceeding through the dispute resolution process, the Association may elect to proceed to arbitration under Section 18.1A.

For greater clarity and for the purposes of Section 20.1 of the Agreement:

- a) the parties agree that a "sustained" breach shall occur where:
 - i. there has been a breach that is material or non-material in nature;
 - ii. the Park Board has notified the Association in writing about the breach within 30 days after discovery and provided a reasonably detailed explanation;
 - iii. the breach is not remedied in accordance with the timelines and processes set out in Section 21.1 of the Agreement (which timelines and processes, for the purpose of Section 20.1 of the Agreement, shall not require a notice of termination to initiate the timelines and processes, and shall not result in the termination of the Agreement); and
 - iv. the breach has occurred since the signing of the Agreement; and
- b) the parties agree that "reasonable concerns" shall only apply where:
 - i. the Park Board has notified the Association in writing of its concerns about the Association within 30 days after such concerns arising and provided a reasonably detailed explanation;
 - ii. the Park Board has provided evidence to substantiate its concerns; and
 - iii. the concerns are not remedied in accordance with the timelines and processes set out in Section 21.1 of the Agreement (which timelines and processes, for the purpose of Section 20.1 of the Agreement, shall not require a notice of termination to initiate the timelines and processes, and shall not result in the termination of the Agreement); and
 - iv. the concerns relate to circumstances or incidents that have occurred since the signing of the Agreement.

18. For the purposes of Section 20.3 of the Agreement, the parties agree that if the Park Board determines that the Association is or has been in sustained breach of the Agreement or if the Park Board holds reasonable concerns regarding the Association's ability to operate all or any component of the replacement facility in a safe, professional and compliant manner such that this Agreement is not extended to all or any component of the replacement facility, the decision about whether or not to extend this Agreement to all or any component of the replacement facility shall be determined on an objectively reasonable standard and on an objectively reasonable basis. If the Association disagrees with whether the Association is or has been in sustained breach of this Agreement, or whether the decision to extend this Agreement to all or any component of the replacement facility has been determined on an objectively

reasonable standard and on an objectively reasonable basis, then the Association may invoke the dispute resolution mechanism set out in Section 18.1 of the Agreement and, if the matter is not resolved after proceeding through the dispute resolution process, the Association may elect to proceed to arbitration under Section 18.1A.

For greater clarity and for the purposes of Section 20.3 of the Agreement:

- a) the parties agree that a “sustained” breach shall occur where:
 - i. there has been a breach that is material or non-material in nature;
 - ii. the Park Board has notified the Association in writing about the breach within 30 days after discovery and provided a reasonably detailed explanation;
 - iii. the breach is not remedied in accordance with the timelines and processes set out in Section 21.1 of the Agreement (which timelines and processes, for the purpose of Section 20.3 of the Agreement, shall not require a notice of termination to initiate the timelines and processes, and shall not result in the termination of the Agreement); and
 - iv. the breach has occurred since the signing of the Agreement; and
- b) the parties agree that “reasonable concerns” shall only apply where:
 - i. the Park Board has notified the Association in writing of its concerns about the Association within 30 days after such concerns arising and provided a reasonably detailed explanation;
 - ii. the Park Board has provided evidence to substantiate its concerns; and
 - iii. the concerns are not remedied in accordance with the timelines and processes set out in Section 21.1 of the Agreement (which timelines and processes, for the purpose of Section 20.3 of the Agreement, shall not require a notice of termination to initiate the timelines and processes, and shall not result in the termination of the Agreement); and
 - iv. the concerns relate to circumstances or incidents that have occurred since the signing of the Agreement.

19. The Park Board confirms that the termination provisions in Section 21.1 apply only in the case of a sustained, material, un-remedied breach of the Agreement. If the Association disagrees whether or not a breach meets these criteria, they may invoke the dispute resolution mechanism set out in Section 18.1 of the Agreement. The Park Board further confirms that the Association has a cure period of 60 days (as more specifically set out in Section 21.1) to remedy such breach (except in the case of emergency) and that if more than 60 days is required to remedy the breach (using reasonable resources and acting diligently), then the Association will not be considered to be in breach after 60 days and for such longer period as is required to remedy the breach, provided the Association is making reasonable and diligent efforts to remedy the breach in a timely manner (all as more specifically set out in Section 21.1). For additional clarity, the Park Board confirms that “reasonable and diligent efforts” must be objectively reasonable and it is not in the sole discretion of the Park Board whether efforts to remedy a breach are “reasonable and diligent”. If the parties disagree with whether efforts have been reasonable and diligent, either party may invoke the dispute resolution mechanism set out in Section 18.1. With regard to Section 21.1(e) of the Agreement, the parties wish to confirm that “continuously and diligently” must be objectively reasonable and it is not in the sole discretion of the Park Board whether efforts to remedy a breach are being made “continuously and diligently”. If the parties disagree with whether efforts have been continuous and diligent, either party may invoke the dispute resolution

mechanism set out in Section 18.1. Further with regard to Section 21.1(e), the parties wish to clarify that the Park Board's right to terminate the Agreement with no further notice required occurs only after the initial notice periods contemplated by Section 21 have passed.

20. In the interest of clarity the parties wish to confirm that, at all times during the Term including any Renewal Term, the Agreement shall remain in full force and effect during any dispute resolution mechanisms as set out in the Agreement.
21. The parties agree that the negotiations to enter into the Agreement have been carried out between the CCAs and Park Board but that the final approval of the body of the Agreement was given by the Park Board Commissioners on behalf of the Park Board. With that in mind, and for greater certainty with regard to the administration of the Agreement, the Park Board acknowledges that, while authority to administer the Agreements rests with the General Manager of the Park Board, the General Manager of the Park Board will not issue a notice of termination pursuant to the Agreement unless it is authorized by the Park Board Commissioners.
22. The Park Board agrees that if the Park Board agrees to include wording in the appendices of another CCA that would have the effect of modifying or amending a section of the body of the Agreement, the Park Board agrees that it will provide such wording to the Association and such wording may be added to this Appendix C at the election of the Association. The foregoing will not apply in the case of modifications to the appendices of a CCA which are intended to address current practice or unique operations of a particular CCA.
23. The Association and the City/Park Board have entered into various agreements relating to the operation, maintenance and revenue generation and sharing of the Hastings Parking Lot located at Renfrew and Hastings Street and the parking lot built in the old "Lacrosse Box" area (the "**Parking Lot Agreements**"). Nothing in this joint operating agreement affects the Parking Lot Agreements and the Parking Lot Agreements are not included within the scope of this joint operating agreement. **[Hastings specific]**