

THIS AMENDED OPERATIONS AND MAINTENANCE AGREEMENT dated the day of
, 2019 and effective as of the of day of , 2019

BETWEEN:

THE CORPORATION OF THE CITY OF CLARENCE ROCKLAND
(Hereinafter called the "City")

OF THE FIRST PART

AND:

ACADEMIE CIH/ CIH ACADEMY
(Hereinafter called the "Academy")

OF THE SECOND PART

WHEREAS the Academie de Rockland / Rockland Academy is a registered charity incorporated for the purpose promoting education by operating a private coeducational residential secondary school and is committed to establishing a coeducational residential hockey program in eastern Ontario;

AND WHEREAS the Academy is a not-for-profit affiliate of the Academie de Rockland / Rockland Academy that has been incorporated for the purposes of undertaking activities in connection with the City Facilities including but not limited to operating and maintaining the City Facilities in accordance with the terms of this Agreement;

AND WHEREAS on July 8, 2009, the Federal and Provincial Governments approved the construction of the City Facilities for funding under the Building Canada Fund;

AND WHEREAS pursuant to a funding agreement or agreements to be entered into by the City and the Federal and Provincial Governments, the upper levels of government will reimburse the City for 66.66% of Eligible Costs incurred in connection with the construction of the City Facilities up to a maximum of \$13.8 Million;

AND WHEREAS the City passed By-law No. 2010-165 on October 12, 2010 authorizing the execution of a Municipal Capital Facilities Agreement and confirming that the City Facilities constitute a Municipal Capital Facility pursuant to subsection 110 of the *Municipal Act, 2001*;

AND WHEREAS in furtherance of its objective of establishing a hockey academy in Clarence-Rockland, the Academy intends to reimburse Four Million Dollars plus interest of the City's contribution to the cost of constructing the City Facilities;

AND WHEREAS the parties have entered into the Framework Agreement dated October 19, 2009 which outlines the respective general obligations and the terms pursuant to which the City Facilities shall be erected and ultimately operated;

AND WHEREAS the City is desirous of operating the City Facilities in such a way that will best serve the residents of the City of Clarence-Rockland and its environs;

AND WHEREAS to achieve its desire, the City has determined that it requires professional services to manage the City Facilities;

AND WHEREAS the Academy has represented to the City that it has the skills and resources necessary to provide the Services and warrants and represents that it is qualified to perform the services required by the City as set forth in this agreement;

AND WHEREAS the City, on the basis of the representations of the Academy, has agreed to retain the Academy to operate and manage the City Facilities.

NOW THEREFORE this agreement witnesseth that in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

DEFINITIONS

1. In this Agreement the following words shall have the meanings as described below:

„Academy" means Academie CIH / CIH Academy;

"Academy Offices and Fitness Room" means the offices to be used by Academy coaches, the meeting room, common space and fitness room located on the Upper Level and identified as such on Schedule B-2;

"Academy Facilities Lands" means the parcel of land described as Part 1 on Plan SOR-9854 being Part of Lots 21, 22 and 23, Concession 1 O.S. in the Geographic Township of Clarence; City of Clarence-Rockland being part of PIN 69057-0304;

"Agreement" means this City Facilities Operations and Maintenance Agreement and any schedules or amendments in writing thereto;

"Book Value" means the asset's cost minus the accumulated depreciation since the asset was acquired.

"Building Canada Fund Agreement" means the agreement between Her Majesty the Queen in Right of Canada and the City;

"Building Systems" means all mechanical, electrical, HVAC, water, sewage, security and safety systems, landscaping and fencing contained in, on or around the City Facilities;

"Capital Replacement Fund" means the fund established by the Academy and the City in accordance with section 14 of this Agreement to pay for Major Capital Replacements, as may be required from time to time,

"Concession" means the small restaurant/concession area located on the Upper Level of the City Facilities and identified as such on Schedule B-2;

"City Development Agreement" means the development agreement entered into by the parties in connection with the construction of the City Facilities and the rights and obligations of the parties therein;

"City Facilities" means the twin ice hockey arena (including all related rooms and areas) together with the adjacent parking areas, walkways, internal roads and other areas shaded in grey on the plan attached as Schedule "A". The City Facilities do not include the soccer field and/or future soccer fields which use shall be governed by the Soccer Field Use Agreement attached as Schedule "K";

"City Facilities Lands" means the parcel of land described as Part 2 on Plan SOR-9854 being Part of Lots 21, 22 and 23, Concession 1 O.S. in the Geographic Township of Clarence; City of Clarence-Rockland being part of PIN 69057-0304;

"Commencement Date" means the 15th day of July, 2012

"Contaminant" shall have the same meaning as provided for in the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended;

"Cooperative Venture" means the venture between the City and the Academy in connection with the construction, operation and use of the City Facilities, as more clearly defined in the Formal Agreements;

"Eligible Costs" means those costs related to and incurred by the City in connection with the construction of the City Facilities which are eligible for funding under the Building Canada Fund as more particularly set out in the funding agreements entered into by the City;

"Events of Default" is defined in Section 48;

"Facilities" means the City Facilities and the Academy Facilities, referred to collectively;

"Formal Agreements" means collectively, the Framework Agreement, the Land Lease, the City Development Agreement, the Academy Development Agreement and this City Facilities Operation and Maintenance Agreement, the Municipal Capital Facilities Agreement, the Ice Time Agreement, the Soccer Field Use Agreement and such other documents that the parties hereto deem necessary to give effect to the transactions contemplated by the Framework Agreement;

"Framework Agreement" means the agreement entered into by the Parties on October 19, 2009;

"Land Lease" means a land lease of the Academy Facilities Lands entered into between the City as landlord and the Academy as tenant;

"Major Capital Replacements" means, for any period and in respect of any portion of the City Facilities referred to in this Agreement, any expenditures authorized in writing by the City relating to the City Facilities of a nature usually charged to capital account, determined in accordance with generally accepted accounting principles consistently applied which is in excess of Twenty-five Thousand Dollars (\$25,000.00), exclusive of applicable taxes, professional fees and contingencies.

"Municipality" or "City" means the Corporation of the City of Clarence-Rockland;

"Normal Business Hours" means such hours which are required for the Academy to fulfill its obligations under this Agreement and the Formal Agreements and, unless otherwise agreed by the parties shall consist of those times between the hours of [7:00am to 11:00 pm] during which the use of the Ice Rinks is rented to a person other than the Academie de Rockland / Rockland Academy, statutory holidays excluded;

"Non-Eligible Costs" means all costs which are not Eligible Costs including but not limited to start-up costs, equipment, furniture and fixtures required for the use and operation of the Arenas including but not limited to computers, signage, telephone system, score clock, security cameras, tools, edgers, dehumidification unit, fuel maker, skate sharpener, nets, Zamboni, fax machine and copy machines.

"Parties" means both the City and the Academy referred to collectively;

"Person" or "Persons" means any individual, partnership, corporation, joint venture, association, joint stock company, trust, unincorporated organization, utility or a governmental authority, department or other agency;

"Plans and Specifications" means the plans and specifications for the City (as prepared by the Architect and dated August 23rd 2011, a copy of which has been provided by the City to the Academy prior to execution of this Agreement), and all changes thereto from time to time;

"Realty Taxes" means all real property taxes, rates, duties and assessments (including local improvement rates), impost charges or levies, whether general or special, that are levied, charged or assessed from time to time by any lawful authority, whether federal, provincial, municipal, school or otherwise, and any taxes payable by the City which are imposed in lieu of, or in addition to, any such real property taxes, whether of the foregoing character or not, and whether or not in existence at the commencement of the Term, and any such real property taxes levied or assessed against the City on account of its ownership of the City Facilities or its interest therein, but specifically excluding any taxes assessed on the income of the City;

"**Services**" means the tasks, duties and responsibilities specified in the Statement of Work attached as Schedule "C", and any other services of a similar kind for which the Academy has represented that it has the skills and resources;

"**Term**" means a period of Thirty (30) years from the Commencement Date;

"**Transfer**" means an assignment of this Agreement in whole or in part, a sublease of all or any part of the City Facilities, any transaction whereby the rights of the Academy under this Agreement or to the City Facilities are transferred to another person, any transaction by which any right of use or occupancy of all or any part of the City Facilities is shared with or conferred on any person, any mortgage, charge or encumbrance of this Agreement or the City Facilities or any part thereof, or any transaction or occurrence whatsoever which has changed or will change the identity of the person having lawful use or occupancy of any part of the City Facilities, in any such case without the consent of the City;

"**Transferee**" means any person or entity to whom a Transfer is or is to be made.

OPERATING PRINCIPLES

- 2) This Agreement is intended to provide a framework to define the mutual roles and responsibilities of the parties. In addition to the parties' respective specific obligations set forth in this Agreement, the City and the Academy agree to continue to develop their mutual roles and responsibilities in developing, managing and operating the City Facilities and designated programs and agree that the following principles will apply in relation thereto:
 - a) The relationship between the parties is based on mutual trust and respect;
 - b) The Academy agrees to provide Services applicable to a first rate facility to ensure that the needs of the Clarence-Rockland community, within the framework of this Agreement, and the requirements of the Building Canada Fund Agreement are being met;
 - c) There shall be open and honest communications between the parties with a view to solving all differences and problems that may arise by way of consensus;
 - d) The Academy shall co-ordinate the development and operation of the City Facilities;
 - e) The parties agree to ensure that space is made available within the City Facilities to meet the needs of minor sports associations and of the community while ensuring the successful operation of the City Facilities;
 - f) The parties shall ensure an inclusive environment that provides a variety of ways to access the Services within the City Facilities;
 - g) The Academy has agreed to operate the City Facilities in a financially accountable manner, including the ongoing development, maintenance and lifecycle replacement of the facilities and amenities as more specifically set out in this Agreement;
 - h) The parties shall share all information and communications as they relate to the City Facilities to the extent permitted by applicable laws;
 - i) The parties hereto have an interest in the ongoing maintenance and repair of the City Facilities. The City's capital investment is best protected if funds are available and procedures are in place to ensure that major equipment and the facility infrastructure are maintained in a state of good repair. As the operators of the facility, the Academy will directly affect capital conservation and maintenance costs. If the Academy's operating procedures place a high priority on preventative maintenance, long-term capital costs will be reduced.

3) Sections and Headings.

The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereon", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

4) Number.

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa* and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and *vice versa*.

5) Schedules. The following schedules, as amended from time to time, are annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule A	Site Plan
Schedule B-1	Floor Plan - Lower Level
Schedule B-2	Floor Plan - Upper Level
Schedule C	Statement of Work
Schedule D	Amortization Schedule -
Schedule E	CRAETC - Capital Repair and Replacement Report
Schedule E1	Capital Replacement Fund Table A
Schedule F	Hydro One - Customer Service Contract
Schedule G	Public Skating, Shinny Hockey and Ringuette Policy
Schedule H	Accessible Customer Service Policy
Schedule I	Alcohol Management Policy
Schedule J	Ice Rental Agreement
Schedule K	Soccer Field Use Agreement
Schedule L	Municipal Arenas Signage Policy for Local Sports Associations

APPOINTMENT AND TERM OF AGREEMENT6) Appointment and Term.

Subject to the earlier termination of this Agreement in accordance with the terms hereof, the City hereby appoints the Academy as the exclusive operator and manager of the City Facilities during the Term and the Academy agrees to operate and manage the City Facilities during the Term, unless earlier terminated or extended according to the terms of this Agreement.

7) Extension.

Not less than six (6) months prior to the end of the Term, the City and the Academy will discuss the terms of any extension to the Term, if so requested by the Academy. At the end of the Term (and any renewal thereof) the provisions of sections 54 and 55 shall apply.

CO-OPERATION BETWEEN PARTIES

8) Cooperation Between Parties

- a) The City and the Academy agree to be mutually supportive of one another in the application for Provincial and Federal Grants.
- b) The City and the Academy will work together in booking their respective activities within the City Facilities to ensure that, to the extent reasonably possible, activities do not disturb the activities of the other priority.
- c) In the event an issue arises with respect to the maintenance of the City Facilities, a representative from the Academy shall meet with the City's Director of Community Services or designate to resolve the issue.
- d) The City and the Academy agree not to incur expenses on behalf of each other without the expressed written permission of the other party.
- e) Upon providing reasonable prior written notice to the Academy and at the City's costs, the City may appoint an independent auditor to review the financial records of the Academy but only such financial records which relate to the City Facilities.

OWNERSHIP OF FACILITIES

9) Ownership of Facilities

- a) The City and the Academy acknowledge that the City is the sole owner of the City Facilities and the fixtures contained therein, save and except for all movable capital equipment purchased by the Academy which shall be owned by the Academy. Upon termination of this Agreement (early or otherwise): (i) all fixtures shall become the property of the City; (ii) non-fixture capital equipment owned and used by the Academy in the operation of the City Facilities is subject to the City's option to purchase in accordance with section 55 of this Agreement.
- b) The City shall at all times have the right of access to the City Facilities upon reasonable notice to the Academy for inspecting, maintenance, repairs or replacement purposes which are being done by the City, provided that the City makes reasonable efforts to avoid or minimize interference with the programs being carried out by the Academy pursuant to this Agreement. It shall not be unreasonable for the City to provide notice the same day as an intended inspection and the Academy shall not refuse access to the City Facilities unless such inspection will have a material impact on that day's programs. The requirement for prior notice shall not apply to Municipal By-law Officers.
- c) The City shall provide the Academy with access to and use of the City Facilities including the equipment and assets contained therein for the sole and limited purpose of providing the Services anticipated by this Agreement.

DUTIES OF THE ACADEMY

10) Duties of the Academy

- a) The Academy shall operate the City Facilities on a not-for-profit basis with a view to deliver the Services at cost.
- b) As required by the Building Canada Fund Agreement, the Academy will operate 3 distinct programs (with usage principally planned during the weekday):

- A residential hockey program. A sport-education program where co-ed students, grades 9 to 12, will be part of an advanced residential hockey and education experience from September to June. Targeted clientele: hockey players from all across Canada and potentially from other countries (a breakdown of 50%-25%-25% of Ontario, Out-of-Province and International students is predicted, although Infrastructure Canada received no evidence in support of this prediction). The Academy projects that enrolment will reach 100 students in the fourth year of operation and 190 in the seventh year.
 - A weekly hockey program. A sport-education skills academy offered in partnership with Hockey Canada and Eastern Ontario's French and English Public School Boards. Targeted clientele: minor league hockey players from the Eastern Ontario region.
 - Summer hockey camps. Will offer residential hockey camps hosted by current and former NHL players and coaches. Targeted clientele: hockey players from Western Quebec, Eastern and Southeastern Ontario and Northeast U.S.
- c) The Academy has a memorandum of understanding with Hockey Canada to make the City Facilities an official Eastern Ontario training facility for Hockey Canada's national teams for a ten year period. A copy of such memorandum of understanding has been provided to the City.
- d) The Academy shall perform all services reasonably required to properly operate and manage the City Facilities and to a minimum, shall perform the Services set out in the Statement of Work attached as Schedule 'C'. The Services listed in Schedule 'C' may be amended from time to time by agreement of the parties or by the City where any additional Services can be justified as falling within the normal services provided by operators of similar facilities in the Province of Ontario and such additional Services are within the Academy's budgetary constraints with respect to the City Facilities. Where the parties are unable to agree as to the Services to be provided by the Academy, either party may refer such dispute to Dispute Resolution for a final determination of the matter.

DUTIES OF THE CITY

- 11) The City will be responsible for the following:
- (a) Policies – reviewing and / or developing the overall plans and policies for the operation and maintenance of the City Facilities;
 - (b) Approval of any material modifications to the Services;
 - (c) Establishing branding and visual identity of the City Facilities as a municipal capital facility;
 - (d) Periodically meeting with the Academy to ensure a good level of communication between the parties with respect to issues pertaining to the Services and the operation of the City Facilities;
 - (e) Furnishing the Association Shared Office and Meeting Room identified on Schedule B-2;
 - (f) Furnishing the Storage Areas identified on Schedule B-1 which are for the use of the community and sports associations; and

- (g) Scheduling, bookings and maintenance for the soccer fields according to the Soccer Field Use Agreement.

FINANCIAL ARRANGEMENTS

12) Collection and Retention of Revenues.

During the Term, the Academy will retain all revenues resulting from the rental of the City Facility (excluding the Soccer Fields) , including revenues generated during periods where the ice surfaces are removed together with revenues relating to the operation of the Tuck Shop and Concession identified on Schedules B-1 and B-2 respectively. Admission revenues relating to the use of the City Facilities by the City, the Academy, Rockland Academy and other groups or teams (such as Junior "B" hockey teams) will be kept by those groups/teams using the City Facilities.

13) Contribution to Initial Capital Cost of Construction.

During the Term, the Academy shall pay to the City, and shall cause the Rockland Academy to guarantee the payment of, an amount of four million dollars (\$4,000,000.00 plus interest at the City's borrowing rate for the debt related to the construction of the City Facilities (to be adjusted for each refinancing term), amortized over the thirty (30) year term of this Agreement in equal annual payments in accordance with the amortization schedule attached as Schedule "D". Such payment represents the Academy's reimbursement to the City of a portion of the City's initial capital cost of construction of the City Facilities and may be prepaid by the Academy without bonus or penalty. In the event of an uncured Event of Default pursuant to which this Agreement is terminated by the City prior to the end of the Initial Term, the balance owing of the \$4,000,000.00 capital cost reimbursement shall become immediately due and payable.

13a) Development Charges and federal grant

The City has included \$3,888,161 for the City Facilities as a growth-related project cost as part of its 2015 Development Charges report approved by Council effective February 1st 2015. The portion that is applicable to the Academy is 59% or \$2,283,624 and this amount is applied to the outstanding balance of the loan as at February 1st, 2015 for a revised outstanding debt of \$1,703,257.

Further, upon execution of this agreement, the City will receive \$680,000 from the federal government. The portion that is applicable to the Academy is 59% or \$401,200 and this amount will be applied to the outstanding balance of the loan as at September 2015.

This outstanding debt balance and the updated amortization schedule are attached as Schedule 'D'.

13b) Annual payment to the City for 2016 and Onwards

Starting in September 2016, the CIH will make annual payments of \$150,000.00 which will be comprised of \$64,956 as a repayment of the loan and the balance of \$85,044.00 will be contributed to the capital replacement fund identified in clause 15. The existing outstanding amount owing is \$2,452,696.00 at August 31, 2017. The City, at its discretion, will defer payment of the \$150,000.00 amount on the

understanding that the capital repayment is still owed to the City.

13c) Hydro Costs.

The City will continue to pursue a front-end agreement with Hydro One for the \$1,251,330.82 'Schedule F' that was expended as part of the project to ensure sufficient electrical power for the City Facilities. Should the City be successful in this pursuit, the City will re-imburse the Academy with its proportionate share of 59% of these costs through a one-time reduction in the outstanding debt associated with the capital cost reimbursement identified in clause 13

13d) Operational Subsidy

At the City's sole discretion, there will be an annual operational subsidy of \$200,000.00 paid by the City to CIH Academy. This operational subsidy will be paid monthly commencing January 1, 2019 in the amount of \$16,666.66.

14) Capital Replacement Contribution.

The Academy shall be solely responsible for the cost of all capital improvements and replacements save and except for Major Capital Replacements which shall be shared equally by the parties and paid where available, from the Capital Replacement Fund. The Academy shall be solely responsible for all capital replacements of moveable equipment, regardless of cost.

15) Capital Replacement Fund.

The Academy shall make ongoing contributions into a Capital Replacement Fund for Major Capital Replacements, in an annual amount to be agreed upon by the parties on an annual basis in advance of the Fiscal Operating Year in question. The City shall not be required to contribute to the Capital Replacement Fund, but shall ensure that it maintains sufficient debt capacity to borrow funds to meet the City's obligations for contribution towards Major Capital Replacements.

16) Shortfall in Capital Replacement Fund.

In the event that the Academy's Capital Replacement Fund is insufficient to pay its share of a Major Capital Replacement, and provided that the Academy has fulfilled its obligations with respect to annual contributions to the fund, the City may, at its sole discretion, advance to the Academy the shortfall required for the Academy to pay its share of the Major Capital Replacement, which advance shall become a debt to the City payable together with interest at the then current prime rate of interest.

17) Expenses.

Except for the City's required contributions to Major Capital Replacements or as may otherwise be agreed between the parties in writing (including any agreement in respect of possible major renovations as contemplated by section 20 below):

(i) The Academy shall at all times be solely responsible for the payment of all expenses related to the operation, maintenance and management of the Facilities, and shall ensure that all accounts payable for such matters are kept current;

(ii) The City will refund to CIH Academy for any operating deficits that are caused by unforeseen circumstances including :

a. hydro rate increases that are beyond the consumer price index for Ottawa;

b. ice rental rate increases approved by the City that are below the consumer price

index for Ottawa; and

(iii) The remainder of CIH Academy's operation of the City Facilities shall be at no cost to the City.

18) Financial Statements.

The operation and management of the City Facilities by the Academy, shall be conducted on a completely "open book" basis such that the City shall have full access to the financial records of the Academy relating to the City Facilities. The City will engage a firm of its choice to produce an annual audited statement of revenue and expenditures for the operations of the City Facilities estimated to cost \$15,000.00. CIH Academy shall share the cost of this annual audited statement equally with the City. The annual audited financial statements shall be based upon a fiscal operating year September and ending on the 31st day of August of each year of the Term ("Fiscal Operating Year"). The parties acknowledge and agree that all expenses and revenues relating to the City Facilities shall be included in the financial records and statements contemplated by this Section 18, and, for the avoidance of doubt, shall exclude:

- a. revenues and expenses relating to the Academy Facilities, as such term is defined in the Framework Agreement;
- b. revenues (including tuition fees and donations) and expenses (including teaching and other education-related expenses, student and teacher accommodation and board) relating to relating to the Rockland Academy's operations,
- c. revenues (including coaching fees and donations) and expenses (including coaching and other hockey related expenses) relating to the Academy's hockey programs; and
- d. revenues and expenses relating to naming rights referred to in section 29 of this Agreement;

19) Balanced Budget.

The Academy, and any third party contractor which may be permitted by the City, shall operate and manage the City Facilities at cost, and shall use its best efforts to maintain a balanced budget. The Academy will be responsible for all annual deficits. If there is an annual operating surplus, as confirmed by the annual audit, such surplus shall be divided Sixty (60%) percent in favour of CIH Academy and forty (40%) percent in favour of the City. Prior to each fiscal period, the Academy will provide the City with a copy of budget for the upcoming fiscal period and will receive comments from the City with respect to such budget

20) Major Renovation.

Should the need for major City Facilities expansion or renovation be identified by the City, the City and the Academy agree to collaboratively plan and, as warranted, develop additional cost sharing arrangements where identified initiatives have mutual benefit.

CITY USE OF CITY FACILITIES

- 21) The City shall be responsible for the operation and maintenance of the soccer fields in accordance with the Soccer Field Use Agreement and will have reasonable access to the parking areas identified on Schedule "A" at no cost to the City. In addition, the City shall have the right to use the Multifunction Training & Testing Rooms and associated Break Out Rooms, each as identified on Schedule --B-1", at no cost to the City when such use does not conflict with the Academy operations. Such uses would include, but not be limited to, City events, day camps, and similar activities.

- 22) The only amounts payable by the City with respect to the City use of the City Facilities shall be fees associated with rental of ice time by the City.
- 23) The City's use of meeting rooms and parking area will be subject to availability. When requested by the City, the Academy will make reasonable efforts to advise the City in advance of the times that such rooms are available. The Academy agrees that the City shall have the first opportunity to reserve the use of the meeting rooms.

ICE TIME AGREEMENT

- 24) The use of the twin ice hockey arena will be as set out in the Ice Time Agreement attached as Schedule "J", as may be amended from time to time upon agreement by the parties . The following basic principles will govern the use of the twin ice hockey arena:
- (a) The Ice Rinks will be available for public use at least 70% of the total available hours of weekly operation. Such availability for public use will apply each week during the calendar year, subject to maintenance periods agreed to by the Parties. The City shall have the option of designating lawful priorities for the use of such 70% by the public-.
 - (b) The rates to be charged by the Academy for the use of the Ice Rinks will reflect the actual cost of operating and maintaining the Arenas, including without limitation reasonable overheads, the Academy's contribution to initial capital cost of construction, Capital Replacement Fund contribution requirements and other reasonable reserves that a prudent owner and operator of such a facility would maintain.
 - (c) The City will be entitled to subsidize ice-time rates to certain users at no cost to the City.
 - (d) The selection of hours by the City will take into consideration the needs of the Academy for its regular programming.
 - (e) A minimum of 1.5 hours of public skating be offered by CIH Academy during each weekend and 1 hour during each week day, up to a maximum of 50 hours per year between September and April at no cost to the City; (It is understood that occasionally some weekend public skating hours can be modified or re-allocated in order to not interfere with external programs such as hockey tournaments or special events.)
 - (f) The arena will be opened during activities recognized by the City, for example, the Soccer Fest);
 - (g) The City is authorized to use the Zamboni owned by the City at any time, as may be required . The parties consent and acknowledge that the Academy may use one of the City's Zambonis on a regular basis subject to the City requiring it for short periods of time should an emergency arise in the sole opinion of the City.

ADDITIONAL OPERATING ISSUES

- 25) Business and Other Taxes

In each and every year during the Term the Academy shall pay and discharge within fifteen (15) days after they become due, and indemnify the City from and against payment of, and any interest or penalty in respect of every tax, licence fee, rate, duty and assessment of every kind with respect to any business carried on by the Academy in the City Facilities or by any subtenant, licensee, concessionaire or franchisee or anyone else, or in respect of the use or occupancy of the City Facilities by the Academy, licensees, concessionaires or franchisees or anyone else (other than Realty Taxes, to the extent the Academy is not required to pay same as a Municipal Capital Facility, or such taxes as income, profits or similar taxes assessed on the

income of the City).

26) Use of Soccer Fields

The Academy shall have the right to reserve the use of the soccer fields in accordance with the provisions set put in Schedule K of the Soccer Field Use Agreement.

27) Rules and Regulations

The Academy and its employees and all persons visiting or doing business with it on the City Facilities shall be bound by and shall observe the Rules and Regulations provided by the City and as amended from time to time.

28) Hours of Operation

The Academy shall, throughout the Term conduct its operations in the City Facilities to a minimum during Normal Business Hours but may conduct its business in excess of Normal Business Hours. Notwithstanding the foregoing, the Academy shall not be required to operate when prohibited by a governmental law or by-law regulating the hours of business.

29) Signage and Naming Rights

The City shall be entitled to find a sponsor for naming rights of the City Facilities upon such terms and conditions that are acceptable to the City. Any signage shall be no cost to the City. The net revenues for the signage will be shared annually on equal basis 50/50. The revenue received by the City will be applied against the City's budget for the Clarence-Rockland arena. The Academy shall also be entitled to post program related advertisement in the City Facilities. The City and the Academy shall work together to establish reasonable guidelines for the posting of such program related advertisement.

The City shall be permitted, at its expense, to install the City logo on centre ice to the ice surfaces the regular **MSA Season** meaning the period from September 1 to April 30 annually.

30) Observance of Law

The Academy shall, at its own expense, comply with all laws, by-laws, ordinances, regulations and directives of any public authority having jurisdiction affecting the City Facilities or the use or occupation thereof including, without limitation, police, fire and health regulations and requirements of the fire insurance underwriters. Without limiting the generality of the foregoing:

- a) where, during the Term, the Academy has, through its use or occupancy of the City Facilities, caused or permitted a release of a Contaminant at, from or to the City Facilities, the Academy shall immediately clean up such Contaminant from the City Facilities, and any affected areas, at the Academy's expense and restore the affected areas to their original condition; and
- b) on the termination of this Agreement for any reason, the Academy shall remove, at its expense, any Contaminant or contamination which, through the Academy's use or occupancy of the City Facilities, it has brought to or created on the City Facilities and restore such affected areas to their original condition.
- c) the Academy shall indemnify, defend, and hold harmless the City, and their respective officers, partners, agents and employees from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including legal fees on a solicitor and ms own client basis) and consultants' fees arising out of or in any way connected with any deposit, spill, discharge, or other release of a Contaminant that occurs during the Term of this Lease, at or from the City Facilities, or which arises at any time from the Academy's use or occupancy of the City Facilities, or from the Academy's failure to provide all information, make all

submissions, and take all steps required by all authorities under the any such environmental laws and this indemnity shall survive the expiration of tills Agreement.

31) Equipment and Furnishings

The Academy shall provide a list of all equipment and furnishings for use in the City Facilities and shall be responsible for all costs of maintenance, repair or replacement thereof. At the end of the Term (including any renewals thereto) or upon the earlier termination of this Agreement, the provisions of section 55 shall apply.

ACADEMY'S INSURANCE AND WSIB

32) The Academy shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance. Such insurance coverage shall be provided by a qualified insurance company authorized to transact business in Ontario which is approved by the City, acting reasonably:

- a) "All Risks" insurance including Sewer Back-Up on property of every description owned by the Academy or for which the Academy is legally liable, or which is installed by or on behalf of the Academy, within the City Facilities or on the City Facilities Lands. Such property can include, without limitation, stock, furniture, equipment, fixtures and Leasehold improvement in an amount not less than the full replacement cost. Such insurance shall include a waiver of subrogation in favour of the Corporation of the City of Clarence Rockland.

The insurance described above shall name as loss payee the City and anyone else with an interest in the City Facilities from time to time designated in writing by the City, and shall provide that any proceeds recoverable in the event of damage to leasehold improvements shall be payable to the City and to the Academy with respect to leasehold improvements. The City agrees to make available such proceeds toward repair or replacement of the insured property if this Agreement is not terminated pursuant to the terms of this Agreement.

The deductible shall be no greater than \$10,000, and shall be the sole responsibility of the Academy.

- b) "All Risks' Profits Business Interruption to cover both the Academy and the City's loss of revenue following an insured peril. The period of indemnity shall be no less than 12 months. Such coverage shall include Extra Expense.
- c) Professional Fees in the amount of not less than \$100,000.
- d) Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$25,000,000. per occurrence / \$25,000,000. annual aggregate for any negligent acts or omissions by the Academy relating to their obligations under this Agreement. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; broad form completed operations; owners & contractors protective; occurrence property damage; products; employees and volunteers as Additional Insured(s); contingent employers liability; abuse liability; tenants legal liability; cross liability and severability of interest clause

Such insurance shall add the Corporation of the City of Clarence Rockland as Additional Insured including a waiver of subrogation. This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the City.

The Deductible shall not exceed ten thousand (\$10,000) dollars and shall be the sole responsibility of the Academy.

- e) if applicable, Comprehensive boiler and machinery insurance on a blanket basis with limits for each accident in an amount not less than the full replacement costs of the property, covering all equipment owned or operated by the Academy or by others (other than the City) on behalf of the Academy in the City Facilities or relating to or serving the City Facilities; Such insurance shall follow from business interruption; expediting expenses; water damage; hazardous substances; professional fees and stock spoilage
 - f) plate glass insurance with respect to all glass windows and glass doors in or on the City Facilities for the full replacement value thereof; and
 - g) such other forms of insurance as may be reasonably required by the City from time to time.
- 33) All such insurance shall be with insurers and shall be on such terms and conditions as the City reasonably approves.
- 34) All policies shall contain a notice of cancellation to the City with not less than thirty (30) days prior to any material change, cancellation or termination.
- 35) The Academy agrees to provide copies of all the above-noted insurance policies to the City including any renewal or replacements thereof.
- 36) Approval of the insurance by the City shall not relieve or decrease the liability of the Academy hereunder.

CITY'S INSURANCE

- 37) The City shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance.
- a) "All Risks" insurance including Sewer Back-Up on Property of every description owned by the City or for which the City is legally liable. Such property can include, without limitation, building, stock, furniture, equipment, fixtures in an amount not less than the full replacement cost.
 - b) 'All Risks' Profits Business Interruption to cover the City's loss of revenue following a loss that was as the result of the Insured peril. The period of indemnity shall be no less than 12 months.
 - c) Comprehensive boiler and machinery insurance on a blanket basis with limits for each accident in an amount not less than the full replacement costs of the property, covering all equipment owned or operated by the City. Such insurance shall follow from business interruption; expediting expenses; water damage; hazardous substances; professional fees.
 - d) Municipal Liability Insurance issued on an occurrence basis for an amount of not less than \$25,000,000. per occurrence / \$25,000,000. annual aggregate for any negligent acts or omissions by the City relating to their obligations under this Agreement. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; broad form completed operations; owners & contractors protective; occurrence property damage; products; employees and volunteers as Additional Insured(s); contingent employers liability; abuse liability; tenants legal liability; cross liability and severability of interest clause
- 38) The Municipal Liability Insurance will include the Academy as Additional Insured but only with respect to the operations of the Named Insured.

OCCUPATIONAL HEALTH AND SAFETY

- 39) The Academy agrees that, where the provisions *Occupational Health and Safety Act* (Ontario) and Regulations apply to the Services, all of the responsibilities and obligations imposed upon the Academy under this Act shall be assumed by the Academy. All costs for services/materials required to fulfill these obligations shall be the responsibility of the Academy. The Academy shall fulfill all of its obligations in compliance with the *Occupational Health and Safety Act*, and further agrees to take responsibility for any health and safety violation that may occur. Furthermore, if the City is made a party to any charge under the *Occupational Health and Safety Act* in relation to any violation of the said Act arising out of this Agreement, the Academy shall indemnify and save harmless the City from any and all charges, fines, penalties, and costs that may be incurred or paid by the City.

The Academy shall provide confirmation of WSIB coverage and enrollment with respect to all employees, contractors, or agents employed or engaged by the Academy in the performance of this Agreement. The Academy shall provide the City with a certificate of clearance as confirmation of Workplace Safety and Insurance Board coverage for all employees.

FINANCIAL SECURITY

- 40) The Academy will provide security to the City, up to a maximum amount of \$500,000.00, in the form of a charge against the structures built on the Academy Facility Lands, in the event that the Academy ceases to operate the City Facilities.

INDEMNITIES

- 41) The Academy shall indemnify and save harmless the City, its elected representatives, officers, employees and agents from and against all liabilities, claims, damages, losses, costs and expenses for loss or damage to property, or injuries to or death to any and all persons, arising directly or indirectly out of or in connection with:
- a) the Academy's occupancy or use of the City Facilities, or any portion thereof, or out of the Academy's operations in connection therewith;
 - b) the breach of any provision of this Agreement; or,
 - c) any negligent or willful acts or omissions by the Academy with respect to the Academy's performance of its obligations under this Agreement.
- 42) The City shall indemnify and save harmless the Academy, its affiliates, directors, officers, employees and agents from and against any losses that arise out of, or result from and are directly related to:
- a) the breach of any provision of this Agreement;
 - b) the negligent or willful acts or omissions by the City with respect to the City's performance of its obligations under this Agreement.
- 43) The provisions of these Articles shall survive the expiration or termination of this Agreement, and any subcontracting out of all or any of the operation or maintenance services to third party.

MUTUAL RELEASE

- 44) The Parties release each other and waive all claims against the other and those for whom the other is in law responsible with respect to occurrences insured against or required to be insured against by the releasing party, whether any such claims arise as a result of the negligence or otherwise of the other or those for whom it is in law responsible, subject to the following:

- a) such release and waiver shall be effective only to the extent of proceeds of insurance received by the releasing party or proceeds which would have been received if the

releasing party had obtained all insurance required to be obtained by it under this Agreement (whichever is greater) and, for this purpose, deductible amounts shall be deemed to be proceeds of insurance received (subject to the right of the City to include such deductible amounts in Operating Costs); and

- b) to the extent that both parties have insurance or are required to have insurance for any occurrence, the Academy's insurance shall be primary.
- 45) Notwithstanding the foregoing or anything else herein contained, in no event, unless the damage or loss is the result of the wilful act of the City, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the City be liable for:
- a) damage to property of the Academy or others located on the City Facilities;
 - b) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the City Facilities including the parking areas or from the water, steam or drainage pipes or plumbing works of the City Facilities or from any other place or quarter located within Schedule 'A';
 - c) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring within the City Facilities;
 - d) any damage caused by anything done or omitted to be done by any other occupant or tenant of the City Facilities; or
 - e) any indirect or consequential damages suffered by the Academy.
- 46) Notwithstanding the foregoing or anything else herein contained, in no event, unless the damage or loss is the result of the wilful act of the Academy, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the Academy be liable for any indirect or consequential damages suffered by the City:

SUBCONTRACTING

- 47) The Academy shall be entitled to subcontract the management and operation of the City Facilities to a third party contractor subject to the consent of the City (acting reasonably) and subject to the City being satisfied that the cost of employing the third party contractor is comparable to the cost that would be incurred by the Academy to operate the City Facilities itself, provided that such subcontractor is bound by the terms of this Agreement including, but not limited to, the requirements for operations to be on an open-book basis.

DEFAULT

- 48) Events of Default - Any of the following constitutes an Event of Default under this Agreement:
- a) any amounts payable by the Academy pursuant to this Agreement is not paid within ten (10) days after notice in writing from the City to the Academy;
 - b) the Academy has breached any of its obligations in this Agreement and the City provides written notice of such breach to the Academy and, if such breach is capable of being remedied after notice in writing from the City to the Academy:

- i) the Academy fails to remedy such breach within thirty (30) days (or such shorter period as may be provided in this Agreement); or
 - ii) if such breach cannot reasonably be remedied within thirty (30) days (or such shorter period), the Academy fails to commence to remedy such breach within thirty (30) days of such breach, or thereafter fails to proceed diligently to remedy such breach.
 - c) the Academy becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the Academy's existence or the liquidation of its assets;
 - d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of the Academy;
 - e) the Academy makes a sale in bulk of all or a substantial portion of its assets, other than in conjunction with an assignment or Transfer approved by the City;
 - f) this Agreement or any of the Academy's assets are taken under a writ of execution and such writ is not stayed or vacated within fifteen (15) days after the date of such taking;
 - g) the Academy makes an assignment or Transfer, other than in compliance with the provisions of this Agreement;
 - h) the Academy abandons or attempts to abandon the City Facilities or the City Facilities become vacant or substantially unoccupied for a period of five (5) consecutive days or more;
 - i) the Academy moves or commences, attempts or threatens to move its trade fixtures, chattels and equipment that are necessary for the ongoing operation of the City Facilities out of the City Facilities;
 - j) any insurance policy covering any part of the Facilities is cancelled and not replaced or notice of cancellation is given and is not remedied as a result of any action or omission by the Academy or any person for whom it is legally responsible; or
 - k) the Academy's related corporation, the Academie de Rockland 1 Rockland Academy ceases to operate as a registered charity or ceases to operate as a private coeducational residential secondary school on the Academy Facilities Lands.
- 49) Default and Remedies - If and whenever an Event of Default occurs, then, without prejudice to any other rights which it has pursuant to this Agreement or at law, the City shall have the following rights and remedies, which are cumulative and not alternative:
- a) to terminate this Agreement by notice to the Academy or to re-enter the City Facilities and repossess them and, in either case, enjoy them as of its former estate, and to remove all persons and property from the City Facilities and store such property at the expense and risk of the Academy or sell or dispose of such property in such manner as the City sees fit without notice to the Academy. If the City enters the City Facilities without notice to the Academy as to whether it is terminating this Agreement under this Section 48 or proceeding under Section 49(b) or any other provision of this Agreement, the City shall be deemed to be proceeding under Section 49(b), and the Agreement shall not be terminated, nor shall there be any surrender by operation of law, but the Agreement shall remain in full force and effect until the City notifies the Academy that it has elected to terminate this Agreement. No entry by the City during the Term shall have the effect of terminating this Agreement without notice to that effect to the Academy;

- b) to enter the City Facilities as agent of the Academy to do any or all of the following:
 - i) re-let or re-licence the City Facilities for whatever length and on such terms as the City, in its discretion, may determine;
 - ii) take possession of any property of the Academy in the City Facilities, store such property at the expense and risk of the Academy, and sell or otherwise dispose of such property in such manner as the City sees fit without notice to the Academy;
 - iii) make alterations to the City Facilities to facilitate their use or occupancy; and
 - iv) apply the proceeds of any such sale, use or occupancy first, to the payment of any expenses incurred by the City with respect to any such use, occupancy or sale, second, to the payment of any indebtedness of the Academy to the City other than any amount due under this Agreement, and third, to the payment of any amount due under this Agreement, with the residue to be held by the City and applied to payment of future amount due under this Agreement as it becomes due and payable, provided that the Academy shall remain liable for any deficiency to the City;
 - c) to remedy or attempt to remedy any default of the Academy under this Agreement for the account of the Academy and to enter on the City Facilities for such purposes. No notice of the City's intention to remedy or attempt to remedy such default need be given to the Academy unless expressly required by this Agreement, and the City shall not be liable to the Academy for any loss, injury or damages caused by acts of the City in remedying or attempting to remedy such default. The Academy shall pay to the City all expenses incurred by the City in connection therewith;
 - d) to recover from the Academy all damages, costs and expenses incurred by the City as a result of any default by the Academy including, if the City terminates this Agreement, any deficiency between those amounts which would have been payable by the Academy for the portion of the Term following such termination and the net amounts actually received by the City during such period of time with respect to the City Facilities.
- 50) Costs. The Academy shall pay to the City all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the City in enforcing the terms of this Agreement, or with respect to any matter or thing which is the obligation of the Academy under this Agreement, or in respect of which the Academy has agreed to insure or to indemnify the City.
- 51) Remedies Cumulative - Notwithstanding any other provision of this Agreement, the City may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Academy, either by any provision of this Agreement, by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Agreement as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the City by statute or common law.

ENTRY

- 52) The City may, on reasonable notice (which notice may be on the same day), enter the City Facilities at any time during the Term for any purpose. The City will make reasonable efforts to avoid disturbing the Academy's operations. The requirement for notice will not apply to Municipal By-law Officers.

EFFECT OF WAIVER OR FOREBEARANCE

- 53) No waiver by any party of any breach by any other party of any of its covenants, agreements or obligations contained in this Agreement shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations nor shall any forbearance by any party to seek a remedy for any breach by any other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of any payment by the City shall not be deemed a waiver of any preceding breach by the Academy of any term, covenant or condition regardless of the City's knowledge of such preceding breach at the time of the acceptance of such payment. All charges payable by the Academy to the City hereunder shall be paid without any deduction, set-off or abatement whatsoever, and the Academy waives the benefit of any statutory or other right in respect of abatement or set-off in its favour at the time hereof or at any future time.

TERMINATION

- 54) Upon any termination of this Agreement, the Academy shall return the City Facilities and the assets within the City Facilities in as good or better condition as at the date upon which the Academy took possession of the City Facilities, subject only to such wear and tear as may be reasonably expected given the reasonably expected service life of the City Facilities and furniture and assets.
- 55) In the case of termination, the City will have the option to either purchase any assets purchased by the Academy and related to the operation of the City Facilities at such asset's Book Value (calculated in accordance with GAAP) or to advise the Academy that such assets may be removed by the Academy upon their departure. Otherwise, all assets within the City Facilities which have either been fully depreciated or purchased during the term of this Agreement shall remain the property of the City.
- 56) It is agreed and understood that the Academy will accept payment as above as full and final compensation to the Academy for any and all claims the Academy may have at law or in equity in respect of the City's early termination of this Agreement in accordance with the terms hereof, and the Academy shall hereby forever release and discharge the City from any further claims for loss or damages or liability to the Academy resulting from such termination.

DESTRUCTION OR DAMAGE TO CITY FACILITIES

- 57) Destruction or Damage to City Facilities – If during the Term of any renewal thereof the City Facilities are totally destroyed or are partially destroyed so as to render them wholly unfit for occupancy and they cannot be repaired with reasonable diligence within twelve (12) months of the happening of such damage then this Agreement shall, at the sole option of the City, terminate from the date of such damage or destruction and the Academy shall immediately surrender the premises and all interest therein to the City and the City may re-enter or repossess the City Facilities discharged of this Agreement and may remove all persons therefrom. In no event shall the City be responsible for any damages suffered by the Academy as a result of such damage or destruction. If the City terminates this Agreement in accordance with this Section due to damage or destruction of the City Facilities that was not caused by the fault of the Academy, the Academy shall not be responsible for any further payments pursuant to section 13 and Schedule 'D' after the date of such termination.
- 58) Certificate Conclusively – Any decisions regarding the extent to which the City Facilities or any portion of the City Facilities has become unfit for use and/or cannot be repaired within

a specified timeline, shall be made by an architect or professional engineer and the City may appoint an architect or professional engineer for this purpose. If, however, such architect or professional engineer has been mutually appointed by the parties, the decision of such architect or professional engineer shall be final and binding on the parties.

- 59) **Insurance Proceeds** - In the event of any material damage or destruction occurring by reason of any cause in respect of which proceeds of insurance, together with the Capital Replacement Fund, are substantially insufficient to pay for the costs of rebuilding the City Facilities, or are not payable to or received by the City (except in either case if such shortfall is caused by the City's failure to maintain insurance in accordance with the terms of this Agreement), or in the event that any mortgagee or other person entitled thereto shall not consent to the payment to the City of the proceeds of any insurance policy for such purpose, the City may elect, on written notice to the Academy, within six (6) months of such damage or destruction, to terminate this Agreement, and the Academy shall immediately deliver up vacant possession of the City Facilities to the City. In all circumstances, the City shall be entitled to retain all proceeds of insurance relating specifically to the City Facilities (excluding the Academy's equipment and fixtures). If the City terminates this Agreement in accordance with this Section due to damage or destruction of the City Facilities that was not caused by the fault of the Academy, the Academy shall not be responsible for any further payments pursuant to section 13 and Schedule 'D' after the date of such termination.
- 60) **City's Work** - In performing any reconstruction or repair, the City may effect changes to the City Facilities and its equipment and systems and minor changes in the location or area of the City Facilities. The City shall have no obligation to grant to the Academy any allowances and shall have no obligation to repair any damage to leasehold improvements or the Academy's fixtures, except as contemplated by the Capital Replacement Fund.

DISPUTE RESOLUTION

- 61) **Dispute Resolution**
- a) The parties agree that should a dispute arise as to any matter contained in this Agreement, either party may refer such dispute to dispute resolution under the provisions of this section by providing a written notice of such referral to the other party.
- b) Where a matter is referred to dispute resolution, the first step to resolve the issue shall be a meeting between the City's CAO and CEO of the Academy. The second step shall be the appointment of a third party mediator and they will attempt to mediate a resolution. This will not limit or otherwise change any legal rights of the parties. The mediator will be chosen by and be acceptable to both parties. The parties agree to equally split the cost of the mediator. If the parties are unable to reach a resolution within 30 days of the appointment of a mediator, then the matter may be referred by either party to arbitration as set out below.
- c) Where a dispute cannot be resolved through mediation, then either party may refer such dispute to arbitration by the giving of a written notice by either party to the other party. In the event of arbitration, the arbitrator shall be such as the parties may agree to on or before thirty (30) days from the submission by either party of the dispute to arbitration; in default of agreement on or before the expiration of such thirty (30) days, then within ten (10) days thereafter the Academy shall appoint an arbitrator, the City shall appoint an arbitrator, and the two so chosen shall appoint a third arbitrator. If either party defaults in such appointment within the said ten (10) days, the arbitrator appointed by the other party shall act as sole arbitrator as if appointed by both parties. The arbitrator or arbitrators, as the case may be, shall have all the powers given by the Arbitrations Act (Ontario) to arbitrators and may at any time and from time to time proceed in such manner as she, he or they may think fit on such notice as she, he or they may deem reasonable and after notice in the

absence of either party, the award and determination of the arbitrator or a majority of the arbitrators shall be final and binding and each party agrees not to appeal from such award or determination. The costs of any such arbitration shall be borne equally by the parties unless otherwise ordered by the arbitrator.

CONDITIONS PRECEDENT

- 62) The Parties acknowledge and agree that there exists an on-going requirement for compliance with the Building Canada Fund Agreement.
- 63) The Parties acknowledge and agree that the fulfillment of this Agreement, along with all of the other Formal Agreements, is contingent upon receipt of financing contributions from the Federal and Provincial Government. In the event that such funding is not received, the City will, at all times, be entitled to terminate this Agreement, and any or all of the Formal Agreements or, failing which, the parties shall negotiate in good faith any necessary changes to same to address the impact of any changes to the funding commitments. For the avoidance of doubt, any termination of this Agreement by the City as contemplated by this section shall not constitute an Event of Default for which the Academy would become liable for the payment referred to in section 13 of this Agreement.

GENERAL PROVISIONS

- 64) Good Faith.

The Academy and the City agree this Agreement is subject to negotiations between them and others. The Academy and the City shall proceed in good faith and as expeditiously as possible, to satisfy all of their obligations under this Agreement and to conclude all necessary acts to the satisfaction of all necessary conditions and the finalization of all agreements. The parties hereto agree to cooperate with each other to the extent reasonably possible to fulfill each of their obligations and conditions under this Agreement.

- 65) Confidentiality.

The parties hereto agree that they shall jointly coordinate and agree upon all press releases and other public disclosures concerning this Agreement before any such press releases or public statements or disclosures are made, subject to disclosures required by statute.

- 66) Interpretation

- a) The headings are for convenience only and do not form part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement, or any of its provisions.
- b) Unless otherwise specifically provided for herein, all calculations to be made hereunder are to be made in accordance with GAAP.
- c) Any reference to currency is to Canadian currency.
- d) Any reference to a statute includes, and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto which are in force from time to time and to any statute or regulations that may be passed which supplement or supersede such statute or such regulations.
- e) The signatories for each entity set out below hereby warrant and represent that they are authorized to bind the corporation or entity for which they are signing.

- 67) Inconsistencies.

In the event of any inconsistencies or conflicts between the terms of this Agreement and any schedules, appendices or other documents attached to and forming part of this Agreement, the terms of this Agreement shall prevail, unless otherwise stated in this Agreement.

68) Entire Agreement.

The parties recognize that there is no other convention, representation, guarantee, oral agreement, contract or condition, expressed or implied, collateral or otherwise forming in part, affecting or related to this present Agreement.

69) Severability.

The invalidity of any provision of this Agreement or any covenant herein contained on the part of any party shall not affect the validity of any other provision or covenant hereof or herein contained.

70) Waiver of Agreement.

Failure by either party to insist upon the strict performance of any of the covenants, agreements, terms, provisions or conditions contained in this Agreement or to exercise any election shall not be construed as a waiver or relinquishment of such covenant, agreement, term, provision or condition but the same shall continue and remain in full force. No waiver shall be deemed to have been made unless expressed in writing.

71) Amendment or Modification.

This Agreement shall be reviewed on an annual basis by the parties before December 31st of each year, when the annual audit is reviewed. If there are any suggested changes that the parties do not agree with, the matter shall be decided according to the provisions of the Dispute Resolution provisions in paragraph 61. All changes shall be in writing signed by the parties or, if there is no agreement, based upon the arbitrator's decision.

72) Notice.

Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered hereunder to any party hereto shall be in writing and shall be sufficiently given or sent or delivered if it is: (i) delivered personally to an officer or director of such party; (ii) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Province of Ontario; or (iii) sent by facsimile.

Notices shall be sent to the following addresses or facsimile numbers

a) in the case of the City:

The Corporation of the City of Clarence-Rockland
1560 Laurier Street
Rockland, Ontario
K4K 1P7
Attention: Clerk

b) in the case of the Academy:

8720 County Road 17
Rockland Ontario
K4K 1T2

Attention: Robert Bourdeau

or to such other address or facsimile number as the party entitled to or receiving such

notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall: (i) if delivered personally as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery; (ii) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth business day following the date of mailing, unless at any time between the date of mailing and the fourth business day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mail, allowing for such discontinuance or interruption of regular postal service; and (iii) if sent by facsimile, be deemed to have been given, sent, delivered and received on the date the sender receives the telecopy answer back confirming receipt by the recipient.

73) Relationship of Parties

The City and the Academy intend that:

- a) The City and Academy shall not be treated as partners or as members of a joint venture for any purpose;
- b) The Academy shall be treated as an independent contractor of the City. The Academy shall be responsible at all times, including following termination of this Agreement, for all costs associated with its employees, including wages and salaries, benefits Workers' Compensation and unemployment compensation, any associates tax liabilities.

74) Binding.

The parties hereto acknowledge that it is their intention that upon their execution and delivery, this Agreement shall be binding and have full legal effect in accordance with their terms, but subject to the conditions set out herein.

75) Assignment.

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. This Agreement shall not be assigned in whole or in part by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld and any attempt to assign this Agreement in whole or in part without such prior written consent is void.

76) Future assurances.

Each of the parties hereto covenants and agrees that their successors and permitted assigns will sign such further agreements, assurances, papers and documents, attend such meetings and generally do and perform or cause to be done and perform such further and other acts and things that may be necessary or desirable from time to time in order to give full effect to this Agreement and every part hereof.

77) Force Majeure.

- a) Without limiting or restricting the applicability of the law governing frustration of contracts, if any party herein is delayed or hindered in or prevented from the performance of its obligations hereunder or from compliance with any of its covenants hereunder by *force majeure*, then the performance of the act or obligation or compliance with a covenant of such party will be excused for the period of such delay

and the period for the performance of the act or obligation or compliance with the covenant will be deemed extended for an equivalent period.

- b) For the purposes of this section, a force majeure shall include any act or event of force majeure or other matter beyond its control, including but not limited to an act of God, inability to procure material, failure of power or any other utility, terrorism, riot, insurrection, war, strike, lock-out, government security measure affecting the Municipality, labour trouble or interruption (no obligation shall be imposed upon any party to settle or resolve any strike, lock-out, labour trouble or interruption) (referred to herein as "Force Majeure"), such failure shall not be deemed to be a breach of the obligations of such party to this Agreement, and the time for the performance of such obligations shall be extended as may be appropriate under the circumstances

- 78) Compliance with Laws.

The parties shall properly execute and comply with all statutes, rules, orders, ordinances and regulations of all governmental authorities, at all levels including municipal requirements, in the operation of the City Facilities.

- 79) Governing Law.

In all respects this Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and the Courts of such province shall have jurisdiction to entertain any action arising in connection therewith.

- 80) Time.

Unless otherwise specified, time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties have hereunto entered into and executed this Agreement by their duly authorized representatives, as of the date first above written.

**THE CORPORATION OF THE CITY OF
CLARENCE- ROCKLAND**

{SIGNATURES REMOVED}