

**THE CORPORATION OF THE CITY OF VICTORIA RECREATIONAL FACILITIES  
LICENCE AGREEMENT**

THIS AGREEMENT is made on the 8th day of May, 2019.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF VICTORIA**

#1 Centennial Square Victoria, B.C. V8W 1P6

(the "City")

AND

**SHWING BATTER INVESTMENT GROUP INC.** (Inc. No. BC1030496)

**#101 - 1814 Vancouver Street**

Victoria, B.C. V8T 5E3

**("Shwing")**

**VICTORIA HARBOURCATS BASEBALL CLUB INC.** (INC. No. BC0952631)

#8 - 1540 Springhill Drive Kamloops BC V2E 2H1

**(the "Harbourcats")**

(Shwing and Harbourcats collectively defined as the "Licensee")

**RECITALS:**

**A.**

**Capitalized terms not otherwise or elsewhere defined will have the respective meanings** ascribed to them in section 1 of this Agreement;

The City is the owner of the Facility;

The officers and directors of Shwing took over the ownership and management of the Harbourcats in 2015;

In the 2016 Licence, the City agreed to licence the Facility for a term which ended on December 31, 2018;

Under the 2012 Licence, the Harbourcats provided the City with the Deposit in lieu of the letter of credit required under section 2.5(b) of that agreement, and the Deposit continued to be held by the City under the 2016 Licence;

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The Harbourcats **have requested** the return of the Deposit and in its place, **have provided** the Letter of Credit to the City as security for the Licensee's obligations under this **Agreement**, which the City has accepted; and

**G.**

**The Licensee wishes** to use the Facility for the purpose described below.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of these presents, and the mutual covenants and promises herein contained the sufficiency of which is hereby acknowledged, the **parties agree as follows:**

**1.0  
DEFINITIONS**

1.1  
In this Agreement:

**"2012 Licence" means** the licence agreement between the City and the Harbourcats dated

June 13 2012;

**"2016 Licence" means** the licence agreement between the City and the Licensee dated September 24, 2016;

**"Baseball Season" means** June 1st up to and including August 20th of the Term;

**"Deposit" means** the \$27,000 deposit provided by the Harbourcats to the City under the 2012 Licence;

**"Director"** means the City's Director of Parks, Recreation and Facilities;

**"Facility"** means the building, structures, and grounds situated at 1014 Caledonia Avenue in the City of Victoria, British Columbia, known as Royal Athletic Park;

**"Facility Manager"** means the person designated by the City to manage the Facility;

**"Fence"** has the meaning ascribed in section 7.5;

**"Green Street Lot"** means the City owned parking lot bordered by Green Street, Vancouver Street, and Caledonia Street, and adjacent to the Victoria police department headquarters;

**"Gross F&B Revenue"** has the meaning ascribed in section 5.4;

**"Letter of Credit"** means the letter of credit attached as Schedule "A" to this Agreement;

**"Scheduled Games"** has the meaning ascribed in section 2.2;

**"Scheduled Game Days"** has the meaning ascribed in section 2.2; and

**"Term"** has the meaning ascribed in section 2.1;

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## 2.0

### LICENCE TO USE

#### 2.1

This Agreement shall be for a term commencing May 15, 2019 and ending December 31, 2019 (the **"Term"**).

The City grants to the Licensee, subject to the terms of this **Agreement, the use of the Facility** during the Term for the purpose only of home baseball games of the Licensee (**"Scheduled Games"**) **on those days** and times scheduled in advance with notice to the City as provided herein (**"Scheduled Game Days"**), provided that such **games may** only be held during the Baseball Season. The Licensee has priority booking

rights for the Baseball Season and agrees to provide the City with the dates and times for scheduled **games** on or before May 20, 2019. The City will **use reasonable efforts to accommodate** the Licensee's scheduled games and will only **refuse to accommodate a proposed** scheduled game in exceptional circumstances, **it being understood** and agreed that the Director will have absolute discretion pursuant to this section and the Licensee agrees to accept the City's decision in this regard. **The Licensee further agrees that the City will not be liable to pay any compensation or any other amounts to the Licensee with respect to any loss, claims, damages, expenses, penalties or costs whatsoever suffered or incurred** by the Licensee, its servants, players or agents as a result of the Director's approval or disapproval of any particular day or time, and the Licensee hereby releases and forever discharges the City from **and against any such claims.**

2.3

In addition to the foregoing, the Licensee may engage a third party to operate a zipline at the Facility during the Baseball Season provided that:

(a)

**the third party shall take out and maintain** during the Term, a policy of **commercial general liability insurance against claims for bodily injury, death or property damage arising out of the use of the Facility by the third party**, in the amount of not less than five million dollars per single occurrence, or **such greater amount as the City** may from time to time designate and shall **provide the City with a certificate of insurance evidencing coverage, or a certified copy** of such policy or policies if requested.

(b)

all policies of insurance required under subsection (a) shall:

(i) name the City as an additional insured;

(ii) contain a provision requiring the insurer not to cancel or change the **insurance** without first giving the City thirty (30) days' notice in writing;

(iii) contain a cross liability clause in favour of the City; and

(iv) be in a form and on such terms, including with respect to deductible **amounts, as are satisfactory to the City**, in the City's sole and absolute discretion;

prior to the start of the Term, the Licensee delivers to the Director:

(i) **a release and indemnity executed by the third party in the form attached as Schedule "B" to this Agreement; and**

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(ii) a copy of the operating agreement between the Licensee and the third party and site plans, drawings, or specifications of the zipline as **may be requested** by the City.

2.4

**Unless expressly stated** otherwise, all rights of the Licensee under this Agreement with **respect to** the Facility may only be exercised by the Licensee during the Baseball Season.

2.5

The Licensee's use of and access to the Facility shall not exceed eight (8) hours on any Scheduled Game Day provided always that the Facility Manager may, in their discretion, **agree to an extension** of time to permit completion of a game. Despite the foregoing, in no event may the Licensee's Scheduled Games and game-related activities extend beyond 11:59 p.m. on the Scheduled Game Day, including any playoff game, without the approval of the Director. In the event that a game is not completed by 11:00 p.m., the media booth and team dressing rooms will be available for one hour following the completion of the game.

2.6

Without limiting section 2.5, the Licensee agrees to ensure that the Facility is **vacated in a** timely manner at the conclusion of its use on each Scheduled Game Day and in any event, within (1) one hour following the conclusion of a completed game.

2.7

Either of the City or the Licensee may, at all times, after reasonable consultation with the **other party hereto**, cancel Scheduled Games, where **necessary because of weather** conditions, field conditions, an act of God, labour dispute, or any other cause that is beyond the control of the City or the Licensee (as the case may be). The City may, in its discretion, permit the rescheduling of any Scheduled Game that the City or the Licensee cancels under this provision. Where the City cancels a Scheduled Game under this provision, the City shall not be liable to the Licensee for any loss of revenue, or for any **costs, expenses**, loss or damage incurred by the Licensee or any other person as a result of such cancellation.

The Licensee may use the Facility on days other than Scheduled Game Days for the Licensee's team practices, provided the Director in their discretion determines that there are no scheduling or Facility maintenance conflicts, and provided that the Licensee pays a fee of fifty-one dollars and fifty cents (\$51.50) per hour, to a

maximum of three hundred dollars per day (\$300.00); which will include field preparation costs, but will not include any public access for viewing, nor food or **beverage services**.

2.9

**The Licensee may park** the Harbourcats team bus at the Facility for the duration of the Term and will be subject to a storage fee of one hundred dollars (\$100.00) per month from September 1st to the end of the Term.

2.10

Subject to section 2.9, the Licensee must remove all its goods and chattels from the Facility on or before September 1st of the Term unless such time limitation is extended by mutual agreement, and if it fails to do so, the City may remove and store those goods and chattels at the expense of the Licensee without being liable to the Licensee for any **damage to** or loss of the goods and chattels during the removal or storage.

2.11

If the cost of the removal and storage referred to in section 2.10 is not met in full by the **Licensee** within thirty (30) days of invoice for the same, the City may sell the goods and chattels by auction or by sale at the price as the City deems appropriate, retaining from the proceeds the costs of removal, storage and sale, and remitting the balance, if any, to

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the Licensee, and if there is a deficiency, the Licensee must pay such deficiency to the City.

2.12

Subject to section 2.10, the Licensee may bring its goods and chattels into the Facility from and after May 15th of the Term.

**3.0**

## **PAYMENT**

**3.1**

The Licensee must pay to the City the sum of one thousand dollars (\$1000.00) plus applicable taxes for each of the Scheduled Games that are actually played. A game will

be considered played if it goes 5 full innings or more.

### 3.2

For the **Licensee's use of and access** to the Facility in excess of eight (8) hours on any Scheduled Game Day, the Licensee shall pay to the City seventy dollars (\$70.00) per hour plus **taxes**.

### 3.3

The Licensee must pay to the City the amount owing for Scheduled Games played, and practices scheduled at the Facility, within thirty (30) days of invoicing.

### 3.4

As a specific exception to section 2.7, in the event the City or Licensee **cancels a Scheduled Game**, a game underway with less than 5 full innings played, or a practice, the City will **reimburse the Licensee for any fees paid** (if any) for that Scheduled Game, game **underway or practice**, and the Licensee will be entitled to **receive the Licensee's share of the Gross F&B Revenue pursuant to section 5.4**. Notwithstanding the foregoing, the City will be entitled to deduct from any reimbursable fees or the Licensee's share of the Gross F&B Revenue payable pursuant to this section, any **set-up costs**, all staffing costs and any other out of pocket **expenses** incurred by the City in relation to a cancelled Scheduled **Game, game underway or practice**. **No fees will be deducted** for Scheduled Games **cancelled up to 2 hours before gates open**.

### 3.5

In the event the Licensee neglects or fails to make any payment when due under this **Agreement or any other agreement between the City and the Licensee, or is otherwise in default** of any of its obligations under this Agreement, the City may, without limiting any **other remedies that may be available to it, draw upon the Letter of Credit** for any amount due and owing by the Licensee, including without limitation any amount under sections 2.8, 2.9, 3.1, 3.2, 3.4 and 3.8, **provided that the Licensee has not remedied such default after being given 30 days written notice of such default**.

### 3.6

If the Licensee makes all payments to the City when due during the Term, the City will at **the expiry of the Term, return the Letter of Credit to the Licensee**.

### 3.7

If the Licensee fails to make use of the Facility by operating, scheduling and participating in a minimum of twenty (20) Scheduled Games (excluding any Scheduled Games

cancelled by the City pursuant to section 2.7) per Baseball Season during the Term, the City may draw upon the Letter of Credit to its full extent and those amounts will be forfeited to the City on account of damages.

3.8

The Licensee will pay all applicable taxes (including any tax payable under the Excise Tax Act but excluding **property taxes**) in addition to **any amounts paid** to the City under this **Agreement**. For greater certainty, all payment amounts stated under this **Agreement are** exclusive of any applicable **taxes, unless expressly stated otherwise.**

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#### **4.0 REQUIREMENTS FOR USE**

4.1

The City will provide personnel which in the opinion of the Director, **are necessary to** ensure the proper and safe use of the Facility for the purposes permitted by this **Agreement**, including without limitation the following personnel:

**(a)  
door workers;**

**(b)  
concession workers;**

**(c)  
janitorial staff;**

**(d)  
bartenders; and**

**(e)  
other event related personnel, except security staff,**

and the City will be responsible for all costs including salary, wages and remittances for **these personnel.**



4.2

The Licensee will provide at its sole cost all game officials, medical attendants, and **announcers necessary** for Scheduled Games.

4.3

**At its own expense, the City** will provide house lighting and heat as are reasonably **required** for the permitted purpose of the Licensee.

4.4

Up to three (3) hours of field lighting per scheduled game is included in the per **game fee**. For lighting beyond three hours, the Licensee shall pay the City for the use of the Facility's field lights at the rate of Seventy Dollars (\$70.00) Dollars per hour, calculated to the **nearest quarter hour**.

4.5

The City will provide the Licensee, at no charge, with the use of twenty four (24) parking stalls from May 15th up to and including August 20th of the Term at the Green Street Lot on Scheduled Game Days for the **Licensee's use**.

4.6

In the event that team members are picked up or dropped off at the Facility between the hours of 11 p.m. and 7 a.m., the Licensee will make arrangement for any such bus pick up and/or drop off to occur at the southwest corner of the Facility (being the corner of **Vancouver and Caledonia**). The Licensee will ensure the bus pulls onto Vancouver Street and shuts off its engine while loading/unloading.

5.0

## **CONCESSION OPERATIONS AND SOUVENIR SALES**

5.1

The City retains the sole and exclusive right to operate all concessions in the Facility, for the purpose of selling **refreshments**, including liquor. The Licensee and the City will work together to determine liquor and concession menus within BC liquor licensing, Island Health regulations and facility capacity limitations. The City and the Licensee will work together to establish pricing for food and **beverage products** sold during Scheduled **Games**.

5.2

The

The Licensee may, with the prior written consent of the City, contract with external vendors for the provision of food and **beverage services**, excluding liquor sales, at a cost of twenty

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five dollars (\$25.00) plus taxes per service site per Scheduled Game. **All external vendors** shall be subject to a non-competition agreement with the Facility's concession offerings. All external vendors shall be responsible for provision of all amenities associated with their **services**.

The City will make **every reasonable effort to maintain its current** liquor license for the Facility during the Term, provided that the City will not be responsible for any reduction in **revenue or losses sustained** by the Licensee, directly or indirectly, due to the loss of that license, whether due to changes in provincial liquor licensing regulations, or to any act, **omission or wrongdoing** of the Licensee or any of its **employees, contractors, agents or invitees**, or otherwise. If the City is unable to provide a liquor licence for the Facility during the Scheduled Games, the Licensee has the option to terminate this Agreement without costs or penalty on 3 days written notice to the City.

#### **5.4**

The Licensee will be entitled to receive a thirty percent (30%) share of gross revenue (net of taxes) from the City's sale of food and beverage products (the "**Gross F&B Revenue**") at all Scheduled Games.

#### **5.5**

The City will remit to the Licensee, the Licensee's share of the **Gross F&B Revenue, along with a statement of food and beverage revenue, in relation to each Scheduled Game, no later than thirty (30) days after each Scheduled Game.**

#### **5.6**

**The Licensee may, with the prior written consent of the City, erect a souvenir sales stand** at the Facility for the duration of each Baseball Season during the Term. The Licensee has the sole right on Scheduled Game Days to sell **novelties, souvenirs and programs, related to the Licensee's use of the Facility**, without participation or a charge by the City.

#### **5.7**

All programs sold or distributed by or on behalf of the Licensee will contain **messages, the content of which must be approved by the Director, reminding the Licensee's patrons:**

#### **(a)**

of the danger of drinking and driving; and

**(b)**

**that they are asked to respect the rights of local residents when leaving the game.**

**5.8**

**The Licensee may operate a corporate BBQ area, for specified group spectators, in a portion of the Facility agreed to in writing by the City. Subject to and only if permitted under the City's liquor licence, the City will provide a temporary bar service to the corporate BBQ area. Revenues from this bar service will be included in the Gross F&B Revenue for the Scheduled Game.**

5.9

If, in the opinion of the Director, the Licensee is liable to pay the City for damage caused to the Facility or the loss of equipment or other chattels, and if the Licensee fails to pay the City for such loss or damage within thirty (30) days of a demand in writing from the City, the City may hold back any such amount the Director deems is owing to the City from the Licensee's share of the Gross F&B Revenue.

**6.0**

**TICKETS**

6.1

The Licensee will provide box office services for Scheduled Games at the Facility, at times that the parties shall mutually agree upon.

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6.2

Upon the completion of a Scheduled Game, the Licensee will provide to the City a **statement** of the Licensee's ticket **sales records**, including the Licensee's ticket manifest.

6.3

After each Scheduled Game the City will provide a copy of the City's admission report to the Licensee.

## 7.0

### FACILITY IMPROVEMENTS

#### FACILIT

### 7.1

The Licensee may from time to time propose improvements to the Facility, which the City may approve in its sole discretion. Any improvements made to or installed upon the Facility shall, immediately upon affixation, be **deemed to be annexed** to the Facility and the property of the City.

### 7.2

Unless the parties agree otherwise, the parties will share equally in the cost of undertaking and completing any proposed improvements that the City approves pursuant to section 7.1.

### 7.3

During the Term, the Licensee is responsible for the cost of maintenance and repair of all improvements it has funded and installed solely or jointly with the City in the Facility.

### 7.4

If the Licensee chooses, it may at its sole cost, and within such reasonable period of time as the City directs, install additional safety netting at the Facility to **prevent baseballs from** leaving the playing area and causing injury or damage to property.

### 7.5

The City will install and maintain a temporary outfield fence (the "**Fence**") for the Licensee's Scheduled Games and the City will remove the Fence at the end of the Baseball Season. The Licensee will be responsible for all costs related to or arising from the Fence installation, maintenance and removal, including those relating to any anchoring **system** required.

### 7.6

The parties agree that during the Baseball Season, it will be necessary to take down the Fence at various times in order to allow other parties to use the Facility. Accordingly, during the Term, the City will provide to the Licensee the dates on which the Fence will **need to be taken down to accommodate third part use. The Licensee and the City** agree that the City will be responsible for arranging for the take down of the Fence **between Scheduled Games as necessary and all costs associated therewith** and the Licensee will **be responsible for arranging** for the set-up of the Fence prior to Scheduled Games and all **costs associated therewith**.

## 8.0

### ADVERTISING

#### 8.1

During the Baseball Season, the Licensee may install, at its sole cost and expense, third party advertising signs within the Facility and may retain all revenue derived from such third party advertising, provided that:

**(a)**

the location and content of all third party advertising must be approved by the Director, such approval not to be unreasonably withheld. Without limiting the foregoing, the City shall provide the Licensee with a letter generally defining the type and content of advertising that will be permitted;

**(b)**

on days other than Scheduled Game Days, the City and other Facility users will be

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entitled to temporarily cover any third party advertising signs placed by the **Licensee**, provided that the City and its other Facility users will be responsible to ensure that any such temporary signs or sign **coverage are removed before** Scheduled Game Days; and

on Scheduled Game Days the Licensee will be entitled to temporarily **cover any** third party advertising signs placed by the City and other Facility users, **provided that the Licensee will be responsible to ensure that any such temporary signs or sign coverage are removed** at the conclusion of each Scheduled Game Day, or, if **two** or more Scheduled **Game Days fall on consecutive days** with no other intervening events at the Facility, at the conclusion of the last of the consecutive Scheduled Game Days.

#### 8.2

If the Licensee or the City **causes damage to any signs pursuant to section 8.1(b) or (c)**, **the Licensee or the City (as the case may be)** will repair, or **cause to be repaired any such damage** or rectify or cause to be rectified any signs that are dislodged.

## 9.0

### OBLIGATIONS OF LICENSEE

#### 9.1

**The Licensee must pay all salaries, wages, fees and commissions** of all personnel employed by it, all royalties, author's, publisher's, and composer's fees, which may become payable as a result of any of the Licensee's Scheduled Games, as well as all assessments or taxes lawfully imposed.

#### 9.2

The Licensee indemnifies and agrees to save harmless the City in respect of any claims, demands, actions, suits and costs arising out of or resulting from the use of the Facility by the Licensee or any servant, agent, player, officer or invitee of the Licensee, provided that nothing in this Agreement shall make the Licensee responsible to indemnify the City against any such claims, demands, actions, suits and costs to the extent that they are caused by the negligence or wilful misconduct of the City or its officers or employees.

#### 9.3

No later than May 15th, the Licensee must deliver to the Director a policy of insurance issued by an insurer licensed to carry on the business of insurance in British Columbia in an amount of not less than \$5,000,000.00 in respect of any claims for personal injury (including death) and property damage that may be made by the City or by any other person as a result of negligence or wilful misconduct on the part of the Licensee, its servants, players or agents, in respect of anything done or omitted to be done in the Facility during the Term.

#### 9.4

**The Licensee must strictly observe, obey and act in accordance** with all statutes, bylaws, regulations, and legal requirements of any kind relating to the Facility or its use.

#### 9.5

**Because people attending some games may be emotional and this may result** in situations with inherent danger to public safety and property, the Licensee agrees that its players, agents and employees will not use devices and effects or otherwise incite audiences to act in an uncontrollable manner during the Licensee's games. The City's determination and decision as to the minimum requirements in these matters shall be final.

#### 9.6

**The Licensee undertakes** that its players and performers, by their acts, speech,

music, conduct or manner will not violate or incite others **to violate any statute law, bylaw, regulations, rule, policy or local standard** concerning decency or obscenity.

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9.7

The Licensee must not tolerate any violence on the part of any person taking part in any **game in** the Facility and the City may eject from the Facility any persons who, in the opinion of the Director or any officer of the City, are creating a disturbance or behaving in an objectionable or improper manner.

9.8

The Licensee will present its games and all game related activities in a manner that is suitable for family audiences, and will not permit within the Facility any act, entertainment or material that is of an obscene or unduly violent nature.

9.9

The Licensee will discourage standing on the seats, standing to obstruct the view of the **patrons or crowding**.

9.10

If an audience becomes appreciably unruly and violates the above regulations, the Licensee, the officials and players must stop the games and the announcer must announce that this action is not permitted and the game will resume as soon as the audience is re-seated and orderly.

9.11

The Licensee will be responsible for any **possessions** that remain in the Facility on a day ~~The icon~~ to-day or ongoing basis.

9.12

**The Licensee will work cooperatively** with British Columbia Transit, the City and community-based transportation organizations to promote the use of public transit and **other alternative modes of transportation** to and from the Facility.

9.13

The Licensee will meet regularly, **and work cooperatively**, with **representatives of** the North Park Neighbourhood Association and Fernwood Neighbourhood Resource Group

Society to discuss and resolve community issues related to the Licensee's use of the Facility.

9.14

The Licensee is required to maintain and repair the field level **seating structures**.

## **10.0 RESTRICTIONS ON USE**

**10.1**

**The Licensee must not** suffer or permit transportation of liquor into or within the Facility.

10.2

The City may sell liquor in the Facility if it is authorized to do so by licence **issued under** the applicable provincial legislation. In the event that the liquor licence is not in place 3 months prior to the start of the initial **Baseball Season the Licensee shall have the right to terminate** this Agreement with no further obligations at the Licensee's sole discretion. If at any time the City loses the right to sell liquor in the Facility during the **Baseball Season the Licensee may at** its sole discretion elect to terminate this agreement pursuant to section 5.3.

10.3

Without written permission of the Director, the Licensee must not put up or operate any engine or motor or machinery in the Facility, or **use a flammable substance** for either mechanical or other purposes, nor use anything except electrical lighting for illuminating the Facility.

10.4

The Licensee must not stage any act or game in which fire or flame is involved without the prior written permission of the Fire Marshal or the Fire Chief.

10.5

The Licensee must not use any decorative material, which may pose a risk to the Facility

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or people without the prior consent of the Director.



#### 10.6

The Licensee must not carry on or do anything, nor suffer or permit the carrying on or doing of anything in or upon the Facility, which may result in an **increase** of the premium payable for the insurance of the Facility against fire or other perils, or which may make void or voidable any such policy of insurance.

#### 10.7

**Except as otherwise expressly provided in this Agreement, the Licensee must not** construct, erect, attach or permit to be **constructed, erected or attached any** device, fixture or any other thing in or on the Facility without the prior written consent of the Director.

#### 10.8

**The Licensee will not place or cause or permit** the placing of posters on public property, including lamp posts, power line posts, park benches, buildings, walls and similar public property.

#### 10.9

Despite section 10.8, the Licensee may tape or cause or permit the taping of posters, about the **Licensee's games, on poster** cylinders installed for that purpose on the City's lamp posts if the **posters are:**

(a)

limited in number to no more than one on each cylinder, and

(b)

not larger than 8" x 14".

10.10 **The Licensee may not assign this Agreement** nor any of the rights granted to it by this

Agreement to any other person nor sublet or grant sub-licences in respect of the Facility, **except** the right of **admission to spectators**, without the consent of the City, such consent **not to be unreasonably** withheld. Notwithstanding the foregoing, the Licensee **may assign** this Agreement or grant a sub-licence in respect of the Facility to an entity under the **same ownership as the Licensee and provided any such sub-licensee or assignee** is operating a **baseball team**. Notwithstanding any such assignment or sub-licence, the Licensee shall **remain** fully liable for the **performance** of its obligations under this Agreement and shall **not be released** from performing any of the **terms, covenants and** conditions in this Agreement.

10.11 The Licensee must not sell or dispose of, or permit to be sold or disposed of,

tickets in

**excess** of 4,120, or admit a larger number of persons than can **safely and freely move** about in the Facility.

10.12 Only bona fide **players, working personnel, guests, and employees** will be permitted in **dress**ing rooms before and during a game.

## **11.0 RIGHTS OF THE CITY**

11.1

The City by the Director, the Mayor, City Manager, the Facility Manager by any person designated by them may, at any time while the Facility is used by the Licensee, enter the Facility, inspect the Facility **and make alterations, repairs** or additions which, in their **opinion, may be necessary for the safety or preservation** of the Facility, and may in the case of fire or other **catastrophe cause the evacuation** of the Facility without liability to the **Licensee for damages caused** by the evacuation.

11.2

The City retains the right, at all times, to control and govern **the areas known as the "Press**

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Box" and the exclusive right to designate the persons who may use this area. The City will **provide reasonable access for parties and purposes associated with the Licensee's operations.**

11.3

If in the opinion of the Director a threat of arson, bombing or other violence has **been made** in connection with the Facility, the Director may cause the Facility to be **evacuated.**

11.4

Unless the **threat was caused** by the negligence or wilful misconduct of the Licensee, its servants or agents, the Licensee has the right at some time convenient to the City, to use the Facility for the purpose of making up for time lost due to the evacuation.

11.5 If the City is obligated by **reason of an evacuation** to refund any tickets sold, the Licensee

has no claim against the City for any loss of revenue, or for any **costs, expenses, losses**

or damages incurred by the Licensee or any other person. **12.0 GENERAL**

## **PROVISIONS**

### 12.1

in this Agreement, any reference to the "Director" includes any designate of the Director.

### 12.2

Time is of the essence in the performance of this Agreement, and the provisions of this **clause** are not waived by the conduct of either party.

### 12.3

If, due to any cause, other than neglect or default of the City, cancellation of a Scheduled Game by the City pursuant to section 2.7, a strike or lockout of City employees, or an act of God or of the Queen's enemies, the Licensee fails to use the Facility for the purpose authorized under this Agreement on a Scheduled Game Day, the Licensee must pay to the City all expenses incurred by the City under this Agreement and all amounts due to the City for the use of the Facility under this Agreement.

### 12.4

If:

#### **(a)**

there is filed by or against the Licensee in any court a petition in bankruptcy or insolvency or for reorganization of the Licensee or for appointment of a liquidator of the **Licensee's property, or the Licensee otherwise becomes** insolvent;

**the Licensee makes an assignment** or petitions for or enters into an arrangement for the benefit of creditors;

**the Licensee becomes a** party to proceedings under which it seeks protection from its creditors, whether under the Bankruptcy and Insolvency Act, the Companies Creditors Arrangement Act or any similar law of Canada or any Province of Canada; or

#### **(d)**

being an **incorporated company, proceedings** are begun to wind up or dissolve the Licensee

the City may cancel this Agreement without notice and eject the Licensee from the Facility.

#### 12.5

If the Licensee is in breach of any covenant or term of this Agreement, the City may by written notice require the Licensee to correct such breach within thirty (30) days, failing

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which the City may terminate this Agreement without further notice and eject the Licensee from the Facility.

#### 12.6

If, during the Baseball Season, the Licensee fails to make use of the Facility on five consecutive Scheduled Game Days for any **reason** other than neglect or default of the City, cancellation of a Scheduled Game by the City under section 2.7, a strike or lockout of City employees, or an act of God or of the Queen's enemies, the City may in its discretion at any time after the last Scheduled Game Day of the Baseball Season, **terminate** this Agreement immediately upon written notice to the Licensee.

#### 12.7

Despite any cancellation under sections 12.4, 12.5 or 12.6, the Licensee is liable to the City for payment of all **moneys owing at the time of cancellation and for any amount** payable under section 3.1 for the unexpired portion of the Term, which amounts shall be immediately due and owing to the City.

#### 12.8

In the event of a cancellation by the City under sections 12.4, 12.5 or 12.6, the Licensee **agrees** that the City will not be liable **to pay any compensation or any other amounts to the Licensee with respect to any loss, claims, damages, expenses, penalties or costs whatsoever** suffered or incurred by the Licensee, its servants, players or agents, as a result of such cancellation, and the Licensee hereby releases and forever discharges the City from and against any such claims.

#### 12.9

If due to a mechanical **breakdown or failure, whether or not it was caused by the negligence of any City employee, or due to a labour dispute whether or**

not picketing is lawful, the City is unable to provide the Facility:

**(a)**

**the Licensee may cancel** this Agreement without being liable to the City for the **payment** of any rent in respect of the unexpired Term; and

**(b)**

**whether or not the Licensee exercises** its right of cancellation, the City is not liable **to the Licensee for any damages suffered as a result** of its inability to provide the Facility.

12.10 The Licensee is liable for any damage done to the Facility during **Scheduled Games by**

**the Licensee, its employees, agents or contractors or by any player, official, patrons or** invitees of the City or the Licensee, including riot damage, but excluding **damage done by** act of God, the **Queen's enemies or the acts or omissions** of the **officers and servants** of the City. The Licensee will ensure that it is properly and prudently insured in respect of **any claims for property damage arising under** this Agreement. The Licensee **shall make good at its own expense**, all damage or disturbance which **may be caused** to the Lands in **the exercise** of its obligations hereunder pursuant to then-current City **standards**.

12.11 The City is not liable to the Licensee for the loss of or damage to any of the goods or

personal property of the Licensee, **its servants** or agents within the Facility, including the **storage shed and dressing rooms, unless the loss or damage is caused by the gross** negligence or wilful misconduct of the City, its officers or **servants**.

12.12 The Licensee will maintain sufficient insurance on the goods and personal property of the

**Licensee and its servants and** agents which is in the storage shed, and dressing rooms of the Facility.

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12.13 Any notice required to be given under this Agreement is sufficiently given if mailed or

**delivered to:**

(a) The Corporation of the City of Victoria

#1 Centennial Square Victoria, B.C. V8W 1P6 Attention: City Clerk

(b) Shwing Batter Investment Group Inc.

#101 - 1814 Vancouver Street Victoria, B.C. V8T 5E3

12.14 Nothing in this Agreement shall be interpreted as prejudicing or impairing the City of

Victoria in the exercise of any statutory legislative powers under the *Local Government Act*, the *Community Charter* or any other enactment, all of which may **be exercised as if** this Agreement had not been executed, provided that the foregoing shall not restrict or limit the rights and remedies of the Licensee resulting or arising from a breach or non **performance** of the terms of this Agreement by the City.

12.15 Nothing in this Agreement shall be interpreted **so as** to render the relationship of the

parties to be that of a partnership, joint venture, or employer-employee for any purpose.

12.16

The City agrees not to allow any other commercial baseball operations, such as collegiate leagues, independent leagues, or minor league baseball to use the Facility during the **Term**.

### **13.0 COUNTERPART**

13.1

This Agreement may be executed in counterparts and delivered by facsimile or emailed PDF file, each of which will have the same effect as if all parties had signed the same **document**. **Each counterpart shall be deemed to be an original**. All counterparts shall be **construed together** and shall constitute one and the same Agreement.

**14.0**

**EFFECTIVE DATE**

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14.

1

This Agreement is effective as of the date of the signature of the last party to sign.

**IN WITNESS WHEREOF the parties hereto have executed this Agreement.**

**THE CORPORATION OF  
THE CITY OF VICTORIA by**

its authorized signatories:

**MAYOR LISA  
HELPS #1  
Centennial Square  
Victoria BC V8W**

1P6 Mayor Lisa Helps

City Clerk  
Christopher Coates  
In 12119

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

**CHRISTINE HAVELKA Deputy City  
Clerk Corporation of the  
City of Victoria #1  
Centennial Square Victoria,  
BC V8W IP6**

**SCHWING BATTER INVESTMENT**

**GROUP) INC.** by its authorized signatories:

Print Name: Jim  
Swanson

Di

n

Time

Swanson

Print Name:

Date: May

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**VICTORIA HARBOURCATS BASEBALL**

**CLUB )** INC.by its authorized signatories:

Print

Name:

Tim.

Gwangan

Date: M84

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Print Name:

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Schedule A **Letter** of Credit

**IslandSavings**

ADVISON OTOPs WEST CREDIT UNION



Dear Sir.

IRREVOCABLE STANDBY LETTER OF CREDIT

OURRI: E NO AMOUNT CUSTOMER BI: NILICIARY TXPIRY DATI: EXPIRY PLACT:  
REFERENCE

: \$27,000.00 : *Victoriu HarbourCuts Byseball Club Inc.* , **The City of Victoria** : 01  
April 2020 : **Duncan BC**

We hereby authorize you to draw on the *Island Savings a Division of First West Credit Union 499 Canada Avenue, Duncan BC V9L 1T7* for the account of *Victoria HarbourCats Baseball Club Inc* (the "Customer") up to an aggregate amount of \$27,000.00 (Twenty-Seven Thousand Dollars) available on demand.

Pursuant to the request of our customer, we hereby establish and give you an Inevocable Standby Lcilor of Credit in your favor in the above amount which may be drawn on by you at any time and from time to time, upon written demand for payment made upon us by you, which demand we shall honor without enquiring whether you have the right as between yourself and the said Customer to make such demand, and without recognizing any claim of our suid customer, or objection by it to payment by us.

You may make partial drawings or full drawings at any time.

Thu 1.clier at Credit relates to those financial obligations set out in an Aurcomcat between the Customer and the City of Victoria to support an application for a *Licence: Royal Athletic Park, Victoria BC*.

The amount of this Letter of Credit may be reduced from time to time as advised by 1101ice in writing to the undersigned from time to time by the City of Victori:1.

This clier of Credit will continue in loree for a period of (t) year, hus shall be subject to the condition hereinafter set forth.

It is a condition or this Irrevocable Standby Letter of Credit that it shall be deemed automatically extended without amendment liom car to year from the

present or any future expiration date heicol

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This Irrevocable Standby letter of Credit is subject to the International Chamber of Commerce publication of the Uniform Customs and Practice for Documentary Credits that is in effect on the above date of issue and engages the Issuing Institution in accordance with the terms thereof

Dated at **Duncan**, British Columbia, this day 25<sup>th</sup> March 2019.

*Barh Landigo*

*Nicule Old*

## **Schedule B**

### **Release and Indemnity Agreement**

This Agreement dated for reference the day of May 2019, is entered into by and

BETWEEN:

**THE CORPORATION OF THE CITY OF VICTORIA**

#1 Centennial Square Victoria, B.C. V8W 1P6

(the "City")

AND:

**WESTSHORE EXCURSIONS VICTORIA LTD. dba WILDPLAY VICTORIA**

(Incorporation No. BC0858458) #15, 1767 Old Island Hwy Victoria, B.C. V9B 1J1

(the "**Releasor**")

**WHEREAS:**

Capitalized terms not otherwise or elsewhere defined will have the respective meanings ascribed to them in section 1 of this Agreement;

The City is **the owner of the Facility** and has licenced the Facility to the **Licensee for** carrying out home baseball games for the Term;

The Licensee wishes to retain the Releasor to install and operate a zipline during the **Licensee's Baseball Season;**

The City has agreed to permit the Licensee to use the Facility for this purpose, subject to **certain terms and conditions;** and

E .

The Releasor has agreed to release, insure, and indemnify the City for its use of the Facility as provided herein.

In consideration of the promises in this Indemnity Agreement and the payment of Ten Dollars (\$10.00) from each of the parties to each other, the receipt and sufficiency of which is hereby acknowledged, the Releasor and the City agree as follows:

**1.0  
DEFINITIONS**

1.1  
In this Agreement:

**"Baseball Season"** means June 1st up to and including August 20th of the Term;

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in the City of Victoria, British Columbia, known as Royal Athletic Park;

**"Licence"** means the licence agreement dated May 8, 2019 between the City and the Licensee for the use of the Facility;

**"Licensee"** means Shwing Batter Investment Group Inc. (Inc. No. BC1030496) and Victoria Harbourcats Baseball Club Inc. (Inc. No. BC0952631);

**"Operating Agreement"** means the agreement between the Licensee and the Releasor to operate the zipline during the Licensee's **Baseball Season**; and

**"Term"** means the term of the Licence, commencing May 15, 2019 and ending December 31, 2019.

**INDEMNITY**

2.1  
The Releasor shall indemnify and hold harmless the City and its elected and appointed officials, officers, employees and agents from all suits, proceedings, losses, damages, expenses, demands, claims, costs (including actual costs of professional advisors and costs associated with remediation of contamination) and harm of any kind, howsoever caused, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, arising out of or in any way connected with:

(a)

**the Releasor's occupation** or use of the Facility or City property in the **performance** of its obligations under the Operating Agreement;

any failure to pay for labour and materials for which the Releasor is responsible pursuant to the Operating Agreement;

**any other breach or default by the Releasor under the Operating Agreement; and**

**any wrongful act, omission or negligence of the Releasor, its members, directors, officers, employees, contractors, subcontractors, licensees, invitees, customers** and others for whom it is responsible in the performance of its obligations under **the Operating Agreement.**

2.2

The indemnity survives the expiry or earlier termination of this Agreement.

## **3.0**

### **INSURANCE**

3.1

**The Releasor shall take out and** maintain during the Term, a policy of commercial general liability insurance against claims for bodily injury, death or property damage arising out of the use of the Facility by the Releasor, in **the amount** of not **less than five** million dollars per single occurrence, or such greater amount as the City may from time to time designate and shall provide the City with a **certificate of insurance evidencing coverage**, or a certified copy of such policy or policies if **requested**. All policies of **insurance required under section 3.1** shall:

3.2

(a)

name the City as an additional insured;

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b)

contain a provision requiring the insurer not to cancel or change the insurance without first giving the City thirty (30) days' notice in writing;

(c)

contain a cross liability clause in favour of the City; and

d)

be in a form and on such terms, including with respect to deductible amounts, as **are satisfactory** to the City, in the City's sole and absolute discretion.

### **3.3**

If both the City and the Releasor claim to be indemnified under any insurance required by this Agreement, the indemnity shall be applied first to the settlement of the claim of the City and the balance, if any, to the settlement of the claim of the Releasor.

### **3.4**

Maintenance of such insurance shall not relieve the Releasor of liability under the indemnity provisions of this Agreement.

3.5

The foregoing provisions shall not limit the **insurance required by law, nor relieve the Releasor** from the obligation to determine what insurance it requires for its own purposes.

3.6

No finding of negligence, whether joint or **several, as against** the City in favour of any third party shall operate to relieve or shall be **deemed to relieve the Releasor** in any manner from any liability to the City, whether such liability arises under this Agreement, under the provisions of the *Community Charter* as amended from time to time, or **otherwise**.

## **4.0**

### **RELEASE**

**The Releasor releases the City** and its elected and appointed officials, **officers, employees** and agents from all claims of any kind, whether known or unknown, whether or not relating to negligence, which the Releasor now has or at any future time **may have, however caused**, arising out of or in any way connected with the rights or responsibilities granted by this Agreement, including without limitation, the use of the Facility or City **highways**, or the exercise by the City of any of its rights pursuant to this Agreement or as owner of the Facility.

4.2

This **release survives the expiry** or earlier termination of this Agreement.

**5.0**

## GENERAL

### 5.1

**Further Assurances.** The parties shall execute and do all such further deeds, acts, things **and assurances as may be reasonably** required to carry out the intent of this Indemnity Agreement.

### 5.2

**No Assignment.** The Releasor will not assign, transfer or dispose of their rights and responsibilities under this Agreement, in whole or in part, without the prior written consent of the City, which consent may be withheld by the City in its sole discretion.

### 5.3

**Governing Law.** This Agreement will be construed in accordance with the laws of the Province of British Columbia.

### 5.4

**Headings.** The headings or captions in this Indemnity Agreement are inserted for

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convenience only and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.

5.

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**No Waiver.** No consent or waiver, expressed or implied by any part to or of any breach or default by the other party in the performance by the other party of its obligations hereunder will be deemed or construed to be a consent or waiver to or of any breach or default in the performance by such party hereunder.

5.

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**Joint and Several.** The covenants, conditions, agreements, rights, powers, privileges and liabilities of the Releasor shall be construed and held to be **several** as well as joint.

**Enurement.** This Agreement will enure to the benefit of and be binding upon the parties and their **respective successors and assigns.**

**Counterparts. This Agreement to be executed** and delivered by facsimile and in any number of counterparts all of which together shall constitute an original.

5.  
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**Severance. If any section** of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section as the case may be, will be considered **separate and severable** and the remaining parts or sections as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.

5.1  
0

**Effective Date. This Agreement is effective as of the date of the signature of the last party** to sign.

**IN WITNESS WHEREOF the parties hereto have executed**  
this Agreement:

**THE CORPORATION OF THE CITY OF )**  
**VICTORIA, by its authorized**  
signatpiKATOR LISA HELPS

#1 Centennial  
Square Victoria  
BC V8W 1P6

Name:

-

Dat

e:

**CHRISTINE HAVELKA Deputy City Clerk Corporation of the**  
**City of Victoria #1 Centennial**  
**Square Victoria, BC V8W 1P6**

Glaugh  
June  
12119

Name:



Date:

**WESTSHORE EXCURSIONS**  
**VICTORIA LTD.**, ) by its authorized  
signatories:

Robert Keno

Name:

Name:

Date:

May

2014

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