

Attachment A:

**Lease Agreement between the City and
MacPherson and Zenone Physiotherapist
Corporation**

**təməsew tx^w AQUATIC AND COMMUNITY CENTRE
ACTIVE REHABILITATION FACILITY LEASE AGREEMENT**

THIS LEASE is dated for reference the 1st day of May, 2024

BETWEEN:

Corporation of the City of New Westminster
511 Royal Avenue, New Westminster, B.C. V3L1H9

(the “**City**”)

AND:

MacPherson and Zenone Physiotherapist Corporation
(Corporation #BC1073545)
1607 Nanaimo Street, New Westminster, B.C V3M 2G5

(the “**Tenant**”)

WHEREAS:

- A. The City is the registered owner in fee simple of those lands and improvements in the City of New Westminster known as təməsew tx^w Aquatic and Community Centre, legally described as:

Parcel Identifier: 009-207-732

LOT 86, NEW WEST DISTRICT, PLAN NW24862 SUBURBAN BLOCK 4&13,
GROUP 1, EXCEPT PLAN 28208 & 37542 & LMP8088

(the “**Land**”)

- B. There is located on the Land a building known as the təməsew tx^w Aquatic and Community Centre (the “**Building**”), having a civic address of 65 E Sixth Avenue, New Westminster, BC.

- C. The Tenant is a for profit enterprise;

- D. The Tenant wishes to lease the space in təməsew tx^w Aquatic and Community Centre shown on the sketch plan attached as Schedule “A” (the “**Premises**”) for the purpose of operating a comprehensive active rehabilitation, health and wellness treatment centre, and the City wishes to grant to the Tenant a lease to use and occupy the Premises on the terms and conditions set out in this Lease;

- E. In accordance with section 26 of the *Community Charter* (British Columbia), the City has published notice of its intention to lease the Premises to the Tenant.

THIS LEASE is evidence that, in consideration of the Lease Fee to be paid and the promises exchanged below, and other good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge), the parties covenant and agree as follows:

1. Definitions

I. In this Lease, unless otherwise specifically provided, the parties agree that the following terms have the following meanings:

- (a) **"Commencement Date"** means August 1, 2024 and any extension thereof;
- (b) **"City's Work"** means the work to be performed by the City at its cost and expense more particularly set forth in Schedule "B";
- (c) **"Expiry Date"** means July 31, 2034;
- (d) **"Fixturing Commencement Date"** means May 1 2024;
- (e) **"Fixturing Period"** means May 1, 2024 up to and including July 31, 2024;
- (f) **"Lease"** means this lease, including all the attached Schedules;
- (g) **"Tenant's Work"** means the Tenant's improvements, fixturing, and furniture, machinery and equipment, necessary and required to be made and installed in and to the Premises in order for the Tenant to open for business to the public as a rehabilitation and wellness centre and without limiting the generality of the foregoing the work to be performed by the Tenant at its cost and expense more particularly set forth in Schedule "C".

2. Construction and Fixturing of the Premises

I. The Tenant acknowledges that it has entered into this Lease on the understanding that the City's Work in the Premises is limited to the scope of construction described in Schedule "B".

II. The City will complete the City's Work prior to the Fixturing Commencement Date.

Provided that the Premises are ready for occupancy as determined by the City in its sole discretion, the Tenant will have possession of the Premises commencing on the Fixturing Commencement Date for the purpose of performing the Tenant's Work. The City grants to the Tenant, at a cost to the Tenant of \$468 monthly or \$1404 for the three months, and without any rent or fees on the Fixturing Commencement Date, for the benefit of the Tenant and its contractors, subcontractors, suppliers and agents an irrevocable licence to enter the Lands and the Building and use the Premises and any required parts of the Land and the Building at all times during the Fixturing Period. All provisions of this Lease will apply during the Fixturing Period.

III. If the Premises or any part of them are not ready for occupancy that will allow the Tenant to complete the Tenant's Work in accordance with the provisions of this Lease and obtain a Certificate of Occupancy for the Premises on or before the Commencement Date by reason of the fact that the Premises are not in a condition that will allow the Tenant's Work to be commenced on the Fixturing Commencement Date, then the Fixturing Period, the Commencement Date and the Expiry Date will be postponed by the length of such delay.

3. Lease

I. The City hereby demises and leases the Premises to the Tenant to have and to hold to enter upon and use the Premises for the Term, on the terms and conditions set out in this Lease and for the purpose set out in this Lease.

II. The Tenant acknowledges and agrees that this Agreement creates a lease and nothing in this Agreement creates any other property rights or interest in the Tenant, the Building or the Land.

4. Term

I. The term (the "**Term**") of this Lease is ten years, commencing on the Commencement Date and expiring on the Expiry Date subject to extension and earlier termination pursuant to the terms of this Lease.

5. Renewal

I. If the Tenant wishes to renew this Lease for a further term of five (5) years (the "**First Renewal Term**") commencing on the Expiry Date of the original Term, the Tenant may provide a written request to the Manager – Recreation Services and Facilities t@m@sew'tx Aquatic and Community Centre no less than 6 months before the Expiry Date. If upon receiving such a request, the City wishes, in its sole discretion, to grant to the Tenant a renewal lease of the Premises, the City shall provide notice of the renewal to the Tenant. The renewal lease for the First Renewal Term will be in the same form and upon the same covenants, agreements, conditions, and provisos contained in this Lease except for any provisions for City's Work, Tenant's Work, free rent, bonuses, leasehold improvements or other tenant inducements of any kind, and except the lease fee to be paid during the First Renewal Term. The lease fee for the First Renewal Term shall be determined by the City's cost to operate the Premises and the then-fair market rent for the Premises in their then-current condition and in any event not less than \$60 per square foot.

II. The renewal lease for the First Renewal Term will provide that if the Tenant wishes to renew this Lease for a further term of five (5) years (the "**Second Renewal Term**") commencing on the expiration of the First Renewal Term, the Tenant may provide a written request to the Manager – Recreation Services and Facilities t@m@sew'tx Aquatic and Community Centre no less than 6 months before the expiration of the

First Renewal Term. The renewal lease for the Second Renewal Term will be in the same form and upon the same covenants, agreements, conditions, and provisos contained in this Lease except for any provisions for City's Work, Tenant's Work, free rent, bonuses, leasehold improvements or other tenant inducements of any kind, and except the lease fee to be paid during the Second Renewal Term. The lease fee for the Second Renewal Term shall be determined by the City's cost to operate the Premises and the then-fair market rent for the Premises in their then-current condition.

III. The renewal lease of each of the First Renewal Term and the Second Renewal Term is deemed to incorporate all of the terms and provisions of this Lease as modified by this section 5, and the parties ratify and confirm all of the terms and conditions of the Lease as so amended. The parties will not be obliged to enter into a separate renewal lease to give effect to this section 5 but the Tenant will, at the Tenant's cost, execute a separate renewal lease if required by the City to do so.

6. Lease Fee

The Tenant shall pay to the City a monthly Lease Fee of \$2,340.00 commencing on the Commencement Date (the "**Lease Fee**") and monthly, on the 1st day of the month, calculated in accordance with this section 6 of the Lease. The Tenant acknowledges and agrees that the Lease Fee amount does not include PST or GST (as applicable). The Lease Fee includes utilities (electricity, water, sewer, garbage, recycling and excludes telecommunications and internet and is based on the City's estimated costs to operate the Premises, not including depreciation or unscheduled maintenance (unknown and unexpected work).

I. The Tenant shall pay the City in years 1 through 5 (2024- 2028) of the Term, the Lease Fee of \$45 per square foot of the Premises. In years 6 through 10 (2029- 2033) of the Term, the Lease Fee will be \$55 per square foot of the Premises.

II. The Tenant shall not be entitled to any refund of the Lease Fee as a result of any planned or unplanned temporary closures or partial closures of the Building with a duration under 3 business days.

III. For greater clarity and notwithstanding anything else in this Lease to the contrary, the City agrees with the Tenant that there will be a Lease Fee of \$468 per month or \$1,404 for the three months payable by the Tenant to the City during the Fixturing Period.

7. Termination

I. In the event that the City requires the Premises for its own use, or in its sole discretion considers that it is in the public interest to cancel the rights herein granted in whole or in part, or the Tenant ceases to use the Premises for the purposes permitted herein, the City may terminate this Lease on ninety (90) days written notice to the Tenant.

II. Either party may terminate this Lease for any reason on sixty (60) days written notice to the other party. Without limiting the foregoing, the City may terminate this agreement under this section 7.II if it determines, in its sole discretion, that the Building should be repurposed for another use.

III. In the event the City exercises its right to terminate the Lease prior to the Expiry Date of the Term pursuant to section 7.I, except if such termination is by reason of the Tenant ceasing to use the Premises for the purposes permitted herein, or pursuant to section 7.11, the City shall reimburse the Tenant for the actual out-of-pocket costs incurred and paid by the Tenant for the Tenant's Work.

IV. Upon the exercise by either party of their right to terminate the Lease under this section 7, this Lease and the Term hereby demised will cease and be at an end as of the effective date of such termination (the "Termination Date") and the Lease Fee and all other payments for which the Tenant is liable under the terms of this Lease will be apportioned and paid in full to the Termination Date.

8. Tenant Use of Premises

I. The Tenant shall only use the Premises during regular facility operational hours of the Building for the purpose of providing active rehabilitation, health and wellness treatments and for any and all uses incidental and necessary to such purpose under the name "New West Physio" or such other name as the Tenant is at such time using for its business. The Manager - Recreation Services and Facilities - tøməsew' tx^w Aquatic and Community Centre must be notified of the Tenant's regular program hours to ensure support for events or programs during the Tenant's regular hours of operations, as janitorial service (garbage removal and towel laundering) scheduling would need to be modified.

II. The Tenant and the Tenant's employees, contractors, guests and clients shall have the right throughout the Term to use the fitness centre in the Building. The Tenant will be required to purchase a Lease Holder ActivePass to access the fitness centre. The ActivePass will be swiped for each client using the fitness centre. The Tenant's employees and independent contractors are not required to swipe the ActivePass to facilitate access to and use of the fitness centre by the Tenant's clients, however the Tenant's staff are required to swipe the ActivePass when accessing the fitness centre for their personal use. The Tenant's employees and independent contractors are to provide identification to City staff which will include identification badges or clothing when entering the fitness centre.

III. The use of other rental spaces such as multipurpose rooms, gymnasiums and pool will be at the discretion of the City and follow Facility Allocation and Fees and Charges for the applicable spaces.

IV. The Tenant shall have the right to engage independent contractors including, without limitation, physiotherapists, chiropractors, massage therapists and kinesiologists to provide services on the Premises where such services are provided by the City the

independent contractor shall pay the applicable City permit fee and provided the Tenant shall ensure that each independent contractor maintains adequate professional liability insurance and has secured an annual business licence from the City of New Westminster for its operations in the Premises.

V. The Tenant shall not use the Premises for any other purpose other than as set out in this Lease.

9. City Use of Premises

I. The City shall maintain and repair the Building infrastructure at its own cost, other than repair and maintenance resulting from the Tenant's misuse of the Premises in contravention of this Lease, the costs for which will be the Tenant's sole responsibility in accordance with Schedules "C" and "D" and the City shall not use the Premises for City programs or services during the Fixturing Period and for the duration of the Term.

10. Furnishings and Equipment

I. The Tenant shall not store any poisonous, toxic or combustible materials in the Building. Any such materials stored by the Tenant in the Building as of the date of the execution of this Agreement must be removed immediately. Failure to do so will result in the City removing and disposing of such property at the cost of the Tenant. The Tenant may store batteries required for the proper functioning of their equipment. Materials necessary for cleaning and disinfecting surfaces are permitted and must be stored in a safe manner.

II. The Tenant shall provide all furnishings, equipment and supplies in order to operate its business.

11. Parking Facilities

I. There is no designated parking for staff of the Tenant. The Manager, Recreation Services and Facilities - təməsew' tx^w Aquatic and Community Centre will work with the Tenant to identify areas that would be suitable for staff parking.

12. Tenant's Covenants

I. The Tenant covenants and agrees as follows:

- (a) to use the Premises only for the purpose set out in section 8 of this Lease;
- (b) to promptly pay the Lease Fee when due;
- (c) to provide all furnishing, equipment and supplies that may be required to use the Premises for the purpose of this Lease governing the Tenant's operations;

- (d) not to, suffer or permit anything that may be or become a nuisance or annoyance in, on or from the Premises to other occupiers or users of the Building, the Land, or to the owners, occupiers or users of adjoining lands, or to the public;
- (e) not to commit or allow any willful or voluntary waste or destruction of the Premises, and not to, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the Premises;
- (f) not to allow any animals other than guide animals or service animals within the Premises without the City's prior written consent;
- (g) to take all precautions to ensure the safety of all persons using the Premises;
- (h) to obtain in respect of every employee of the Tenant's business a current criminal record check with satisfactory results;
- (i) subject to section 14, to repair and maintain those items listed in Schedule "C" and "D", and any additional furnishings or equipment brought into the Premises by the Tenant in a safe and sanitary condition;
- (j) to notify The Manager, Recreation Services and Facilities - t@m@sew tx^w Aquatic and Community Centre promptly of any extraordinary repair and maintenance issues in relation to the Premises. In the case of an emergency, to notify the Manager, Recreation Services and Facilities - t@m@sew tx^w Aquatic and Community Centre at 604-773-1696 (cell) or 604-636-4348 (office);
- (k) not to erect or display any permanent sign or notice on or in the Premises or adjoining City lands without the City's prior written consent;
- (l) to keep the Premises free of any rubbish, litter and debris and keep the areas adjacent to the Premises free of any rubbish, litter and debris originating from the Premises;
- (m) to dispose of all non- hazardous domestic waste and recycling materials associated with its use of the Premises in the appropriate receptacles provided at the Building, the removal of which shall be dealt with by the City;
- (n) to arrange for appropriate pickup and removal of all hazardous or non-domestic waste associated with its use of the Premises;
- (o) to carry on and conduct its activities on the Premises in compliance with any and all laws (including environmental laws), statutes, enactments, bylaws, regulations and orders from time to time in force and to obtain all required approvals, licenses and permits thereunder and not to do or omit to do anything on or from the Premises in contravention thereof;
- (p) not to store, dispose, treat, use, release or transport any environmental

contaminants on or from the Land, except in compliance with applicable environmental laws, and to promptly remove all environmental contaminants from the Land which it has released or permitted to be released into the Land;

- (q) to pay to the City all PST and GST (as applicable) payable in respect of this Lease;
- (r) to arrange and pay all costs and expenses for the provision of telephone, internet and cable services to the Premises;
- (s) to promptly discharge any builders lien which may be filed against the title to the Land relating to any work or construction that the Tenant undertakes on the Premises, and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any such work or construction undertaken on the Premises;
- (t) to observe and comply with all fire regulations pertaining to the use of the Building and all emergency procedures developed by the City;
- (u) not to permit the consumption of liquor as defined in Liquor Control and Licensing Act R.S.B.C. 1966, c. 267 or the use or consumption of cannabis products as defined in the *Cannabis Control and Licensing Act* R.S.B.C. 2018, c.26 within the Premises; and
- (v) to designate a liaison person to work with the Manager, Recreation Services and Facilities - təməsew' txw Aquatic and Community Centre and provide the City with the name and contact information for the liaison prior to the commencement of the Term and thereafter promptly notify the City of any changes to the name or contact information for the liaison and to maintain this line of communication without recourse to public announcements.

13. Workers Compensation

I. The Tenant shall, in its use of and activities on the Premises, comply with the *Workers Compensation Act* (British Columbia) and all regulations and orders from time to time in force thereunder, including the Occupational Health and Safety Regulations, and, upon request from the City, shall provide evidence of any required registration under that Act and evidence of compliance with any requirement under that Act to make any payments or pay assessments.

II. In addition, the Tenant shall be the “prime contractor” for the Premises under the *Workers Compensation Act* (British Columbia) and shall fulfill all of the “prime contractor’s” obligations under that Act, including by ensuring that the activities of any employers, workers, volunteers and other persons on the Premises relating to occupational health and safety are coordinated and by doing everything that is reasonably possible to establish and maintain a process that shall ensure compliance with that Act and regulations thereunder, including the Occupational Health and Safety

Regulations.

14. City's Maintenance and Repairs

I. The City shall maintain and repair the Building infrastructure at its own cost, other than repairs and maintenance resulting from the Tenant's misuse of the Premises in contravention of this Lease, the costs for which the Tenant shall be solely responsible in accordance with Schedule "D".

15. Utilities

I. The City shall provide heat, water and electricity to the Premises and non-hazardous domestic waste and recycling collection from the Premises, the costs of which are included in the Lease Fee. The City will not be liable for any loss or damage to the Tenant arising or resulting from the interruption of, or failure to supply, any utility to be provided by the City nor shall the City be liable for any loss or damage to the Tenant, its goods, equipment, business or other property caused by any overflow or leakage of water, electricity, gas or fuel oil from any part of the Building, however caused, nor shall the City be liable for any damage to the Tenant, its invitees, agents, employees, members, its goods or other property by reason of any accident, however caused, occurring to the machinery, fixtures, equipment, lights, gas or water pipes and any other apparatus located in the Building.

16. Janitorial Services

I. The City shall provide janitorial services and related supplies at the Premises at its own cost, in accordance with Schedule "D".

17. Security

II. The City shall provide electronic security monitoring at the Building, including at the Premises, at its own cost. The Tenant shall lock and secure the Premises at the end of its daily use. Damages and costs resulting from theft shall be the sole responsibility of the Tenant if it can be shown that the Tenant did not properly secure the premises.

III. The City shall provide the Tenant with keys and/or codes to the Premises. The Tenant will not change the keys and/or codes, or install new locks without consultation with the City.

IV. The Tenant shall be responsible to ensure that the Premises are locked and secured when a staff member is not present.

V. In the event that the Tenant wishes to implement a security system within the Premises, the Tenant must first receive the City's written approval. The Tenant shall be responsible for all the associated costs.

18. Liaison

I. The Tenant shall appoint a liaison to work with the and Manager, Recreation Services and Facilities - t̓məsew' tx̓w Aquatic and Community Centre the Tenant shall notify the City of the name and contact information for its appointed liaison upon execution of this Lease. The Tenant appointed liaison shall attend all meetings scheduled by the City from time to time for the purpose of discussing this Lease and addressing related concerns.

19. Tenant's Representations and Warranties

I. The Tenant represents and warrants that:

- (a) it is validly incorporated and in good standing under the laws of British Columbia with respect to the filing of annual reports;
- (b) it has the power and capacity to enter into and carry out its obligations under this Lease;
- (c) this Lease has been duly and validly executed and delivered by the Tenant; and
- (d) it will secure an annual business license from the City for its operations in the Premises and provide a copy to the City on the Commencement Date and annually throughout the Term.

20. Condition of Premises

I. Subject to completion of the City's Work as set out in Schedule "B", the Tenant accepts and uses the Premises, without any representations, warranties or assurances from the City as to their state or condition or their suitability for the Tenant's purposes.

21. No Interest in Land

I. The Tenant acknowledges and agrees that this is a Lease and the Tenant acquires no interest in the Land but only the right to use the Premises in accordance with the terms and conditions of this Lease.

II. The City covenants and agrees with the Tenant for quiet enjoyment and the City covenants with the Tenant that the Tenant will and may peaceably possess and enjoy the Premises for the Term without any interruption or disturbance from the City or any other person or persons lawfully claiming by, from, or under the City, except as set out in this Lease.

22. Further Interests

I. Subject to the Tenant's rights of exclusive possession pursuant to section 8 of this

Lease, the City will not grant additional licenses and other rights and privileges to third parties with respect to use of the Premises.

23. Tenant Alterations

I. The Tenant's Work must be completed within a reasonable length of time (6 months). After completion of the Tenant's Work, the Tenant shall not make any improvements or alterations to the Premises without the prior written consent of the City, which consent may be withheld at the City's sole discretion. Any approved alterations shall be provided at the Tenant's expense. Upon termination of the Lease all tenant improvements will remain the property of the City.

II. The City will provide the Premises in accordance to Schedule "B".

24. Notice under *Builders Lien Act*

I. The Tenant acknowledges that the City may file a notice against the title to the Land pursuant to section 3(2) of the *Builders Lien Act* (British Columbia).

25. Insurance Requirements

I. The Tenant shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain throughout the Term of the Lease and any renewal term the following insurances in forms and amounts acceptable to the City from insurers registered, licensed and authorized to conduct business in the Province of British Columbia:

(a) Commercial General Liability insurance on an occurrence basis, in an amount not less than \$5 million dollars (\$5,000,000.00) inclusive per occurrence against death, bodily injury, personal injury and property damage arising directly or indirectly out of the work or operations of the Tenant, its employees and agents.. The insurance policy will be endorsed to add the City of New Westminster as Additional Insured and will include Cross Liability and Severability of Interests such that the coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. The insurance shall include, but not be limited to:

- (i) premises and operations liability,
- (ii) broad form products and completed operations,
- (iii) blanket contractual,
- (iv) volunteers and employees as additional insureds,

- (v) non-owned automobile,
 - (vi) contingent employers liability,
 - (vii) broad form loss of use,
 - (viii) personal injury,
 - (ix) broad form tenants legal liability.
- (b) standard owner's form automobile insurance providing third party liability insurance with \$2 million inclusive limits on all vehicles owned, operated or licensed in the name of the Tenant ; and
- (c) "All risk" property insurance for replacement cost on all of the Tenant's improvements on or to the Premises and all of the Tenant's fixtures and personal property on the Premises.
- (d) the City recommends the following insurances where they are applicable.
- (i) Business Interruption Insurance to insure that the Tenant has some policy provisions that will assist with covering their rent and operating expenses in the event of a loss.
 - (ii) Equipment Breakdown Insurance to ensure that the Tenant's equipment is not at risk in the event of a loss.
 - (iii) Auto Liability Coverage for owned and non-owned auto liability in the event that any Tenant owned vehicles cause damages to the Buildings or the Premises with a minimum of \$2,000,000.
 - (iv) Cyber and Media Liability Insurance – please provide evidence of this coverage with a minimum of \$1,000,000.

II. The Tenant will provide the City with evidence of the required insurance prior to the Commencement Date. When requested by the City throughout the Term or any renewal term, the Tenant shall provide certified copies of required insurance policies. Certificates of Insurance shall include the contract title, number, policyholder and the scope of work. Certificates of Insurance may not contain any qualifications or disclaimers whatsoever.

III. All required insurance policies shall remain in full force and effect at all times during the Term.

IV. All required insurance shall be endorsed to provide the City with 30 days advance

written notice of cancellation.

V. The Tenant hereby waives all rights of recourse against the City for loss or damage to the Tenant's property, except as a result of the City's use of the Premises, as specified herein.

VI. All required insurance will contain a clause that waives the insurer's rights of subrogation against the City and the City's personnel.

VII. The Tenant shall require and ensure that each subcontractor maintains insurances comparable to those required above. Upon request, the Tenant will provide the City with Certificates of Insurance for the policies it has obtained from its subcontractors and a copy of the applicable insurance clauses from its subcontractor's agreements.

VIII. The Tenant shall be responsible for deductible amounts under the insurance policies.

IX. All the foregoing insurance shall be primary and not require the sharing of any loss by the City or any insurer of the City.

X. The City reserves the right to require such higher limits of insurance or other types of insurance appropriate to this Lease as the City may reasonably require from time to time. The Tenant acknowledges that any requirement by the City as to the type and amount of coverage under any policy of insurance will not constitute a representation by the City that the amount required is adequate and the Tenant acknowledges and agrees that it is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The Tenant and each of its subcontractors will provide at its own cost any additional insurance which is required by law to provide or which it considers necessary.

26. Tenant Release and Indemnity

I. The Tenant shall at all times and does hereby indemnify, save harmless, release and forever discharge the City from and against all manner of actions, causes of action, claims, debts, suits, damages, demands, promises, and costs (including all legal costs associated with defending a claim) at law or in equity whether known or unknown, including without limitation for injury to persons or property, including death of any person, directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Tenant in connection with or in consequence of this Lease and its operations at the Premises.

II. Fines, expenses, and costs suffered or incurred by the City including, without limiting the foregoing, any liability, costs or expenses whatsoever insured by reasons of liens for non-payment of labour or materials, workers' compensation assessments,

unemployment insurance, federal or provincial tax or check-off, which are based upon or arise out of this Agreement or use of the Premises by the Tenant or any of its staff, licensees or invitees.

27. City Release and Indemnity

I. The City shall at all times and does hereby indemnify, save harmless, release and forever discharge the Tenant from and against all manner of actions, causes of action, claims, debts, suits, damages, demands, promises, and costs (including all legal costs associated with defending a claim) at law or in equity whether known or unknown, including without limitation for injury to persons or property, including death of any person, directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the City in connection with its operations at or use of the Premises.

28. Survival of Indemnities

I. The obligations under sections 25 and 26 survive the expiry or earlier termination of this Lease.

29. Termination Due to Default

I. If and whenever:

- (a) any of the Tenant's goods or chattels are at any time seized or taken in execution or attachment by any creditor of the Tenant or under bill of sale or chattel mortgage;
- (b) a writ of execution issues against the goods and chattels of the Tenant;
- (c) the Tenant makes any assignment for the benefit of creditors or becomes insolvent or bankrupt;
- (d) proceedings are begun to wind up the Tenant;
- (e) the Tenant is in default in the payment of the Lease Fee or any other amount payable under this Lease and the default continues for 30 days after delivery of written notice by the City to the Tenant;
- (f) the Tenant does not fully observe, perform and keep each and every term, covenant, agreement, stipulation, obligation, condition and provision of this Lease to be observed, performed and kept by the Tenant, and persists in such default for 30 days after written notice by the City or, in the case of a default that cannot with due diligence be cured within the period of 30 days, the Tenant does not fully proceed promptly after the giving of such notice to cure such default; or

- (g) the Tenant vacates or abandons the Premises or uses or permits or suffers these of the Premises for any purpose other than the purposes permitted by this Lease, and such default persists for 30 days after written notice by the City, then the City may, at its option, terminate this Lease and the Term shall then become immediately forfeited and void and the Tenant shall immediately cease all use and occupation of the Premises and shall vacate and deliver up possession of the Premises and the City may without notice or any form of legal process and without any adherence to public law duties or procedural fairness or the principles of natural justice, forthwith re-enter the Premises and repossess and enjoy the same.

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30. Surrender

I. All of the Tenant's trade fixtures, furniture, equipment, machinery, chattels and improvements for the purposes of the Tenant's trade or business ("Tenant's Fixtures") in or upon the Premises at the commencement of the Term and during with Term will, until, but without limiting the exercise of the Tenant's right to remove same pursuant to this section 30, be the Tenant's property notwithstanding any provision in this Lease or rule of law or equity to the contrary, provided that the Tenant may at its sole option leave any of the Tenant's Fixtures on the Premises on the Expiry Date or earlier termination of this Lease.

II. Within 30 days after the Expiry Date or earlier termination of this Lease (unless this Lease is terminated for default in accordance with section 28, in which case the Tenant shall comply with the requirements under this section immediately upon termination), the Tenant shall cease its use of the Premises, remove all Tenant's Fixtures, equipment and supplies brought into the Premises and leave the Premises in a safe, clean and tidy condition, and otherwise in the condition in which the Premises are required to be kept throughout the Term, reasonable wear and tear excepted. It is understood and agreed that any of the Tenant's Fixtures not removed by the Tenant within the time period set forth in section 30.I. will, unless the parties otherwise agree, become the property of the City.

31. Condition of Premises

I. If the Tenant fails to leave the Premises in the condition required by this Lease under section 30.I, the City may do so on behalf of the Tenant and the Tenant shall, on demand, compensate the City for all costs incurred.

32. Entry by City

I. The City may enter onto the Premises, with reasonable prior notice to the Tenant, for the purpose of inspecting the Premises in order to determine whether then Tenant is complying with the requirements of this Lease provided the City will use commercially reasonable efforts to minimize interference with the Tenant's use of the Premises and provided further that such prior notice shall include the name and contact information of the person(s) who will be entering and inspecting the premises.

33. No Assignment or Sublease

I. The Tenant shall not, without the prior written consent of the City, assign the Tenant's interest in this Lease or sublease the Premises or any portion of the Premises, nor may the Tenant charge, mortgage or encumber or purport to charge, mortgage or encumber the Land or the Building.

II. The City may withhold such consents for any reason whatsoever.

III. Notwithstanding section 33.I, the Tenant will have the right, without obtaining the consent of the City, to assign this Lease, in whole or in part, or grant a sublease of the Premises, in whole or in part, or grant a licence of occupation of part of the Premises to an affiliate (as defined in the *Business Corporations Act* [SBC 2002] Chapter 57, and any amendment or substitution thereto) provided the Tenant guarantees the obligations of such affiliate under this Lease. In the event of such assignment, sublease or grant of licence, the Tenant will notify the City of the name of the transferee.

IV. The City further acknowledges and agrees that, provided it does not interfere with the primary use of the Premises by the Tenant as set out in section 8 of this Lease the Tenant will have the right, without obtaining the consent of the City, to grant the use of a portion of the Premises, for a fee, to any person or persons for the purpose of conducting courses, lectures, workshops and other similar events for the benefit of the Tenant's clients and the general public, and that such use of the Premises will not constitute an assignment of the Tenant's interest in the Lease or sublease of the Premises or any portion thereof.

34. Entire Agreement

I. The provisions in this Lease constitute the whole of the agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Lease.

35. No Joint Venture

I. Nothing contained in this Lease creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives the Tenant any power or authority to bind the City in any way.

36. Notices

I. Where any notice, request, direction or other communication (any of which is a "**Notice**") shall be given or made by a party under this Lease, it shall be in writing and is effective if:

- (a) delivered in person,
- (b) sent by registered mail addressed to the party for whom it is intended at the address set forth above in the Lease,
- (c) sent by email to the City at InvTACC@newwestcity.ca as the case may be,

provided that any Notice to the City shall be to the attention of the Manager - tēməsew/tx^w Aquatic and Community Centre with a copy to the City Corporate Officer by email to clerks@newwestcity.ca . Any Notice is deemed to have been given if delivered in person, when delivered; if by registered mail, on the fifth business day following the deposit thereof in the mail, if by fax, when transmitted. The address or fax number of a party may be changed by notice in the manner set out in this provision.

37. No Effect on Law or Powers

I. Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Lands and the Building (including the Premises), as if this Lease had not been fully executed and delivered.

38. Interpretation

I. In this Lease:

- (a) reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;
- (b) a particular numbered section is a reference to the correspondingly numbered section of this Lease;
- (c) an "enactment" is a reference to an enactment as that term is defined in the *Interpretation Act* (British Columbia) of the day this Lease is made;
- (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced;
- (e) section headings are inserted for ease of reference and are not to be used in interpreting this Lease;
- (f) a reference to a party is a reference to a party to this Lease; time is of the essence;
- (g) where the word "including" is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word "including"; and
- (h) a reference to a party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, elected and appointed officials, officers, directors, licensees and invitees of such party where the context so requires or allows.

39. City Discretion

I. Wherever in this Lease the approval or consent of the City is required, some act or thing is to be done to the City's satisfaction, the City is entitled to form an opinion, or the City is given the sole discretion:

- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the City or its authorized representative;
- (b) the approval, consent, opinion or satisfaction is in the discretion of the City, acting reasonably; and
- (c) the sole discretion of the City is deemed to be the sole, absolute and unfettered discretion of the City.

40. Severance

I. If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Lease.

41. No Public Law Duty

I. Whenever in this Lease the City is required or entitled at its discretion to consider granting any consent or approval, or is entitled to exercise any option to determine any matter, or to take any action or remedy including, without limiting the generality of the foregoing, the termination of this Lease, the City may do so in accordance with the contractual provisions of this Lease and no public law duty of procedural fairness or principle of natural justice shall have any application.

42. Binding on Successors

I. This Lease ensures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.

43. Laws of British Columbia

I. This Lease shall be construed according to the laws of the Province of British Columbia.

44. Waiver or Non-Action

I. Waiver by the City of any breach of any term, covenant or condition of this Lease by the Tenant shall not be deemed to be a waiver of any subsequent default by the Tenant. Failure by the City to take any action in respect of any breach of any term,

covenant or condition of this Lease by the Tenant shall not be deemed to be a waiver of such term, covenant or condition.

45. Overholding

I. If the Tenant holds over after the expiration of the Term and the City accepts rent, then notwithstanding any statutory requirement to the contrary, the new tenancy thereby created will be deemed a monthly tenancy and not a yearly tenancy and will be subject to the terms, covenants, provisos, and conditions contained in this Lease insofar as they are applicable to a tenancy from month to month.

46. Force Majeure

a. Despite anything contained in this Lease to the contrary, if the City or the Tenant is, in good faith, delayed or prevented from doing anything required by this Lease because of a strike, because of a strike, labour trouble, inability to obtain materials or services, power failure, restrictive government laws, orders, decrees, or regulations, riots, insurrection, sabotage, rebellion, war, act of God, terrorism, epidemics, pandemics, or outbreaks of communicable disease, quarantines, national or regional emergencies, or any other similar reason that is not the fault of the party delayed, the doing of the thing is excused for the period of the delay and the party delayed will do what was delayed or prevented within the appropriate period after the delay to the extent possible. The preceding sentence does not excuse the Tenant from payment of the Lease Fee or the Landlord from payment of amounts that it is required to pay, in the amounts and at the times specified in this Lease.

47. Counterpart and Delivery

I. This Lease may be executed in one or more counterparts, each of which will be an original, and all of which together will constitute a single instrument. Further, the parties agree that this Lease may be signed and/or transmitted by fax or by electronic mail of a .PDF document or electronic signature (e.g., DocuSign or similar electronic signature technology) and thereafter maintained in electronic form, and that such electronic record will be valid, and effective to bind the party so signing, as a paper copy bearing such party's handwritten signature. The parties further consent and agree that the electronic signatures appearing on this Lease will be treated, for the purposes of validity, enforceability, and admissibility, the same as handwritten signatures.

As evidence of their agreement to be bound by the above terms, the City and the Tenant each have executed this Lease on the respective dates written below:

CITY OF NEW WESTMINSTER

by its authorized signatory:

Authorized Signatory:

Authorized Signatory:

Date:

MACPHERSON AND ZENONE PHYSIOTHERAPIST CORPORATION

by its authorized signatories:

Authorized Signatory:

Authorized Signatory:

Date:

Schedule "A"



624Square Feet

SCHEDULE "B"

CITY'S WORK

- a) A concrete floor which may require preparation for finished flooring.
- b) Walls will be insulated drywall and taped. Existing and any new window and/or storefront ledges and casing shall be drywall, taped, sanded and ready to paint;
- c) Provide a 1- 1/4" cold waterline for domestic use capped in the space c/w pressure reducing valve with a capacity of 129 FU (fixture units) located in the premises;
- d) Provide a 4" dia. sanitary line with a 2" dia. sanitary vent pipe capped below the concrete floor slab with a capacity of 20 FU, approved by the Tenant;
- e) Provide a space on site for garbage and recycling containers in the loading dock area. Returns and recycling as per the municipal guidelines;
- f) Provide (1) 5 ton ceiling mounted ventilation and air-conditioning (fan coil units) systems for the sole and exclusive use of the premises for heating and air conditioning the premises only. Tenant's to install within the Leased Premises duct work, thermostats, drops, controls, diffusers, air return grills and exhaust fans;
- g) Coring for all underslab services and penetrations;

SCHEDULE "C"

TENANT RESPONSIBILITIES

The Tenant shall provide and install at its sole expense all materials and work required to construct and finish the Premises (not provided for as the City's Work) in accordance with the Tenant's drawings and specifications including but not limited to the following items (the "**Tenants Work**"):

All Tenant's Work must receive local authority approval and the City's approval, such City's approval not to be unreasonably withheld.

The Tenant's Work shall be all the work required for the installation of the Tenant's improvements including any leasehold improvements, electrical, mechanical, plumbing and other servicing work, trade fixtures, equipment and other chattels in or on the Premises including:

Permits

Tenant will obtain all building and construction permits including the Certificate of Occupancy for the Tenant's Work. All Tenant's Work will conform to the provincial Building codes and municipal Building Bylaw.

Signs

The Tenant is allowed to decal/decorate, display brochures on the outside of their doors provided at the termination of this Lease the doors are returned to their original condition. The City shall include "New West Physio or Active Rehab" in the Building wayfinding and the Tenant will be permitted to display advertisements for their services in the City's round rack in the Building lobby so long as the material is current and accurate. The Tenant will be permitted to display no more than four feather flags at an area in the natural space of the plazas approved by the City. The City's Building manager will work with the Tenant within the framework of the marketing display guidelines, to provide opportunities for permitted services advertising.

Electrical

All electrical installations within the Premises including: additional panels, breakers in the panels, lighting, outlets, emergency and exit lighting and electrical service to signs.

Telecommunications

All distribution and extensions of telephone conduit within the Premises and all intercom,

communication, burglar alarms and signal systems and required monitoring as required by the Tenant.

Plumbing

All plumbing, piping, equipment, fixtures, etc. required to extend and connect plumbing services from fixtures to point of connection of the rough-ins provided by the City, including provision for hot water distribution that is required by the Tenant.

HVAC Distribution

All HVAC piping, ductwork, ecologizer, materials, labour and equipment for the distribution of all HVAC and mechanical services in the Premises, ductwork connections from the HVAC unit (s) and final connections between the Tenant's mechanical work and the base building system will be made by the Tenant. The tenant is to provide a minimum of {1} CO2 sensor per 500m2 in the leased premises. The CO2 sensor (s) are to be tied into the base building BMS to monitor CO2 concentrations within the tenant space and shall be designed to meet Case 1 Mechanically ventilated spaces under LEED IEQ credit 1.

Sprinklers Alterations (Where applicable)

Additions, deletions, modifications and relocations of the sprinkler system layout to suit the Tenant's requirements shall be the responsibility of the Tenant.

Fire Protection

Any fire-fighting, fire prevention, safety and emergency equipment or lighting required in the Premises, (additional to that included in the base system provided by the City) shall be the responsibility of the Tenant.

Panic Hardware

Panic hardware that may be required by the Tenant on either the front or rear doors shall be at the sole cost and expense of the Tenant.

Garbage Removal

The Tenant is responsible for ensuring that its contractors or tradespeople remove all garbage and debris generated by the Tenant's Work on the Premises on a daily basis and is placed in the garbage bin supplied by the Tenant at location to be directed.

LEED Requirements

The Tenant shall construct their Tenant improvements utilizing the City's Tenant Construction and Renovation Guidelines, and green housekeeping requirements.

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SCHEDULE "D"

Lease Terms and Service Level Agreements

LEASE TERMS AND SERVICE LEVEL AGREEMENTS

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
1.	Heating, Ventilation and Air Conditioning		
a.	- annual inspection	City	City
b.	- routine maintenance and repair	City	City
c.	- provision & replacement of filter material	City	City
d.	- cleaning of ducts	City	City
e.	- life cycle replacement (Capital Maintenance)	City	City
2.	Plumbing Systems		
a.	- preventative maintenance and repairs to hot water heating systems	City	City
b.	- major repairs and replacement of hot water heating systems	City	City
c.	- repairs to all fixtures including faucets, unplugging toilets and all other routine repairs	City	City
d.	- life cycle replacement of hot water systems, fixtures and piping	City	City
e.	- Provide a water line to the physio space prior to build out	City	City
3.	Mechanical Systems		
a.	- annual inspection, preventative maintenance and repairs	City	City
b.	- life cycle replacement	City	City
c.	-installation, maintenance and replacement of additional equipment provided and installed by the occupant (subject to prior approval of the City)	Tenant	Tenant
4.	Fire Protection & Suppression		
a.	annual inspection of fire extinguishers and smoke detectors within the premises	City	City
b.	- annual inspection of fire extinguishers within premises	City	City
c.	- repairs/recharging of fire extinguishers	City	City
d.	- fire safety evacuation requirements and	Tenant	Tenant

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
	training provided to staff on a regular basis		
5.	Security Systems		
a.	- system monitoring, inspection, maintenance and repair	City	City
b.	- life cycle replacement	City	City
c.	- repair, replacement or re-keying of all locks	City	City
d.	- replacement of keys/access cards/fobs if lost	City	Tenant
6.	Electrical Distribution Systems		
a.	- repairs and upgrades required by Code or initiated by the City	City	City
b.	- inspection, maintenance and repair of wiring, breakers and electrical panels	City	City
c.	- life cycle replacement of wiring, breakers and panels	City	City
d.	- repair or replacement of switches, receptacles, cover plates	City	City
e.	- extensions, increases or enhancements to meet occupant's needs and future maintenance	City	Tenant
7.	Lighting Systems		
a.	- bulb/tube replacement for interior lighting	Tenant	Tenant
b.	- annual inspection and maintenance of interior emergency/exit lighting	City	City
c.	- life cycle replacement of fixtures	City	City
d.	- cleaning of interior light fixtures	Tenant	Tenant
8.	Interior Windows		
a.	- breakage occurring and routine repair required during Tenant's permitted operating hours	City	City
b.	- breakage occurring and routine repair required outside Tenant's permitted operating hours, unless caused by the Tenant's employees or those for whom it is responsible in law	City	City
b.	- cleaning	City	City
c.	- replacement due to normal wear and tear	City	City

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
9.	Exterior Windows		
a.	- breakage and routine repair	City	City
b.	- cleaning of exterior surfaces	City	City
c.	-window blinds cleaning & repairs	City	City
10.	Interior Doors		
a.	- maintenance & repair (regular wear and tear) entrance door to the space	City	City
b.	- maintenance & repair (due to improper use)	City	City
c.	- life cycle replacement	City	City
11.	Exterior Doors		
a.	- maintenance and repair	City	City
b.	- life cycle replacement	City	City
12.	Interior Surfaces		
a.	- interior life cycle repainting	Tenant	Tenant
b.	- maintenance and cleaning of window applications including, but not limited to, blinds and curtains	City	City
c.	- repairs to interior walls and ceilings, including minor painting	Tenant	Tenant
d.	- interior repairs due to building system failures such as roof leaks, exterior walls and foundation leaks not caused by the occupant or operations	City	City
e.	- maintenance and repairs of floor coverings, including carpet and tile	Tenant	Tenant
f.	- life cycle replacement of flooring	City	City
g.	- maintenance, repair and replacement of millwork (other than regular wear and tear)	Tenant	Tenant
13.	Major Structural Systems		
a.	- repairs or replacements of foundations, flooring sub-structure, building envelope including bearing walls and roofing and parking lots due to damage not related to the tenancy	City	City
b.	-repairs and painting of exterior surfaces including windows, trim, fascia and soffits	City	City

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
c.	- cleaning and repair of eaves troughs and gutters	City	City
d.	- cleaning of roof drains and roof areas	City	City
e.	-elevator maintenance	City	City
14.	Site Services		
a.	- landscaping repairs and maintenance,	City	City
b.	- grass cutting	City	City
c.	- general cleaning of grounds, litter disposal	City	City
d.	- snow and ice removal from steps, walkways, entrances	City	City
e.	- removal of snow from entrance to parking areas	City	City
f.	- provision and application of de-icing materials	City	City
g.	- repairs of water and sewage systems (beyond the building perimeter)	City	City
h.	- maintenance, repair and replacement of gates and fences	City	City
i.	- maintenance and repair of parking areas	City	City
j.	- snow and ice removal from roof areas	City	City
k.	- all costs related to controlling and/or eliminating pests, rodents, insects or wildlife within the Premises	City	City
15.	Signage		
a.	- maintenance, repair and replacement of interior (subject to prior approval of the City)	City	City
16.	Janitorial Services		
a.	- routine janitorial/custodial services	Tenant	Tenant
b.	- Removal of garbage and recycling from tenant space	City	City
c.	- pest control services (interior and exterior)	City	City
d.	- provision of all supplies in public washrooms	City	City
e.	- removal of hazardous material	Tenant	Tenant
f.	- towel laundering (after hours)	City	City
f.	- Towel laundering mesh bag and folding of	Tenant	Tenant

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
	towels.		
17.	Appliances, Program and Other Equipment		
a.	- inspection, maintenance and repair of all appliances and equipment including , refrigerators, microwaves, coolers, free standing cabinets –	Tenant	Tenant
b.	- replacement of all appliances, program and non-installed equipment	Tenant	Tenant
c.	- maintenance, repair and replacement of furniture	Tenant	Tenant
18.	Renovations and Upgrades		
a.	- any upgrades, additions, enhancements or improvements beyond what was originally provided during construction (subject to prior approval by the City)	City	Tenant
19.	Utilities		
a.	- electricity	City	Tenant (included in Lease Fee)
b.	- gas	City	Tenant (included in Lease Fee)
c.	- water and sewer	City	Tenant (included in Lease Fee)
d.	- garbage and recycling	City	Tenant (included in Lease Fee)
20.	Business Operations		
a.	- staff costs	Tenant	Tenant
b.	- telephone, internet & cable services	Tenant	Tenant
c.	- insurance (CGL, business interruption, contents, etc., subject to approval by the City)	Tenant	Tenant
d.	- supplies and equipment (non-janitorial supplies)	Tenant	Tenant

e.	- security services	City	City

Note: Any other items not qualified above that would be classified as infrastructure, mechanical, electrical or building envelope are the responsibility of the City. And any needs related to the Tenant's function and delivery of services are the responsibility of the Tenant.

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