

Attachment B

2014 Westburnco Reservoir – License of Use Agreement



metrovancover

Greater Vancouver Regional District - Greater Vancouver Water District

Greater Vancouver Sewerage and Drainage District - Metro Vancouver Housing Corporation

4330 Kingsway, Burnaby, BC, Canada V5H 4G8 604-432-6200 www.metrovancover.org



March 10, 2015

Our File: W401-010

City of New Westminster
Parks, Culture and Recreation
600-8th Street
New Westminster, BC V3M 3S2

Attention: Diane Perry

Dear Madam:

Re: Westburnco Reservoir – License of Use Agreement - Greater Vancouver Water District

Further to my email, I wish to advise that the attached license agreement has been signed by the commissioner of the Greater Vancouver Water District. This agreement dated August 1, 2014, is for a period of 10 years. The agreement permits the Corporation of New Westminster to utilize the rooftop portion of the Westburnco Reservoir for recreational purposes.

Please feel free to contact me at the above mailing address, email (mark.mousseau@metrovancover.org) or by phone at (604) 432-6485 if you have any questions.

Yours truly,

Mark Mousseau, B.Sc.,B.Ed.,AACI,P.App
Property Negotiator
Property Division

LICENSE OF USE AGREEMENT FOR RECREATIONAL PURPOSES

THIS AGREEMENT dated for reference the first day of August, 2014.

BETWEEN: **Greater Vancouver Water District**
4330 Kingsway
Burnaby, BC V5H 4G8

(“GVWD”)

OF THE FIRST PART

AND: **Corporation of the City of New Westminster**
City Hall,
511 Royal Avenue
New Westminster, BC V3L 1H9

(the “Licensee”)

OF THE SECOND PART

WHEREAS:

A. GVWD is the registered and beneficial owner of lands within the City of New Westminster described as:

Legal Description: Lot “K” Except: Part on Plan 8430 Block 4 Plan 5080
PID: 011-137-398

(the “Lands”).

B. GVWD owns and operates the Westburnco Water Reservoir (the “Reservoir”) located on the Lands.

C. The Licensee has requested that GVWD grant a non-exclusive license to use certain portions of the Lands comprised of approximately 2.51 hectares (±6.22 acres) as shown outlined in heavy black line on the plan attached as Schedule “A” (the “License Area”) for recreational purposes and GVWD has agreed subject to the terms and conditions contained within this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the fee paid by the Licensee to GVWD and in consideration of the premises and covenants and agreements contained

in this Agreement, GVWD and the Licensee covenant and agree with each other as follows:

1.0 GRANT OF LICENSE OF USE

- 1.1 GVWD, subject to the performance and observance by the Licensee of the terms, conditions, covenants and agreements contained in this Agreement and to earlier termination as provided in this Agreement, grants to the Licensee, its agents, employees and invitees a non-exclusive license to use the License Area for the purpose of non-commercial park use and recreational uses and for no other purpose. The general recreational uses of the Reservoir rooftop are shown on the attached Schedule "C".
- 1.2 GVWD makes no representation or warranty as to its authority to grant the license hereunder or that the License Area or any other part of the Lands are suitable for the Licensee's use or purposes and GVWD accepts no responsibility if it is determined that GVWD had no authority to grant the license hereunder or if the Lands are not suitable. The Licensee is deemed to have satisfied itself in all respects regarding the suitability of the License Area, including completing comprehensive site inspections, and accepts the same "as is, where is". GVWD is under no obligation to perform any work or provide any materials to prepare or facilitate use of the License Area or any other part of the Lands for the Licensee.

2.0 RESERVATION OF RIGHTS

- 2.1 GVWD hereby reserves to itself, from the grant and the covenants made by it to the Licensee under section 1.1 above, the right for GVWD, its agents, employees, contractors and subcontractors to have full and complete access to the License Area to carry out any operations associated with GVWD's use of the License Area. Where GVWD's proposed access and use of the License Area will prevent or cause substantial disruption or interference with the Licensee's use of the License Area, GVWD will, except where GVWD considers an emergency to exist, provide the Licensee with reasonable notice of such access and use so as to permit canceling or re-scheduling of recreational activities on the License Area.

3.0 LICENSE FEE

- 3.1 In consideration of the right to use the License Area, the Licensee shall pay to GVWD the sum of Ten Dollars (\$10.00) in advance, for the Term plus the goods and services tax (GST), if applicable. If the license fee is \$10.00 or less, the receipt of the license fee is hereby acknowledged.

4.0 TERM AND RENEWAL

- 4.1 The term of the license granted under this Agreement shall be for **10 years** from the first day of August, 2014 to the 31st day of July, 2024 unless earlier terminated under this Agreement (the "Term").

- 4.2 The Licensee may, no later than six months prior to the expiry of the Term, apply to renew this Agreement for a further term of Ten (10) years. The renewal and terms and conditions of such renewal shall be at GVWD's sole discretion.

5.0 CONTINUANCE OF LICENSE

- 5.1 If after the expiration of the Term, the Licensee continues to exercise the license granted under this Agreement without objection by GVWD and without any written agreement providing otherwise, then the Licensee shall be deemed to be a licensee from month to month and subject to the provisions of this Agreement in so far as its provisions are applicable (the "Continuing License").
- 5.2 It shall be lawful for GVWD to cancel and determine the Continuing License by delivering to the Licensee notice to that effect and upon delivery of such notice the Continuing License shall cease without prejudice to any rights of GVWD under this Agreement that accrued before the cancellation.

6.0 TAXES

- 6.1 The Licensee shall pay all taxes, rates, duties and assessments whatsoever, whether federal, provincial, municipal or otherwise charged upon the Licensee or GVWD as a result of the Licensee's occupation of or use of the License Area.

7.0 CONSTRUCTION

- 7.1 The Licensee shall not construct any structures or make any improvements on the License Area, unless prior to any construction, it has:
- (a) obtained GVWD's approval in writing to the site plans, working drawings, plans, specifications, and elevations, which approval may be withheld at the sole discretion of GVWD; and
 - (b) obtained a building permit from the local government authority having jurisdiction authorizing the construction of the buildings and structures set out in the permits and the plans and specifications attached to it; and
 - (c) obtained all required inspections.
- 7.2 The Licensee shall not occupy any such buildings without first obtaining an occupancy permit.
- 7.3 The Licensee shall, at its cost, maintain and repair all landscaping and irrigation systems within the License Area and all recreation service related improvements on the License Area including but not limited to the reservoir perimeter and interior chain link fencing, drinking fountain, tennis court posts and nets, ball hockey court fencing and hockey nets, basketball backboards and rims, all sport court painted line markings. The parties agree that any and

all damage to the Reservoir and appurtenances occasioned by or attributable to the use made of the License Area by the Licensee or its employees, agents, invitees or other representatives shall be the sole responsibility of the Licensee and all costs and liability in any way associated with such damage shall be borne solely by the Licensee. The Licensee shall be responsible for the removal of graffiti from the Reservoir and License Area as required to keep the Reservoir and License Area free of graffiti.

- 7.4 The Licensee shall, at its cost, maintain any buildings, structures or improvements constructed or placed on the License Area by the Licensee during the Term.
- 7.5 Notwithstanding the foregoing sections, the Licensee must not construct or place buildings or structures or make improvements on the License Area that will interfere with or impede the use of the Lands by others having a lawful right to use the Lands.
- 7.6 GVWD shall, at its cost, be responsible for maintaining and repairing the structure of the Reservoir, itself, and all buildings, structures and improvements located on the Reservoir which are not related to the provision of the recreation service by the Licensee.

8.0 INSURANCE

The Licensee will, at the Licensee's expense, throughout the Term, secure and maintain comprehensive general liability insurance in an amount of no less than five million dollars (\$5,000,000) to the satisfaction of GVWD, and to provide evidence satisfactory to GVWD of such insurance and any renewals. The Insurer will acknowledge this agreement as an insured contract under the policy and will have added the Indemnified Parties, as defined under section 9.1, as additional insureds. The Licensee will be responsible to maintain All Risk property insurance coverage for their installed fixtures and equipment. The policy will contain a waiver of subrogation against the GVWD.

9.0 ASSUMPTION OF LIABILITY, INDEMNIFICATION AND RELEASE

- 9.1 GVWD will not be liable for any loss, damage or injury of any nature whatsoever, including injury resulting in death and any interference, inconvenience, damage or loss to any improvements, or any other property, resulting or arising from or in connection with the Licensee's use of the License Area or in any way relating to this Agreement or the grant of the license hereunder. In no event will GVWD be liable in any way for special, incidental, indirect or consequential losses, including loss of revenue, loss of profits, loss of business opportunity or loss of use of any facilities or property, resulting from any cause whatsoever, including failure or interruption in a supply of electricity or other utility, fire, severe conditions or other natural disasters, even if GVWD knew or ought to have known of the possibility or likelihood of such loss, damage or injury.
- 9.2 The Licensee will save harmless and indemnify GVWD and the Greater Vancouver Regional District and their directors, officers, employees and agents and other representatives (the "Indemnified Parties") from and against all actions, claims, demands, proceedings, suits,

losses, damages, costs and expenses of any kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) arising from the breach of this Agreement by the Licensee, its employees and agents or arising in any way out of or connected with the use of the License Area by the Licensee its agents, employees or invitees under this Agreement, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Indemnified Parties or any of them.

- 9.3 The Licensee will release and discharge GVWD and the Greater Vancouver Regional District and their directors, officers, employees, agents and other representatives (the "Released Parties") from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses, of any kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) which the Licensee, its employees, or agents might have in any manner contributed to arising in any way out of or connected with the use of the License Area by the Licensee under this Agreement except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Released Parties or any of them.

10.0 BUILDERS LIENS

- 10.1 The Licensee will indemnify GVWD from and against any liens for labour, services wages or materials, in respect of the Licensee's use of the License Area.

11.0 NOTICES

- 11.1 It is hereby mutually agreed that any notice required to be given under this Agreement shall be deemed to be sufficiently given if delivered by personal delivery, if mailed from any government post office in the Province of British Columbia by prepaid registered mail or if delivered by facsimile and addressed as follows:

- (a) if to GVWD:

GVWD
 4330 Kingsway – 5th Floor
 Burnaby, BC V5H 4G8
 Attention: Property Division Manager
 Facsimile: 604-436-6930

- (b) if to the Licensee:

The City of New Westminster
 Attention: Director, Parks Culture & Recreation
 511 Royal Avenue
 New Westminster, BC V5H 1H9

or at the address a party may from time to time designate. The notice shall be deemed to have been received upon actual delivery if given by personal delivery, five days after the time and date of mailing if given by registered mail or on the date of transmission if sent by facsimile.

12.0 ASSIGNMENT AND SUB-LETTING

- 12.1 The Licensee shall not assign or sub-license any of its rights and obligations under this Agreement without the prior written consent of GVWD.
- 12.2 The Licensee shall only sub-license to an operator approved by GVWD.
- 12.3 No assignment or sub-license will relieve the Licensee of its obligations hereunder. GVWD may require that any assignee or sub-licensee enter into an agreement with GVWD whereby it agrees to be bound by the provisions of this Agreement.

13.0 TERMINATION

- 13.1 If the Licensee is in default on the payment of license fees, or the payment of any other sum payable under this Agreement, or is in breach of this Agreement, and if the default continues 30 days after giving notice by GVWD to the Licensee, then GVWD may terminate this Agreement and the rights of the Licensee with respect to the License Area shall immediately lapse and be absolutely forfeited.
- 13.2 This Agreement may be terminated by either party by giving the other party six months written notice.
- 13.3 In the case of an emergency situation in which an immediate threat is posed to the integrity and safety of the Reservoir, as determined by GVWD in its sole discretion, GVWD may, upon notice to the Licensee, either immediately terminate this Agreement or temporarily suspend the Licensee's rights hereunder, in either event without liability of any kind or nature. If GVWD suspends the Licensee's rights hereunder, GVWD will use reasonable efforts to resolve the situation in a prompt manner and provide the Licensee with notice of the reinstatement of its rights hereunder. If GVWD is unable to resolve the situation to its satisfaction, it may terminate this Agreement upon notice to the Licensee.

14.0 FORFEITURE

- 14.1 GVWD, by waiving or neglecting to enforce the right to forfeiture this Agreement or upon breach of this Agreement, does not waive GVWD's rights upon any subsequent breach of the same or any other provision of this Agreement.

15.0 FIXTURES

- 15.1 Unless GVWD notifies the Licensee to remove fixtures, all buildings, structures or

improvements constructed on the License Area by the Licensee shall at the termination of this Agreement, become the sole property of GVWD at no cost to GVWD.

16.0 REPAIRS BY GVWD

- 16.1 If the Licensee fails to repair or maintain the License Area or any building, structure or improvements on the License Area in accordance with this Agreement, GVWD may, by its agents, employees or contractors, enter the License Area and make the required repairs or do the required maintenance and the cost of the repairs or maintenance shall be a debt due from the Licensee to GVWD.
- 16.2 In making the repairs or doing the maintenance GVWD may bring and leave upon the License Area the necessary materials, tools and equipment and GVWD shall not be liable to the Licensee for any inconvenience, annoyance, loss of business or other injuries suffered by the Licensee by reason of GVWD effecting the repairs or maintenance.

17.0 TREE CUTTINGS, EXCAVATIONS AND HAZARDOUS SUBSTANCES

- 17.1 The Licensee will not carry on or do or allow to be carried on or done on the License Area any cutting, clearing or removal of trees, bushes or other vegetation or growth or any excavation or disturbance of the surface of the License Area without the written consent of GVWD.
- 17.2 The Licensee shall not bring on or deposit any soil or fill on the License Area except with the written consent of GVWD.
- 17.3 The Licensee will not place, store, use, manufacture, install, bring upon, create or release any Hazardous Substance in, on or from the Lands or permit any of the same. In the event that any Hazardous Substance is installed, brought upon, created within or released from the Lands by or on behalf of the Licensee, the Licensee will cause the removal of same within twenty-four (24) hours of GVWD's demand. The Licensee will indemnify and hold GVWD harmless from any claim, loss, cost, damage or expense resulting from such Hazardous Substance or from GVWD's removal thereof or from any breach regarding the installation, location, creation or release of any Hazardous Substance in the Lands, including any and all costs incurred in remedying such a breach. "Hazardous Substance" means any explosives, radioactive materials, pollutants, contaminants, hazardous or toxic substances, special waste, or other waste, the storage, use, manufacture, or release of which into the environment is prohibited, controlled or regulated under any laws, regulations, orders, bylaws, permits or lawful requirement of any government authority in respect of the protection of the natural environment, or of plant, animal or human health, or in respect of the regulation and use of such wastes and substances.
- 17.4 The Licensee if requested by the GVWD will, at its sole expense, cause environmental site assessments (or such other environmental testing as may be reasonably required by GVWD of the License Area to be conducted by a qualified independent assessor within [thirty (30)

days] of the Commencement Date and within [ninety (90) days] after the expiration or termination of this Agreement and will cause copies of such assessments to be delivered to GVWD as soon as they are available. If during the term GVWD believes that the Licensee or any person authorized by the Licensee to be on the Lands has placed, stored, used, manufactured, installed, brought upon, created or released any Hazardous Substance in, on or from the Lands or permitted any of the same, or has otherwise caused any contamination or damage to the Lands, GVWD may cause an environmental site assessment to be conducted and if such assessment determines that any such contamination or damage was caused or contributed to by the Licensee or any person authorized by the Licensee to be on the Lands, the Licensee will pay for the costs of such assessment. Without limiting any of its other obligations under this Agreement, the Licensee will be solely responsible for any environmental contamination or damage to the Lands identified in any environmental site assessment or otherwise as having been caused or contributed to by the Licensee or any person authorized by the Licensee to be on the Lands and will pay, at its sole expense, for any remediation costs or other fees, expenses or penalties related thereto.

18.0 CLEAN UP

- 18.1 At the end of the Term, the Licensee shall clean up the License Area and restore the surface of the License Area as reasonably as may be possible to the condition of the License Area prior to August 1, 2014.

19.0 REGULATIONS

- 19.1 The Licensee will comply promptly at its own expense with the legal requirements of all authorities, including an association of fire insurance underwriters or agents, and all notices issued under them that are served upon GVWD or the Licensee.

20.0 NO COMPENSATION

- 20.1 The Licensee shall not be entitled to compensation for any loss or injurious affection or disturbance resulting in any way from the termination of this Agreement or the loss of the Licensee's interest in any building, structure or improvement built or placed on the License Area.

21.0 MISCELLANEOUS

- 21.1 The Licensee warrants and represents that the execution of this Agreement by the Licensee on behalf of a group or organization is a warranty and representation to GVWD that the Licensee has sufficient power, authority, and capacity to bind the group or organization with his or her signature.
- 21.2 If the Licensee represents a group or organization, the Licensee agrees to inform all responsible persons associated with the group or organization of the terms and conditions of this Agreement.

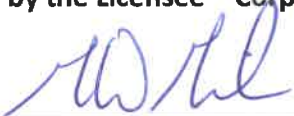
- 21.3 Where written consent is required under this Agreement by GVWD such written consent can be provided by the Director, Operations and Maintenance or their designate unless otherwise stated in this Agreement.
- 21.4 The Licensee covenants and agrees to use the License Area in accordance with the terms of use attached to this Agreement as Schedule "B" and any breach of these terms of use will be considered a breach of the terms of this Agreement.
- 21.5 This Agreement shall not be interpreted as granting any interest in the Lands or the License Area to the Licensee.
- 21.6 Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default.
- 21.7 This Agreement constitutes the entire agreement between the parties with respect to the subject matter and cancels and supercedes any prior agreement between the parties with respect to this Agreement.

22.0 INTERPRETATION

- 22.1 When the singular or neuter are used in this Agreement they include the plural or the feminine or the masculine or the body politic where the context or the parties require.
- 22.2 The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- 22.3 This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 22.4 All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.
- 22.5 A provision in this Agreement granting GVWD a right of approval shall be interpreted as granting a free and unrestricted right to be exercised by GVWD in its discretion.

The authorized signatories of the parties have executed this Agreement as follows.

by the Licensee – Corporation of the City of New Westminster

Per:  on Feb. 10 2015
date

Dean Gibson
Director of Parks, Culture & Recreation
City of New Westminster

Per: _____

by Greater Vancouver Water District

Per:  _____
Commissioner – Carol Mason

on March 4/15
date

SCHEDULE A

SOLARUP LAND SURVEYING INC.
 201 - 8484 152ND STREET
 SURREY B.C. VAN V84
 TEL. 597 6161 FAX 597 0259
 PLE: 5415 DISK: CD-2

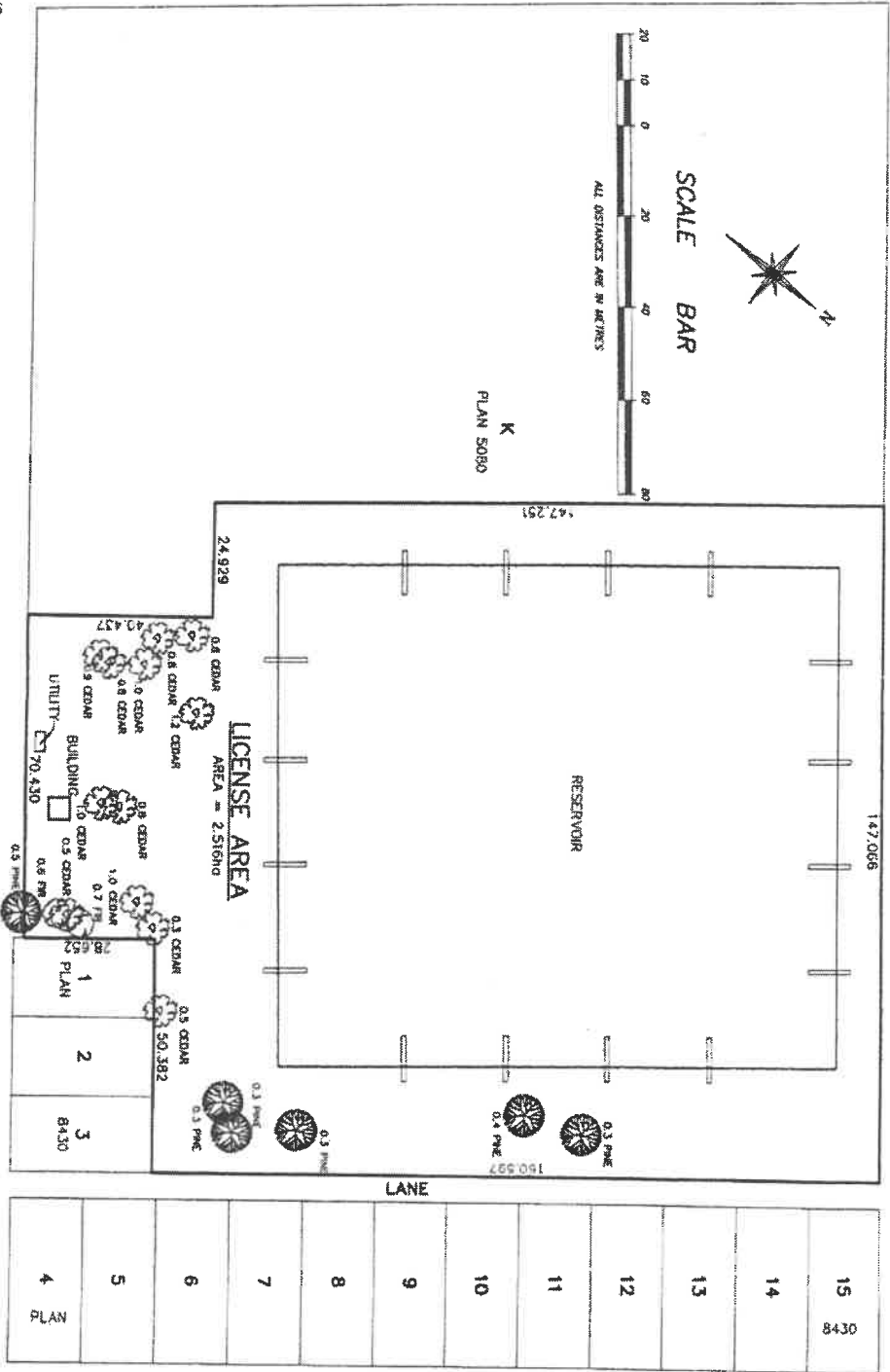
MASSEY STREET

TENTH AVENUE

CHURCHILL AVENUE

LANE

CHILLIWACK STREET



PLAN 5080

SCALE BAR



LICENSE AREA
 AREA = 2.56 HD

RESERVOIR

UTILITY BUILDING
 70.430

1
 26.55
 PLAN

2
 50.382

3
 84.30

4
 26.55
 PLAN

5
 50.382

15
 84.30

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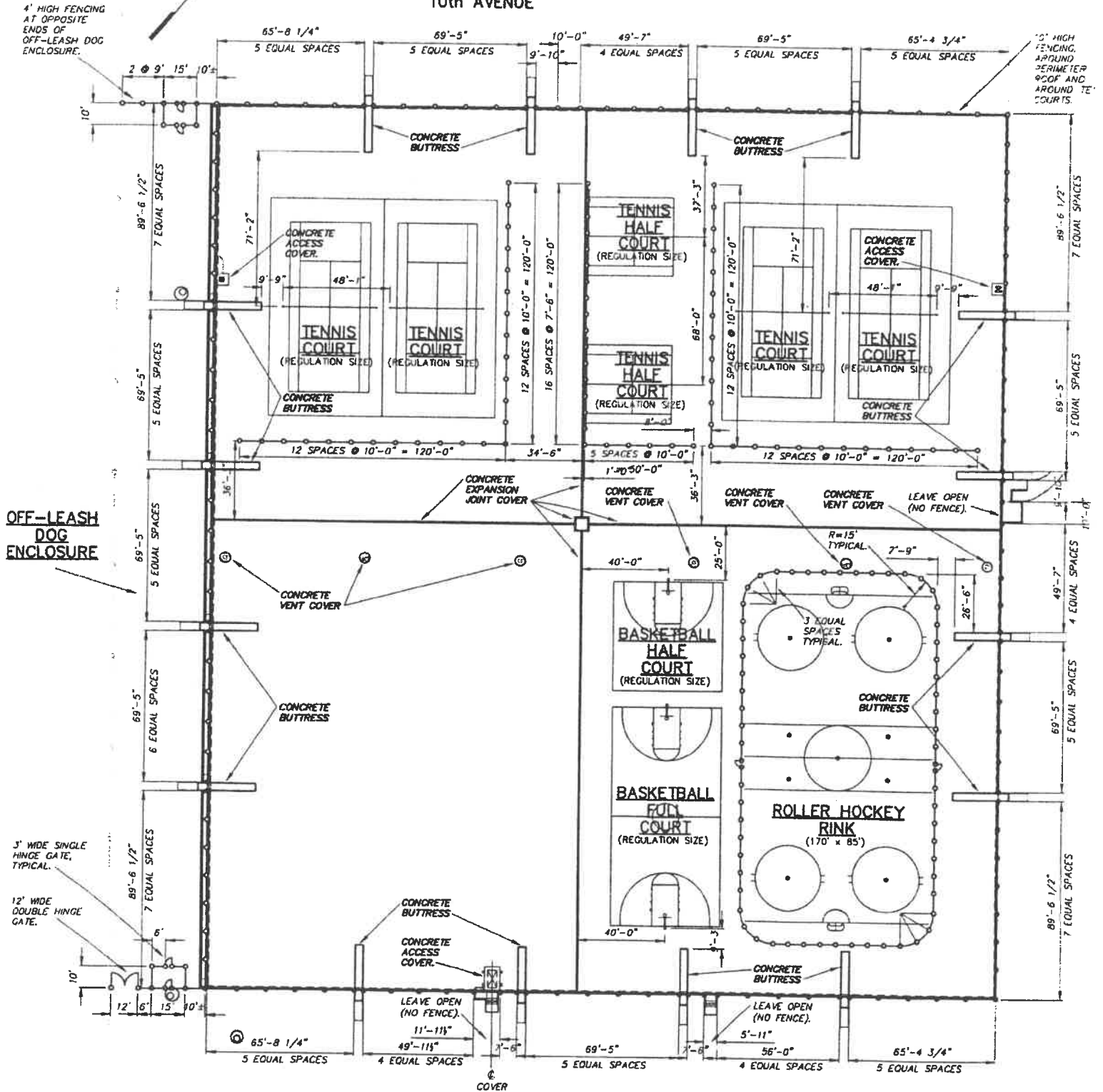
SCHEDULE "B"**Terms of Use**

The Licensee and GVWD further covenant and agree as follows:

- 1.0 GVWD shall, subject to the requirement for reasonable notice in section 2.1 of this Agreement, at all times have the full and free right to enter upon the License Area with workers and equipment as may be necessary to carry out its objects and powers including the construction of additional GVWD works as GVWD may require to operate, maintain, renew or replace the Reservoir and appurtenances.
- 2.0 GVWD may, prior to the exercise by GVWD of any rights under section 1.0 above, require the Licensee by written notice to remove or relocate, at the Licensee's expense, any improvements, landscaping, fixtures, works, paving or things belonging to or utilized by the Licensee or the public (the "Improvements") on the License Area. The Licensee shall, within the time stipulated by GVWD in the written notice, remove or relocate the Improvements in accordance with the terms of the notice and shall repair and restore the License Area to the extent required by GVWD acting reasonably.
- 3.0 GVWD may, in the notice referred to in 2.0 above, require that the removal or relocation of the Improvements are to be carried out under the direct supervision of a GVWD engineer or their delegate in which case the Licensee, before removing or relocating such Improvements, shall make the necessary arrangements with GVWD to vest in the GVWD engineer or their delegate the complete control of such removal or relocation of the Improvements. All the costs associated with the removal and relocation of the Improvements and supervision of such removal and relocation shall be the responsibility of the Licensee.
- 4.0 The Licensee covenants that it shall always observe all requirements and regulations including but not limited to requirements and regulations concerning the security, safety, health and sanitation of the Reservoir and appurtenances, which GVWD may from time to time make. GVWD may from time to time exclude any and all persons, firms or corporations from all or any part of the License Area if such person, firm or corporation, in GVWD's opinion, creates a hazard or potential hazard or jeopardizes or potentially jeopardizes the Reservoir and appurtenances, or if such requirements and regulations set out in the preceding sentences are not observed. The parties agree that any and all damage to the Reservoir and appurtenances occasioned by or attributed to the use made of the surface of the roof by the Licensee, its employees, agents, invitees or other representatives shall be the sole responsibility of the Licensee and all costs and liability in any way associated with such damage shall be borne solely by the Licensee.

SCHEDULE "C"

10th AVENUE



ROOF PLAN

