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# CITY of NOVI CITY COUNCIL

**Agenda Item D**  
**July 6, 2009**

**SUBJECT:** Approval of consent to assignment of lease of the Novi Ice Arena Pro Shop to Sooner Sports, Inc.

**SUBMITTING DEPARTMENT:** Parks, Recreation & Cultural Services

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

Summit Sports, Inc. leases space at the Novi Ice Arena for the purpose of operating the pro shop. Summit Sports, Inc. has sold its pro shop business to Sooner Sports, Inc. The lease agreement between Summit Sports, Inc. and the City requires the City to consent to an assignment of the lease and that the City shall not arbitrarily or unreasonably withhold consent. Staff have performed a diligent review of Sooner Sports, Inc. to determine their ability to provide the pro shop service at the ice rink. Staff are unaware of any basis to withhold consent to assign the lease and recommend approval.

**RECOMMENDED ACTION:** Approval of consent to assignment of lease of the Novi Ice Arena Pro Shop to Sooner Sports, Inc.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Burke				
Council Member Crawford				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

## LESSOR CONSENT TO ASSIGNMENT

The City of Novi, a municipal corporation ("City"), as the "Lessor" under that certain Lease Agreement dated June 23, 2008, Summit Sports, Inc. ("Lessee") for Lessee's Lease of an area within Lessor's ice arena, located at 42400 Arena Drive, Novi, MI 48375 ("Site") for use as a pro shop, hereby consents to the assignment of the Lease by Lessee to Sooner Sports, Inc., ("Purchaser") as provided in Section 14 of the Lease, subject to and/or based on the following:

(a) The Lessor's signatures on this Consent were authorized by actions of the City Council on July 6, 2009.

(b) The names and addresses for purposes of Notices to Lessee and Purchaser under Section 20 of the Lease are as follows:

LESSEE: Summit Sports, Inc.  
330 Enterprise Court  
Bloomfield Hills, MI 48308

PURCHASER: Sooner Sports, Inc.  
14819 Mayview Court  
Shelby Township, MI 48315

(c) This Lessor's Consent to Assignment shall be valid for a period of 45 days after the date of the Lessor's signature, within which time Lessee and Purchaser shall provide the Lessor with a copy of an Assignment of leasehold interest form substantially in accordance with Schedule "A" hereto signed by Lessee and Purchaser, as evidence of and confirming an effective date of Lessee's assignment of the Lease to Purchaser during the period this Consent is valid.

(d) Attached hereto as Schedule "B" is a true and correct copy of the Lease in effect between Lessor and Lessee together with all amendments thereto, which Lease and amendments, if any, constitute the entire agreement between the parties;

(e) Rent under the Lease is to be paid to the Lessor at the address in the Lease.

(f) Purchaser shall provide to Lessor on or before the Transfer Date a security deposit under the Lease in the amount of \$2,500.

**IN WITNESS WHEREOF**, the parties to this Consent to Assignment ("Consent") have executed this Consent as of the latter date of the signatures below.

**LESSOR:**

**CITY OF NOVI**

By: \_\_\_\_\_  
Print Name: David Landry, Mayor  
Date: \_\_\_\_\_

STATE OF MICHIGAN     )  
  )ss.  
COUNTY OF OAKLAND    )

On July \_\_\_\_, 2009, David Landry, Mayor of the City of Novi, personally appeared before me and signed the within instrument and acknowledged to me that he executed the same in his authorized capacity for and on behalf of the City of Novi.

\_\_\_\_\_  
Notary Public  
Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

**PURCHASER**

**SOONER SPORTS, LLC**

By: \_\_\_\_\_  
Print Name:  
Date: \_\_\_\_\_

STATE OF MICHIGAN     )  
  )ss.  
COUNTY OF OAKLAND    )

On \_\_\_\_\_, 2009, \_\_\_\_\_, \_\_\_\_\_ of SOONER SPORTS, LLC, personally appeared before me and signed the within instrument and acknowledged to me that he executed the same in his authorized capacity for and on behalf of SOONER SPORTS, LLC.

\_\_\_\_\_  
Notary Public  
Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

**LESSEE**

**SUMMIT SPORTS, LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

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

STATE OF MICHIGAN     )  
  )ss.  
COUNTY OF OAKLAND    )

On \_\_\_\_\_, 2009, \_\_\_\_\_,  
of SUMMIT SPORTS, LLC, personally appeared before me and signed the within instrument  
and acknowledged to me that he executed the same in his authorized capacity for and on behalf  
of SUMMIT SPORTS, LLC.

\_\_\_\_\_  
Notary Public  
Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

**Schedule "A" to LESSOR CONSENT TO ASSIGNMENT**  
**Assignment of Leasehold Interest**

(See attached.)

## ASSIGNMENT OF LEASEHOLD INTEREST

THIS ASSIGNMENT is made this \_\_\_ day of \_\_\_\_\_, 2009, by and between **Summit Sports, Inc.**, a Michigan corporation whose principal offices are located at 330 Enterprise Ct., Bloomfield Hills, Michigan 48308 ("Assignor"), and **Sooner Sports, L.L.C.**, a Michigan limited liability company whose principal offices are located at 14819 Mayview Court, Shelby Township, Michigan 48315 ("Assignee").

For and in consideration of the sale to Assignee of substantially all of the assets of Assignor's three sporting good retail stores and Assignor's Yahoo internet-based hockey equipment store, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Assignor assigns, transfers, and conveys to Assignee all of Assignor's rights, as Lessee, in and to the Lease Agreement dated June 23, 2008 (the "Lease") for the leased premises described on the attached Exhibit "A". A true copy of the Lease is attached hereto as Exhibit "B".

Assignor represents and warrants to Assignee that the Lease attached as Exhibit "B" is a current, complete, and correct copy of the Lease, that the Lease is in full force and effect and to the best of Assignor's knowledge enforceable according to its terms, and that the Lease contains the entire agreement between the Assignor and the City of Novi, as Lessor, with respect to the matters contained therein, and is free from all encumbrances, defaults, and defenses against Assignor.

Assignor further represents and warrants to Assignee that the Lease is assignable to Assignee in accordance with Section 14.01 of the Lease, and that any necessary consent to the assignment contemplated herein has been obtained (to the extent evidenced by the written acceptance of this Assignment by the City of Novi).

Assignor also represents and warrants to Assignee that it has fully complied with all of its obligations under the Lease through the date of this Assignment, and that Assignor is not in default under any of the terms of the Lease.

Assignee agrees to assume and perform the obligations of the Lessee under the Lease from and after the date of this Assignment, and Assignee agrees to indemnify, defend and hold Assignor harmless from any liability that may arise from occurrences from and after the date of this Assignment relative to the Lease. Assignor agrees to indemnify, defend and hold Assignee harmless from any liability that may arise from occurrences prior to the date of this Assignment relative to the Lease.

Assignor acknowledges depositing the sum of \$2,500.00 with the City of Novi as a security deposit in accordance with Section 9.01 of the Lease ("Deposit"). Assignor transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Deposit, waiving any and all claims to the Deposit.

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first above written.

Assignor:  
**Summit Sports, Inc.**

By: \_\_\_\_\_  
Steven Koptiz  
Its: President

Assignee:  
**Sooner Sports, L.L.C.**

By: \_\_\_\_\_  
Brian Kinder  
Its: Manager

**LESSOR’S CONSENT TO ASSIGNMENT**

The undersigned, being the Lessor in the above-referenced Lease, hereby consents to the Assignment of Lessee’s interest in the Lease to Assignee on the terms set forth above, and the undersigned Lessor agrees to recognize Assignee as the Lessee under the Lease effective as of \_\_\_\_\_, 2009.

Lessor:  
**City of Novi**

By: \_\_\_\_\_  
Its: Mayor

5954-2.bus

**EXHIBIT "A"**

**Leased Premises**

The City of Novi Ice Arena Pro Shop and accompanying storage area located at 42400 Arena Drive, Novi, Michigan, 48375. The Pro Shop is located at the front of the Ice Arena building (on the West side) and consists of approximately 1280 Square feet. The lease of the Pro Shop area also includes a skate sharpening machine.



**EXHIBIT "B"**

**Lease Agreement**

**Schedule "B" to LESSOR CONSENT TO ASSIGNMENT  
Lease Agreement and All Amendments Thereto**

(See attached.)

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## LEASE AGREEMENT

### Preamble

This lease agreement is made and entered into this 23 day of June, 2008, at the City of Novi, State of Michigan, by and between City of Novi, hereinafter called "Lessor", and Summit Sports, Inc., a Michigan Domestic Corporation, hereinafter called "Lessee".

### ARTICLE 1. DEMISE, DESCRIPTION, USE, TERM, AND RENT

SECTION 1.01. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, that certain property hereinafter called the "leased premises," situated in the City of Novi, Oakland County, State of Michigan, described as follows:

The City of Novi Ice Arena Pro Shop and accompanying storage area located at 42400 Arena Dr., Novi, MI 48375. The Pro Shop is located at the front of the Ice Arena building (on the West side) and consists of approximately 1280 Square feet. The lease of the Pro Shop area also includes a skate sharpening machine.

to be used only as a pro shop in accordance with uses normally incident thereto and for no other purpose, specifically the Lessee is not to engage in the sale of anything other than sporting goods equipment and the sale of ancillary services thereto, e.g. skate sharpening, furthermore lessee is not to sell, offer for sale, or give away food or beverages, for the term commencing on July 1, 2008, and ending on June 30, 2009, for the minimum annual rent of \$18,000.00, or 8% of sales whichever is higher, on a fiscal year basis (July 1 through June 30), payable as specified in Article 2. This lease agreement will automatically renew on July 1, 2009 for two additional years, unless notice is given pursuant to Section 10.01, 10.02 and/or 11.01 of this agreement. Further this lease agreement will automatically renew on July 1 of each subsequent year, thereafter, unless notice is given pursuant to Section 10.01, 10.02 and/or 11.01 of this agreement. Lessee will have access to premises as generally contemplated by this lease agreement beginning July 1, 2008. Lessor agrees

that Lessee shall be the exclusive purveyor of sporting goods equipment on the Ice Arena premises except for two annual club sponsored sporting goods equipment sales.

#### **Delivery of Possession**

SECTION 1.02. If Lessor shall be made unable for any reason whatsoever to deliver possession of the leased premises on the commencement date of the term hereof, Lessor shall not be liable to Lessee for any damage caused thereby, nor shall this Lease thereby become void or voidable, nor shall the term hereof in any way be extended, but in such event Lessee shall not be liable for any rent until such time as Lessor can and does deliver possession.

#### **Access**

SECTION 1.03. Lessee shall have access to the leased premises through the front doors of the ice arena during the normal ice arena hours or at such times as is mutually agreeable with the ice arena management for special cases. All deliveries are to be made during normal ice arena hours or as is mutually agreeable with the ice arena management for special cases. During normal ice arena hours, lessee and its employees will have access to the public restrooms on the ice arena premises.

#### **ARTICLE 2. Rent**

SECTION 2.01. Lessee shall pay Lessor at or at such other place as the Lessor shall designate from time to time in writing, as rent for the leased premises, the minimum annual sum of \$18,000.00, or 8% of sales whichever is higher, payable without prior demand and without any setoff or deduction whatsoever, except as expressly provided herein, in equal monthly installments of \$1,500.00, each in advance of the 5<sup>th</sup> day of each calendar month, commencing no later than July 1, 2008, and continuing thereafter until said minimum rent shall be paid. At the end of each fiscal year by the 15<sup>th</sup> day of July the lessee shall pay the lessor the difference, if any between the annual sum of \$18,000 and 8% of sales for the year.

#### **Additional Rent**

SECTION 2.03. Lessee agrees to pay as rent, without demand, setoff, or deduction, in addition to the minimum rental herein-before provided. All increases in fire insurance

premiums on the leased premises due to an increase in the rate of fire insurance in excess of the rate on the leased premises at the time of making this lease, if said increases is caused by any act or neglect of the Lessee or the nature of the Lessee's business.

SECTION 2.04. If Lessee defaults in the payment of any installment of rent hereunder, such installment shall bear interest at the rate five percent (5%) per annum from the day it is due until actually paid. In like manner, all other obligations, benefits, and moneys which may become due to Lessor from Lessee under the terms hereof, or which are paid by Lessor because of Lessee's default hereunder, shall bear interest at the rate of five percent (5%) per annum from the due date until paid, or in the case of sums paid by Lessor because of Lessee's default hereunder, from the date such payments are made by Lessor until the date Lessor is reimbursed by Lessee therefor.

#### **Apportionment of Rental**

SECTION 2.05. In the event that this lease shall terminate prior to the expiration of its full term as herein-before provided without fault on part of the Lessee, and if Lessee is not then in default hereunder and has otherwise paid rent for the remaining period of the term, then on surrender by Lessee of the leased premises, Lessor agrees to and shall pay to the Lessee an amount equivalent to the rental hereunder for the unexpired portion of the term at the date of such termination and surrender, calculated at a daily rate. Payment by Lessor to Lessee under this section shall be made within 90 days of Lessee's vacation of the leased premises.

#### **Reduction of Rent**

SECTION 2.06. Monthly rent obligations to Lessor shall be reduced as follows:

(a) If one (1) of the two (2) rinks at the ice arena is shutdown or has no activities scheduled for a period of 30 days or more, a 50% reduction in rent shall occur retroactive to the first day of being shutdown or inactivity and prorated on a daily basis based on the number of days during the month for which there was no activity.

(b) If both of the rinks at the ice arena are shutdown or have no activities scheduled for a period of 30 days or more, a 100% reduction in rent shall occur retroactive to the first day of

being shutdown or inactivity and prorated on a daily basis based on the number of days during the month for which there was no activity.

### **ARTICLE 3. INSURANCE**

#### **Public Liability Insurance**

SECTION 3.01. Lessee agrees to and shall, 14 days PRIOR TO August 1, 2005, secure from a good and responsible company or companies doing business in the State of Michigan that have an A.M. Best rating of A or better, and maintain during the entire term of this lease, the following insurance coverage:

(a) Public Liability Insurance in the minimum amount of \$1,000,000.00 for the loss from an accident resulting in bodily injury to or death of persons, and \$1,000,000.00 for the loss from an accident resulting in damage to or destruction of property.

(b) Fire and extended coverage insurance on Lessee's trade fixtures, goods, wares, and merchandise in or on the leased premises, with coverage in an amount of not less than the replacement value.

#### **Additional Insurance**

SECTION 3.02. Lessee agrees that Lessor shall be named as an additional insured on the aforementioned policies of insurance.

#### **Proof of Coverage**

SECTION 3.03. On securing the foregoing coverages, Lessee shall give Lessor written notice thereof, together with the certified copy of the appropriate policies or insurance certificates prior to August 1, 2005, and upon every renewal date thereafter.

#### **Protection Against Cancellation**

SECTION 3.04. Proof must also be given by Lessee to Lessor, pursuant to Section 3.03, that each of the policies provided for in this article expressly provides that the policy shall not be cancelled or altered without 60 days, prior written notice to Lessor.

### **Failure to Secure**

SECTION 3.05. If Lessee, at any time during the term hereof, should fail to secure and maintain the foregoing insurance, the Lessor shall be permitted to obtain such insurance in the Lessee's name or as the agent of Lessee, and shall be compensated by the Lessee party for the cost of the insurance premiums. The Lessee shall pay the Lessor interest on paid insurance and premiums at the rate of 7 percent per annum computed from the date written notice is received that the premiums have been paid.

### **Proceeds**

SECTION 3.06. Proceeds from any fire or casualty policy or policies shall be payable to Lessor, who shall use such proceeds to make repairs as provided below. Proceeds from any fire or casualty policy or policies obtained by Lessee pursuant to Section 3.01(b) above shall be paid to Lessee. Proceeds from any other fire or casualty policy or policies obtained by Lessee pursuant to this lease shall be paid to Lessor, who shall use such proceeds as provided below.

### **Fire and Casualty Damage.**

SECTION 3.07. If the building or other improvements on the leased premises should be damaged or destroyed by fire, flood, or other casualty, Lessee shall give immediate written notice thereof to Lessor.

### **Total Destruction**

(a) If the building on the leased premises should be totally destroyed by fire, flood, or other casualty, or if it should be so damaged that rebuilding or repairs cannot reasonably be completed within fifteen (15) working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, this lease shall terminate and rent shall be abated for the unexpired portion of this lease, effective as of the date of said written notification.

### **Partial Damage**

(b) If the building or other improvements on the leased premises should be damaged by fire, flood, or other casualty, but not to such an extent that rebuilding or repairs cannot

reasonably be completed within fifteen (15) working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, this lease shall not terminate, but Lessor shall, if the casualty has occurred prior to the final 12 months of the lease term, at its sole cost and risk proceed forthwith to rebuild or repair such building and other improvements to substantially the same condition in which they existed prior to such damage. If the casualty occurs during the final 12 months of the lease term, Lessor shall not be required to but may, rebuild or repair such damage. If the building and other improvements are to be rebuilt or repaired and are untenable in whole or in part following such damage, the rent payable hereunder during the period in which they are untenable shall be adjusted equitably. In the event that Lessor should fail to complete such rebuilding or repairs within 45 working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, Lessee may at its option terminate this lease by written notification at such time to Lessor, whereupon all rights and obligations hereunder shall cease.

#### **ARTICLE 4. UTILITIES**

SECTION 4.01. Lessor shall provide all utilities except for telephone. Lessee shall during the term hereof, pay all charges for telephone used in or on the leased premises.

#### **ARTICLE 5. WASTE AND NUISANCE**

SECTION 5.01. Lessee shall not commit, or suffer to be committed, any waste on the leased premises, nor shall Lessee maintain, commit, or permit the maintenance or commission of any nuisance on the leased premises or use the leased premises for any unlawful purpose.

#### **ARTICLE 6. REPAIRS**

##### **Lessor's and Lessee's Duties to Repair**

SECTION 6.01. Lessor shall maintain the leased premises in a condition fit for their intended use and shall make all necessary repairs, except that Lessee shall make all repairs of the leased premises occasioned by Lessee's negligent use of the leased



premises, and except as Lessor and Lessee may have expressly agreed otherwise in this lease, as part of the consideration, for one or the other to undertake specifically described types of repairs or maintenance.

#### **Lessor's Duty**

SECTION 6.02. More specifically, Lessor shall repair and maintain the leased premises so that the premises will have:

- (a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- (b) Plumbing facilities that conform to applicable law in effect at the time of installation maintained in good working order.
- (c) A water supply approved under applicable law, which is a system under the control of Lessor, producing hot and cold running water, furnished to appropriate fixtures and connected to a sewage disposal system under applicable law.
- (d) Heating facilities, which conform to applicable law at the time of installation, maintained in good working order.
- (e) Electrical lighting, with wiring and electrical equipment which conform to applicable law at the time of installation, maintained in good working order.
- (f) Building, grounds, and appurtenances at the time of the commencement of the lease in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin, and all areas under control of Lessor thereafter kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.
- (g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease, with Lessor providing appropriate serviceable receptacles thereafter, and being responsible for the clean condition and good repair of such receptacles under his control.
- (h) Floors, stairways, and railings maintained in good repair.

### **Lessee's Duties Correlative to Lessor's Obligations**

Section 6.03. However, no duty on the part of the Lessor shall arise with respect to the maintenance or repairs under Sections 6.01 and 6.02 of this lease if Lessee is in substantial violation of any one or more of the following affirmative obligations:

- (a) To keep that portion of the leased premises which Lessee occupies and uses as clean and sanitary as the condition of the premises permits.
- (b) To dispose from the leased premises all rubbish, garbage, and other waste, in a clean and sanitary manner.
- (c) To use and operate properly all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits.
- (d) Not to permit any person on the premises with Lessee's permission willfully or wantonly to destroy, deface, damage, impair, or remove any part of the leased premises or the facilities, equipment, or appurtenances thereto.
- (e) To maintain and repair, as needed, the skate sharpening machine, such that at the end of the lease term the skate sharpening machine will be in as good of condition as possible except for normal wear and tear as may occur from usage.

### **Lessee's Right to Repair for Lessor or Vacate**

Section 6.04. (a) If, within a reasonable time after Lessee's notice to Lessor of repairs or maintenance which Lessor has a duty to repair, Lessor neglects to make such repairs, Lessee may repair the same, where the cost of the repairs does not require an expenditure greater than one month's rent, and deduct the expenses of such repairs from the rent; or Lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance or other conditions.

(b) For the purposes of this section, if Lessee makes repairs at least 45 working days following Lessee giving notice to Lessor, Lessee will be presumed to have acted after a reasonable time.

## **ARTICLE 7. ALTERATIONS, IMPROVEMENTS, AND FIXTURES**

SECTION 7.01. Lessee shall not alter or improve the leased premises without the prior written consent of Lessor to do so, and any and all alterations, additions, improvements,

and attached fixtures (excluding tenant provided trade fixtures), made or placed in or on said premises shall on expiration, or earlier termination of this lease, belong to Lessor without compensation to Lessee; provided, however, that Lessor shall have the option, to be exercised on expiration or earlier termination of this lease, to require Lessee to remove any or all such additions, improvements, or attached fixtures (excluding tenant provided trade fixtures). Before installing any fixtures in or on the leased premises, Lessee shall submit plans and designs therefor to Lessor for its approval, and in the event that the plans and designs are disapproved by Lessor; such fixtures shall not be installed until any changes required by Lessor are made.

## **ARTICLE 8. QUIET POSSESSION**

### **Covenant of Quiet Possession**

SECTION 8.01. Lessor shall, on the commencement date of the term of this lease as herein above set forth, place Lessee in quiet possession of the leased premises and shall secure him in the quiet possession thereof against all persons claiming the same during the entire lease term and each extension thereof.

### **Subordination**

SECTION 8.02. This lease and any extensions of the term hereof shall be subordinate, at the option of Lessor, to any and all encumbrances given by Lessor on the leased premises or to secure funds for the building to be constructed by Lessor on the leased premises.

## **ARTICLE 9. SECURITY DEPOSIT**

### **Receipt of Deposit**

SECTION 9.01. Lessee has this day deposited with Lessor the additional sum of \$2,500.00, receipt of which hereby acknowledged by Lessor, as security for the full and faithful performance by Lessee of the aforementioned terms, conditions, and covenants of this lease on Lessee's part to be performed and kept and for the cost of any trash removal, housecleaning, and repair or correction of damage in excess of normal wear and tear.

### **Conditions for Return**

SECTION 9.02. The security deposit or any balance thereof shall be returned without interest within 30 days after the Lessee has vacated and left the premises in an acceptable condition (following a personal inspection by Lessor) and surrendered all keys. Lessor will accept normal wear and tear to the premises. If Lessor determines that any loss, damage, or injury chargeable to the Lessee hereunder exceeds the security deposit, the Lessor, at its option, may retain the said sum as liquidated damages or may apply the sum against any actual loss, damage, or injury and the balance thereof will be the responsibility of Lessee. It is further understood and agreed that the said security deposit is not to be considered as the last payment under the lease.

## **ARTICLE 10. TERMINATION OR EXTENSION**

### **Notice of Termination**

SECTION 10.01. Lessor and Lessee mutually agree that either Lessor or Lessee may terminate this lease at the end of the above-stated initial term, and subsequent two-year renewal, by giving the other party written notice thereof at least 60 days prior thereto. In the absence of such notice, this lease shall automatically renew on the terms and conditions contained in this lease and in force prior to the expiration of the above-stated initial term unless terminated by either Lessor or Lessee by giving the other party written notice of termination at least 60 days prior to expiration of the then current term.

### **Changes in Terms and Conditions**

SECTION 10.02. If Lessor gives written notice 90 days prior to the expiration of the second and subsequent renewals thereafter, created under this lease of its intention to change the terms and conditions of this lease and Lessee does not within 60 days from receipt of such notice notify Lessor of Lessee's intention to terminate at the end of the current term, Lessee will be deemed to have become Lessee under the terms and conditions mentioned in such notice for the period provided for above, or for whatever period is stated in such notice.

### **Holding Over After Notice of Termination by Lessee**

SECTION 10.03. If Lessee gives notice of his intention to terminate this lease at the end of any term created under this lease and to vacate the leased premises, but fails or refuses to vacate the leased premises on the date designated for such removal by his notice, then Lessor may either disregard the Lessee's notice, in which case all the terms and conditions of this lease shall continue in effect as if such notice had not been given, or Lessor may, at any time within 30 days after expiration of the lease term involved, give Lessee notice within of its intention to terminate this lease, and Lessee expressly agrees to vacate the leased premises within the time specified in said notice.

## **ARTICLE 11. SURRENDER OF PREMISES**

### **Notice**

SECTION 11.01. Lessee shall, at least 60 days prior to expiration of the term (or any extended term) hereof, give to Lessor a written notice of his intention to surrender the leased premises on that date, but nothing contained herein shall be construed as an extension of the term hereof or as a consent of Lessor to any holding over by Lessee.

### **Removal of Property**

SECTION 11.02. Lessee shall, without demand therefor and at Lessee's own cost and expense prior to the expiration or earlier termination of the term hereof or of any extended term hereof remove all property belonging to Lessee and all alterations, additions, or improvements, and fixtures which by the terms hereof Lessee is permitted to remove; repair all damage to the leased premises caused by such removal; and restore the leased premises to the condition they were in prior to the installation of the property so removed, normal wear and tear excepted. Any property not so removed shall be deemed to have been abandoned by Lessee and may be retained or disposed of by Lessor.

### **Surrender**

SECTION 11.03. Lessee agrees to and shall, on expiration or earlier termination of the term hereof or of any extended term hereof, promptly surrender and deliver the leased premises to Lessor without demand therefor in good condition, ordinary wear and tear and

damage by the elements, fire, or act of God, or by other cause beyond the reasonable control of Lessee excepted.

## **ARTICLE 12. CONDEMNATION**

### **All of Premises**

SECTION 12.01. If during the term of this lease or any extension or renewal thereof, all of the leased premises should be taken for any public or quasi-public use under any law, ordinance, or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this lease shall terminate and the rent shall be abated during the unexpired portion of this lease, effective as of the date of the entry of the order transferring ownership of the property pursuant to the filing of the complaint for said taking of said premises by the condemning authority, or upon the date the deed is executed giving the property to the condemning authority, which ever occurs first.

### **Partial Condemnation**

SECTION 12.02. If less than all of the leased premises shall be taken for any public or quasi-public use under any law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this lease shall not terminate but Lessor shall forthwith at its sole expense, restore and reconstruct the building and other improvements, situated on the leased premises, provided such restoration and reconstruction shall make the same reasonably tenantable and suitable for the uses for which the premises are leased. The rent payable hereunder during the unexpired portion of this lease shall be adjusted equitably.

### **Allocation of Awards**

SECTION 12.03. Lessor and Lessee shall each be entitled to receive and retain such separate awards and portions of lump-sum awards as may be allocated to their respective interests in any condemnation proceedings. The termination of this lease shall not affect the rights of the respective parties to such awards.

## **ARTICLE 13. DEFAULTS AND REMEDIES**

### **Default by Lessee**

SECTION 13.01. If Lessee shall allow the rent to be in arrears more than 14 days after written notice of such delinquency, or shall remain in default under any other condition of this lease for a period of 14 days after written notice from Lessor, or should any person other than Lessee secure possession of the premises, or any part thereof, by reason of any receivership, bankruptcy proceedings, or other operation of law in any manner whatsoever, Lessor may at its option, without notice to Lessee, terminate this lease, reenter and take possession of said premises and remove all persons and property therefrom, without being deemed guilty of any manner of trespass, and relet the premises or any part thereof, for all or any part of the remainder of said term, to a party satisfactory to Lessor, and at such monthly rental as Lessor may with reasonable diligence be able to secure. Should Lessor be unable to relet after reasonable efforts to do so, or should such monthly rental be less than the rental Lessee was obligated to pay under this lease, or any renewal thereof, plus the expense of reletting, then Lessee shall pay the amount of such deficiency to Lessor.

### **Cumulative Rights and Remedies**

Section 13.02. All rights and remedies of lessor under this lease shall be cumulative, and none shall exclude any other right of remedy at law. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefor arises.

### **Default by Lessor**

Section 13.03. If Lessor defaults in the performance of any term, covenant or condition required to be performed by it under this agreement, Lessee may elect either one of the following:

(a) After not less than 21 days' notice to Lessor, Lessee may remedy such default by any necessary actions, and in connection with such remedy may pay the expenses and employ counsel; all reasonable sums expended or obligations incurred by Lessee in connection therewith will be paid by Lessor to Lessee on demand, and on failure of such

reimbursement, Lessee may, in addition to any other right or remedy that Lessee may have, deduct the costs and expenses thereof from rent subsequently becoming due; or  
(b) Elect to terminate this agreement on giving at least 60 days notice to lessor of such intention, thereby terminating this agreement on the date designated in such notice, unless Lessor shall have cured such default prior to expiration of the 60-day period.

#### **Article 14. Assignment and Sublease**

Section 14.01. Lessee shall not assign this lease nor sublet all or any portion of the leased premises without the prior written consent of Lessor, but Lessor shall not arbitrarily or unreasonably withhold consent.

Section 14.02. Lessor is expressly given the right to assign any or all of its interest under the terms of this lease.

#### **Article 15. Miscellaneous**

##### **Notices and Address**

Section 15.01. All notices provided to be given under this agreement shall be given by certified mail, addressed to the proper party, at the following addresses:

Lessor:	Steve Kopitz, President Summit Sports, Inc., 330 Enterprise Court, Bloomfield Hills, MI 48302
Lessee:	Kathy Smith-Roy, Finance Director City of Novi, 45175 W. Ten Mile Road, Novi, MI 48375

##### **Parties Bound**

Section 15.02. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this agreement.

##### **Applicable Law**

Section 15.03. This agreement shall be construed under and in accordance with the laws of the State of Michigan.



### **Legal Construction**

Section 15.04. In case any one or more of the provisions contained in this lease shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **Sole Agreement of the Parties**

Section 15.05. This lease constitutes the sole agreement of the parties hereto and supercedes any prior understandings or writings or oral agreements between the parties respecting the subject matter within it.

### **Amendment**

Section 15.06. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

### **Rights and Remedies Cumulative**

Section 15.07. The rights and remedies provided by this lease are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

### **Waiver of Default**

Section 15.08. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this lease shall be deemed a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

#### **Attorney's Fees**

Section 15.09. In the event Lessor or Lessee breached any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay to the other party reasonable attorney's fees and costs so incurred by such other party.

#### **Excuse**

Section 15.10. Neither the Lessor nor Lessee shall be required to perform any term, condition, or covenant in this lease so long as such performance is delayed or prevented by any acts of God, civil riot, floods, and any other cause not reasonably within the control of the Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

#### **Time is of the Essence**

Section 15.11. Time is of the essence of this agreement.

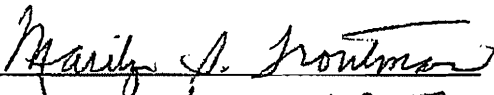
#### **Exculpation of Lessor**


Section 15.12. If Lessor shall convey title to demised premises pursuant to sale or exchange of property, the Lessor shall not be liable to Lessee or any immediate or remote assignee or successor of Lessee as to any act or omission from and after such conveyance.

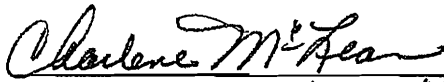
IN WITNESS WHEREOF, the undersigned Lessor and Lessee hereto execute this agreement as of the day and year first above written.

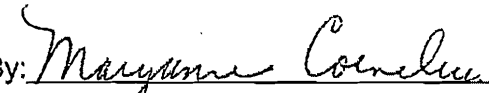
Signed and acknowledged in the presence of:

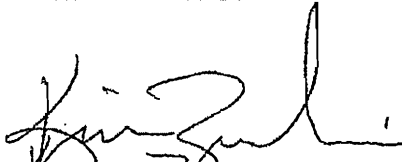
Lessor  
City of Novi

  
Printed Name: MARILYN S. TROUTMAN

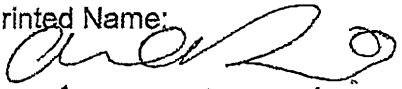
By:   
Printed Name and Title: David B Landry,  
Mayor

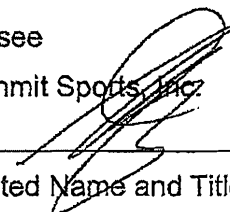
  
Printed Name: CHARLENE McLEAN

By:   
Printed Name and Title: Maryanne Cornelius  
Maryanne Cornelius, City Clerk

  
Printed Name: Kevin Zborzdoski

Lessee  
Summit Sports, Inc.

  
Printed Name: Alisa A. Robison

By:   
Printed Name and Title: Steven Koritz  
President