

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 10-168

BEING A BY-LAW TO AMEND THE OPERATING AGREEMENT, DATED 2 JUNE 2003, SUBSEQUENTLY AMENDED BY AN AMENDING AGREEMENT DATED 10 SEPTEMBER 2007, OF THE PETERBOROUGH SPORT & WELLNESS CENTRE.

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

That the Mayor and Clerk be hereby authorized to execute an agreement between The Corporation of the City of Peterborough and the Sir Sandford Fleming College of Applied Arts and Technology in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 13th day of September, 2010.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) John Kennedy, Deputy Clerk

**AMENDING AGREEMENT
TO THE OPERATING AGREEMENT MADE 2 JUNE 2003**

THIS AMENDING AGREEMENT made this ____ day of _____ 2010

B E T W E E N:

THE SIR SANDFORD FLEMING COLLEGE OF APPLIED ARTS AND TECHNOLOGY
(the "College")

and

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the "City")

WHEREAS the College and the City entered into a Lease Agreement dated 16 September 2002, in order to jointly develop a recreation centre to be known as the Peterborough Sport and Wellness Centre at Fleming;

AND WHEREAS the College and the City entered into an Operating Agreement, dated 2 June 2003, which was subsequently amended by an amending agreement, dated 10 September 2007 (collectively, the "Operating Agreement");

AND WHEREAS the College and the City desire to further amend the Operating Agreement in accordance with the provisions contained herein;

NOW THEREFORE in consideration of the mutual covenants herein contained and the provision of good and valuable consideration by each party to the other, the receipt and sufficiency which is mutually acknowledged, the parties now agree as follows:

1. Articles 1.06, 1.07 and 1.13 are deleted in their entirety and replaced with the following:

"1.06 **Member** – means both Community Members and Student Members.

1.07 **Community Member** – means a person who has paid the City for a membership at the Centre and is in good standing.

1.13 **Shared Space** – means that portion of the Centre which includes the shipping and receiving area, the aerobics studio and storage room, the fitness centre and storage room, three (3) multi-purpose rooms, male and female washrooms adjacent to the main corridor, youth room, multi-use/male/female change rooms, janitor's room adjacent to the fitness corridor, handicapped washroom adjacent to the fitness corridor, therapy and first aid rooms, staff lunch room, lobby and corridors, vending niche, café and sitting area, basement mechanical/electrical maintenance space; and also includes those areas exterior to the Centre which include the east and south parking lot, the storm water management pond and wooded area and the driveway."

2. Article 4.0 is amended by deleting the phrase "Facility Coordinator" and replacing it with the phrase "Facility Manager".

3. The First paragraph of Article 4.1 is deleted in its entirety and replaced with the following:

- “4.01 The City, with the participation and approval of the College, shall hire a Facility Manager. The Facility Manager shall be responsible for the day-to-day operation of the Centre, including:”
4. Article 4.01 is amended by deleting sub-Articles 4.01(k) and 4.01(l) and replacing them with the following:

“(k) budgeting and accounting;

(l) security; and

(m) athletics and recreation.”
 5. Article 5.01 is amended by deleting sub-Articles 5.01(b) to (e) inclusive and replacing them with the following:

“(b) a fitness coordinator, either employed by the City, or on contract;

(c) customer service assistants, either employed by the City or on contract, who shall supervise the Fitness Centre and member services;

(d) cleaning/maintenance staff, either employed by the City, or on contract;

(e) part-time program assistant; and

(f) member fitness instructors.”
 6. Article 5.01 is amended by deleting the first sentence of the last paragraph thereof and replacing it with the following:

“The City and the College shall share equally in the costs of salary and benefits and other expenses in connection with the fitness monitor(s), cleaning/maintenance staff, part-time program assistant and member fitness instructors.
 7. Article 6.01 is amended by deleting the last sentence thereof and replacing it with the following:

“Any adjustment owing from one party to the other as a result of any such reconciliation statement shall be paid as an adjustment on the following shared invoice period.”
 8. Article 7.02 is deleted in its entirety and replaced with the following:

“7.02 The College shall pay all costs associated with the operation of the Gymnasium Component.”
 9. Article 7.00 is amended by the addition of a new Article 7.04 as follows:

“7.04 The College and the City share equally all costs in connection with the utilities used to operate the Centre.”
 10. Article 10.02 is amended by deleting the third sentence thereof and replacing it with the following:

“This shall not prevent the College or the City from offering fitness and lifestyle programs exclusively to Student Members or Community Members respectively at the sole expense of the party offering the activity.”

- 11. Article 10.04 is amended by deleting the first sentence thereof and replacing it with the following:

“10.04 The City and the College shall cooperatively schedule, with the Facility Manager, usage of the Shared Space for each of their purposes.”

- 12. Article 11.01 is deleted in its entirety and replaced with the following:

“11.01 The City and the College shall permit Student Members and Community Members, respectively, limited reciprocal facility use of their dedicated facilities at no extra charge. In particular, the City will permit Student Members to use the pool during all public swims and the College will permit Community Members use of the gymnasium during open gym times.”

- 13. Except as specifically altered or amended herein, the provisions of the Operating Agreement entered into on 2 June 2003 and amended on 10 September 2007 shall continue without alteration or amendment.

IN WITNESS WHEREOF, the parties have executed this Amending Agreement, as of the date first written above.

SIGNED, SEALED AND DELIVERED)	THE CORPORATION OF THE
)	CITY OF PETERBOROUGH
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)	_____
)	D. Paul Ayotte, Mayor
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)	_____
)	John Kennedy, Deputy Clerk
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)	
)	THE SIR SANDFORD FLEMING
)	COLLEGE OF APPLIED ARTS
)	AND TECHNOLOGY
)	
)	
)	_____
)	G. A. Tilly, Ph.D., President
)	
)	
)	_____
)	Murray C. Rodd
)	Chair, Board of Governors