

**GROUND LEASE
(CANADA GAMES PARK)**

THIS INDENTURE made as of the 19th day of May, 2021.

BETWEEN:

**BROCK UNIVERSITY
(the "Landlord")**

-and-

**THE CORPORATION OF THE CITY OF ST. CATHARINES
("St. Catharines"), THE CORPORATION OF THE CITY OF THOROLD
("Thorold"), THE REGIONAL MUNICIPALITY OF NIAGARA
("Niagara") and BROCK UNIVERSITY ("Brock"), each as to an undivided 25% interest,
acting as participants in a consortium known as the CANADA GAMES PARK
CONSORTIUM (collectively, the "Tenant")**

WITNESSES that in consideration of the mutual covenants and agreements herein contained, the Parties covenant and agree with each other as follows:

**ARTICLE 1
DEFINITIONS, INTERPRETATION AND SCHEDULES**

1.1 Definitions

In this Lease, unless the context otherwise requires, the following terms and expressions shall have the following meanings:

"Additional Rent" means all amounts payable by the Tenant under the Lease (save and except Base Rent) whether payable to the Landlord or to any other Party, including without limitation all municipal real estate taxes, school taxes, local improvement charges, development charges, water rates, and other rates or levies and public and private utility charges paid by the Landlord and the Landlord's actual cost of insurance premiums, if any, the cost of maintenance and repairs of the Buildings and the Lands and any other costs or expenses of any nature or kind incurred by the Landlord which are the responsibility of the Tenant hereunder;

"Approval" means the written approval of the Landlord or the Tenant (as the case may be) given in accordance with Section 1.4 hereof and **"Approved"** means any act, document or other thing hereunder or herein referred to which has received such Approval;

"Base Rent" means the rent payable pursuant to Section 6.1 of this Lease;

"Buildings" means all buildings, structures and improvements of any nature whatsoever now existing or hereafter to be constructed on, over, or under or to be otherwise affixed to the Lands by or on behalf of the Tenant, its successors or permitted assigns in accordance with this Lease, and **"Building"** means any one of same;

"Commencement Date" means the date upon which Project Completion has occurred, as such term is defined in the Consortium Agreement;

"Consortium Agreement" means the agreement in respect of, inter alia, the activities and affairs of St. Catharines, Thorold, Niagara and Brock, and their co-tenancy of the leasehold title to the Lands pursuant to this Lease;

"Environmental Laws" means all Laws with respect to environmental matters, including, without limitation, the following: the *Fisheries Act* (Canada), the *Canadian Environmental Protection Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Canadian Environmental Assessment Act*, the *Environmental Protection Act* (Ontario), the *Gasoline Handling Act* (Ontario), the *Ontario Water Resources Act*, the *Dangerous Goods Transportation Act* (Ontario), the *Pesticides Act* (Ontario) and the *Environmental Assessment Act* (Ontario);

"Event of Default" has the meaning ascribed to it in Section 17.1;

“Landlord’s Lands” means those lands and interests in lands in the City of Thorold, Regional Municipality of Niagara, Province of Ontario, all as more particularly described as Part of Lot 39, Part of Gore Lot 39 and Part of the Road Allowance between Lot 39 and Gore Lot 39, Geographic Township of Thorold, designated as Parts 1, 2, 3, 4 and 5 on Plan 59R-16273, and forming part of PIN 64043-0692 (LT);

“Lands” means those lands and interests in lands in the City of Thorold, Regional Municipality of Niagara, Province of Ontario, which are the subject of this Lease and upon, under or over which the Buildings are or will be constructed, all as more particularly described as Part of Lot 39, Part of Gore Lot 39 and part of the Road Allowance between Lot 39 and Gore Lot 39, Geographic Township of Thorold, being Part 1 on 59R-16723, attached at Schedule “A” hereto, being part of the Landlord’s Lands and forming part of PIN 64043-0692 (LT) attached at Schedule “A” annexed hereto.

“Laws” means (i) all federal, provincial, regional, municipal or local laws, statutes, regulations, orders or ordinances having force of law; and all decisions, notices or directives issued by any entity or person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government, which may be relevant to this Lease, and in particular to the construction, operation, maintenance and replacement of the Buildings, on the Lands;

“Lease” means this ground lease, including all the Schedules which are annexed hereto, all subsequent amendments, if any, and all documents which are herein referred to and stipulated to form part of this Lease;

“Leasehold Mortgage” means any charge or mortgage of the Property, or any portion thereof;

“Leasehold Mortgagee” means the holder from time to time of a Leasehold Mortgage;

“Parties” means the Landlord and the Tenant, and **“Party”** means either of them;

“Permits” means all permits, licences, certificates, consents, approvals, certificates of approval, authorizations, registrations or exemptions issued from time to time by any governmental authority pursuant to Laws;

“Property” means the Buildings and the Tenant’s leasehold interest in the Lands;

“Rent” means all rent or other amounts whatsoever payable by the Tenant hereunder, including Base Rent and Additional Rent; and

“Term” means the term of this Lease as established in Section 3.3 hereof.

1.2 Interpretation

This Lease shall be interpreted in accordance with the following provisions:

- (a) The headings of Sections are for convenience of reference only and in no way define, limit, enlarge or affect the scope of or intent of this Lease or its interpretation;
- (b) This Lease shall be governed by the laws of the Province of Ontario as an Ontario contract;
- (c) All of the provisions of this Lease shall be construed as covenants as though the words importing such covenants were used in each separate provision hereof;
- (d) Each provision or covenant of this Lease shall be deemed to be severable and shall not affect the validity of any other provision, except where the provision or covenant is expressed to be a condition;
- (e) Unless otherwise expressly provided to the contrary herein, this Lease, as it may be amended from time to time in writing, constitutes the entire agreement between the Parties with respect to the demise of the Lands by the Landlord to the Tenant and supersedes all prior agreements, understandings and negotiations, whether oral or written and there are no present warranties, representations or other agreements between the Parties except as specifically set forth or referred to herein;

- (f) No supplement, amendment, modification or waiver of or under this Lease shall be binding unless executed in writing by the Party to be bound thereby, and no waiver by a Party of any provision of this Lease shall be deemed or shall constitute a waiver by such Party of any other provision or a continuing waiver unless otherwise expressly provided;
- (g) All the terms and provisions of this Lease shall be binding upon the Parties and their respective successors and assigns (but this shall not permit or imply any permission enabling any Party to assign its rights under this lease except pursuant to the express provisions of this Lease);
- (h) All references in this Lease to dollar amounts shall be deemed to be a reference to such amounts expressed in Canadian dollars; and
- (i) In this Lease the singular or masculine includes the plural or feminine or body corporate or politic wherever the context or the Parties hereto so require.

1.3 Schedules

The Schedules to this Lease comprise part hereof, and are identified as follows:

Schedule "A"	Description of the Lands
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1.4 Approvals

Whenever the provisions of this Lease require an approval or consent of either Party of, or to, any action, person, firm or corporation (in any such case an "**Approval**") unless this Lease expressly states to the contrary, the following rules shall apply:

- (a) such Approval shall be in writing;
- (b) such Approval shall not be unreasonably withheld or delayed;
- (c) the Party whose Approval is required shall, within thirty (30) days after the request for Approval is received, advise the Party requesting such Approval in writing that it gives its Approval, or that it wishes to withhold its Approval in which case such Party shall set forth, in reasonable detail, its reasons for withholding its Approval;
- (d) if the Party whose Approval is required does not advise the other Party of its Approval or that it is withholding such Approval within thirty (30) days after the request for Approval is received in accordance with paragraph (c) above, the Party whose Approval has been requested shall be conclusively deemed to have given its Approval in writing; and
- (e) any dispute as to whether or not such Approval has been unreasonably withheld shall be resolved in accordance with Article 19 of this Lease.

ARTICLE 2 BUILDINGS AND FIXTURES

2.1 Buildings and Fixtures

- (a) Notwithstanding any provision of any Laws, the Parties acknowledge and agree that as between the Landlord and the Tenant and for all purposes, the Buildings are, and shall remain, the property of the Tenant until the termination or determination of this Lease, at which time the same shall, subject to Section 18.2 hereof, become the property of the Landlord without any payment or compensation to the Tenant.
- (b) Save as may be expressly provided in Article 15 hereof, the Tenant shall not assign, encumber or otherwise deal with its interest in the Buildings separately from any permitted dealing with the interest of the Tenant in the Lands under this Lease, to the intent that no person or corporation shall hold or enjoy any interest in this Lease acquired from the Tenant who or which does not at the same time hold a like interest in the Buildings and vice versa.

ARTICLE 3 DEMISE, TERM AND POSSESSION

3.1 Demise

In consideration of the rents, covenants and agreements contained in this Lease, the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord, the Lands together with the following rights:

- (a) A right in common with the Landlord and all those authorized by it of the free and uninterrupted passage of vehicles and pedestrians for the Tenant, its employees, agents, invitees and all others authorised by it over and along that part of the Landlord's Lands legally described as Part 2 on 59R-16723 at all times and for all purposes;
- (b) A right to the free and uninterrupted flow of stormwater from the Lands and Buildings along, across, through and under part of the Landlord's Lands legally described as Parts 2, 4 and 5 on 59R-16723; and
- (c) A free and uninterrupted right to connect into, drain stormwater from the Lands and Buildings into, and use the stormwater drains, ditches, pipes and pond located on part of the Landlord's Lands legally described as Part 2 and 4 on 59R-16723 (the "**Stormwater System Easement**");

(collectively, the rights described in paragraphs (a) through (c) above are referred to herein as the "**Collateral Easements**")

3.2 Stormwater System Easement Relocation

The Landlord shall be entitled on six (6) months' prior written notice, to relocate the Stormwater System Easement, provided that:

- (a) the Landlord shall include with such written notice, plans and specifications for the infrastructure (the "**Replacement Infrastructure**") intended to replace the infrastructure being the subject matter of the Stormwater System Easement;
- (b) the Replacement Infrastructure shall have a capacity to connect into and receive stormwater from the Lands and Buildings which is not less than the infrastructure being the subject matter of the Stormwater System Easement;
- (c) Prior to the release of the Stormwater System Easement from Parts 2 and 4 on Plan 59R-16723, and the associated decommissioning of drains, ditches, pipes and pond which are the subject matter of the Stormwater System Easement:
 - (i) the Replacement Infrastructure shall be constructed, with all defects having been rectified, commissioned, operational, and connected to and receiving stormwater from the Lands and Buildings;
 - (ii) a new easement shall have been granted by the Landlord to the Tenant in respect of the Replacement Infrastructure on substantially the same terms as the Stormwater System Easement; and
- (d) all costs, expenses and liability in connection with the foregoing shall be the responsibility of the Landlord.

3.3 Term

- (a) Subject to Section 3.3(b), this Lease is for a term of Thirty-Eight (38) years from and including the Commencement Date, unless sooner terminated or determined pursuant to an express provision hereof.
- (b) Notwithstanding the foregoing, the Landlord and Tenant acknowledge and agree that the Term is subject to compliance with the subdivision control provisions of the *Planning Act* (Ontario), as from time to time amended, and pending such compliance, the Term shall be deemed to be twenty-one (21) years less a day and the Tenant shall be responsible, at its expense, for any required consent.

3.4 Possession

The Landlord and Tenant acknowledge that the Tenant is in possession of the Lands on the Commencement Date.

ARTICLE 4 USE

4.1 Use of Lands

- (a) The Tenant shall use the Lands solely for any purpose permitted by applicable Laws, including, without limitation, any applicable official plan and/or zoning by-laws, including, without limitation, the following purposes:
 - (i) to renovate, expand, remodel and/or demolish any Buildings existing on the Lands as of the Commencement Date;
 - (ii) to develop or redevelop the Lands including the construction of additional Buildings thereon, all in accordance with the provisions of this Lease and applicable Laws, and in particular to expand, construct, use, operate, maintain and manage upon the Lands, the Buildings and related improvements and structures necessarily incidental to the use, operation and maintenance of the Buildings;
 - (iii) The Tenant may apply for any amendment to any official plan, any rezoning, minor variance, plan of subdivision approval, site plan approval or other development approval as may reasonably be required by the Tenant in connection with any proposed use of the Lands which is not inconsistent with the terms of this Lease, and the Landlord shall, in its capacity as owner of the Lands, upon written request, execute any direction, authorization or application reasonably required by the Tenant in that regard. The Landlord, acknowledging that the City of Thorold may require as a condition of the issuance of a building permit or other Permits for Buildings on the Lands that the Landlord enter into a development agreement, subdivision agreement, site plan control agreement or other agreements collateral thereto pursuant to the provisions of the *Planning Act* (Ontario), hereby agrees to execute on request any such development agreement, subdivision agreement, site plan control agreement or other agreements collateral thereto provided that: (i) such agreements require the Buildings to be constructed in accordance with all applicable Laws and (ii) the Tenant shall indemnify and save the Landlord harmless from any and all liability whatsoever arising out of or in connection, directly or indirectly, with the Landlord's covenants, agreements and obligations under any such development agreement, subdivision agreement, site plan control agreement or other agreements collateral thereto. The Tenant agrees to be fully responsible for and to pay all costs reasonably incurred by the Landlord with respect to the review and execution of any such agreements, including the Landlord's legal and other professional fees.
- (b) The Lands shall not be occupied otherwise than in a lawful manner.

4.2 Landlord's Title

- (a) The Landlord covenants that, as of the Commencement Date, the Landlord is the owner of the Lands in fee simple.
- (b) The Landlord and the Tenant agree to use good faith commercially reasonable efforts to co-operate with each other to resolve any title defects or encumbrances existing as of the date of this Lease which materially impact the Tenant's leasehold interest in the Lands, which the Landlord and the Tenant shall cause their solicitors to jointly identify prior to the Commencement Date.

**ARTICLE 5
CONSTRUCTION, COMPLETION AND REPLACEMENT OF THE BUILDINGS**

5.1 Construction

- (a) The Tenant may, at its sole cost and subject to and in compliance with this Lease, as and from the Commencement Date continue to construct and fully complete the Buildings on and within the boundaries of the Lands in a good and workmanlike manner.
- (b) The Tenant shall be responsible for securing from time to time as necessary all zoning by-law amendments, official plan amendments, minor variances, site plan approvals, consents and all Permits necessary for the construction of the Buildings in accordance with all Laws. The Landlord shall co-operate with the Tenant in obtaining any such amendments, approvals or Permits and shall execute on request any applications, consents, authorizations or agreements reasonably necessary in connection therewith, all as provided for in Section 4.1(a) hereof.

5.2 Replacement or Redevelopment

At any time following construction of the Buildings, or any of them, the Tenant may from time to time alter, enlarge, reconstruct or redevelop the Buildings from time to time on the Lands and carry out any demolition necessary therefor.

**ARTICLE 6
RENT**

6.1 Base Rent

The Tenant shall pay to the Landlord Base Rent in the amount of One Dollar (\$1.00) per year, if demanded.

6.2 Additional Rent

All payments of Additional Rent required to be made by the Tenant pursuant to the provisions of this Lease in addition to the Base Rent, whether payable to the Landlord or a third party, shall be deemed to be rent and failure to make any such payments shall give the Landlord in respect thereof all of the same remedies as a failure to pay Rent.

**ARTICLE 7
ADDITIONAL RENT**

7.1 Net Rent to the Landlord

This Lease shall be a completely carefree net lease for the Landlord, and the Landlord shall not be responsible during the Term for any costs, charges, expenses or outlays of any nature whatsoever in respect of the Lands or the Buildings (except as otherwise expressly provided for herein and except for the internal costs relating to the consideration of Approvals required under the Lease), and accordingly all costs, expenses, payments and outlays applicable to the Lands and the Buildings (except as noted herein) shall be payable by the Tenant.

7.2 Payment of Realty Taxes by the Tenant

- (a) Without limiting the effect of Section 7.1 hereof the Tenant, during the Term, will pay and discharge as and when the same become due and payable all taxes, rates, levies, duties and assessments, general and special, ordinary or extraordinary, of every nature and kind whatsoever, including local improvement taxes which shall during the Term be levied, assessed or imposed by any competent authority upon the Lands and/or the Landlord or Tenant in connection therewith and all sales taxes, value added or multi-stage taxes whether under the *Excise Tax Act* (Canada) or otherwise, or business transfer taxes or similar taxes imposed on Rent or imposed on the Landlord in respect of rents or services, if any, provided by the Landlord as well as all fines, penalties and interest in respect of any of the foregoing (collectively “**Taxes**”) and will, annually as the same are paid, produce for inspection by the Landlord, receipts or other reasonable evidence of payment of the same. Nothing in this Article 7 shall obligate the Tenant to pay any amount on account of taxes upon the capital, income or profits of the Landlord, or which are personal to the Landlord.

- (b) The Tenant will use commercially reasonable efforts and to the extent available, during the Term of this Lease, to designate and maintain the Property as a Municipal Capital Facility within the meaning of section 110 of the *Municipal Act* (Ontario) to exempt the Taxes levied for municipal and school purposes in respect of the Property. Notwithstanding anything herein contained to the contrary, the Landlord covenants and agrees that in the event of such a designation, only the Tenant shall benefit from the exemption (such exemption not to be applied on a proportionate share basis amongst and to the benefit of the Landlord and any other tenants of the Landlord). For greater certainty, nothing in this provision will be interpreted or construed to compel Thorold to exempt any commercial tenants on the property from taxation for municipal and school purposes.
- (c) The Landlord covenants and agrees that it shall execute and provide such documentation, agreement and information required to give effect to this section (including, without limitation, the execution of a Municipal Capital Facility Agreement).
- (d) The Tenant shall indemnify the Landlord and save it harmless against all costs and expenses, claims, demands or actions relating to the payment of Taxes.
- (e) In the event the Tenant does not pay the Taxes, as required, the Landlord shall have the right to pay such Taxes and to recover same from the Tenant as Additional Rent.
- (f) The Tenant, at its expense, shall have the right and privilege at its sole expense of contesting or appealing any assessment or of applying for a reduction of the amount of any Taxes, provided that:
 - (i) the competent taxing authority is not, as a result of such act by the Tenant, able to take any action which would result in a forfeiture or sale of the estate of the Landlord in the Lands,
 - (ii) the Tenant shall continue to pay, when due, Taxes and any other amounts required to be paid hereunder, and
 - (iii) the Tenant prosecutes any appeal or proceeding with due diligence and dispatch and provides prior written notice of any such appeal or contest to the Landlord.
- (g) For clarity, Taxes shall not include any taxes on the income or profit of the Landlord.

7.3 Change in Tax Structure

If there shall be any change in the basis upon which any Taxes are calculated, levied or assessed, or in the event that new taxes of a nature similar to the Taxes are created by any federal, provincial or municipal authority, parliamentary or otherwise, then in either or both of such events all such taxes shall be paid by the Tenant. Any dispute arising in respect of the operation of this Section 7.3 shall be resolved in accordance with the provisions of Article 19 hereof.

7.4 Utilities

The Tenant will, during the Term, pay and discharge when the same become due and payable, all rates and charges with respect to the installation and provision of all public and private utility services, including without limitation, and if applicable, the provision of hydro electric power, gas, water, cable or satellite television and telephone services.

ARTICLE 8 COMPLIANCE WITH LAWS

8.1 The Tenant Shall Comply With Laws

The Tenant shall, at its own expense, comply with all applicable provisions of all Laws, including without limitation, federal and provincial enactments, building by-laws, fire codes and any other governmental or municipal regulations relating to the Buildings, the construction thereof and to the making of any repairs or permitted replacements, alterations, additions, changes or substitutions to or of the Buildings, and to the use and operation of the Buildings and the use of the Lands.

8.2 Landlord Not Responsible for Compliance

Without restricting the generality of Section 8.1, above, the Tenant hereby expressly acknowledges that this Lease shall be completely carefree to the Landlord, and the Landlord makes no representations or warranties whatsoever with respect to the condition of the Lands or of any Buildings existing thereon as of the Commencement Date or the Tenant's proposed use thereof and shall not be responsible for compliance with any Laws in respect of the Tenant's use and occupation of the Lands pursuant to this Lease.

8.3 Environmental Matters

Without limiting the generality of the foregoing, the Tenant shall, at its own expense, comply with the provisions of all Environmental Laws throughout the Term, and the Tenant agrees to indemnify and save harmless the Landlord in respect of any and all claims, actions, orders, assessments, fines, levies, charges, costs or expenses whatsoever arising out of or in connection with any failure by the Tenant to comply with such Environmental Laws during the Term, including without limitation, costs of professional advisors, consultants and experts in respect of investigation, remedial action and clean-up costs and expenses. Without limiting the generality of any other provision of this Lease, the Tenant, at its own expense, shall be responsible for and take all required remedial action in respect of any non-compliance with Environmental Laws in, on, under or about the Buildings and/or Lands, or emanating therefrom, including without limitation, any repairs or replacements to the Building or Lands and the removal, treatment, disposal, restoration and replacement of the soil or any other part of the Lands or the Buildings which are caused or contributed to by the Tenant during the Term. Notwithstanding the foregoing, the Landlord shall indemnify and save harmless the Tenant in respect of any and all claims, actions, orders, assessments, fines, levies, charges, costs or expenses whatsoever arising out of or in connection with any non-compliance with Environmental Laws in, on, under or about the Buildings and/or Lands, or emanating therefrom, including without limitation, any repairs or replacements to the Building or Lands and the removal, treatment, disposal, restoration and replacement of the soil or any other part of the Lands, which relates to environmental conditions which existed on or before December 4, 2019.

8.4 Survival

The obligations of the Tenant under the provisions of this Article 8, shall survive the expiration or termination of this Lease, anything in this Lease to the contrary notwithstanding.

ARTICLE 9 INSURANCE

9.1 Commercial General Liability

The Tenant shall maintain, from and after the date of execution and delivery of this Lease, a Commercial General Liability policy in respect of the Lands and Buildings for limits and risks required pursuant to the Consortium Agreement.

ARTICLE 10 REPAIR

10.1 Tenant to Repair

Throughout the Term, subject to Article 11, the Tenant covenants at its own cost and expense to keep the Lands and Buildings and all appurtenances thereto in such reasonably good order, condition and repair as would a prudent owner of similar facilities of similar size and age; and for such purposes, but without limiting the foregoing covenant of the Tenant, the Tenant at its own cost and expense shall, throughout the Term, keep in reasonably good order and condition, or cause to be kept in such reasonably good order and condition the Lands and Buildings, and properly make, or cause to be made, all needed repairs and replacements thereto, both inside and outside, including, but not limited to, fixtures, walls, foundations, footings, pilings (if any), roofs, elevators, and similar devices (if any), heating, ventilating and air-conditioning equipment, roads, sidewalks, yards and other like areas, condensate, water, gas, and sewer pipes, connections, water steam, gas and electric pipes and conduits, electrical transmission lines and related equipment, loading and delivery facilities and other fixtures in or on, and appurtenant to the Buildings or the Lands whether or not enumerated herein.

10.2 Inspection

The Tenant covenants with the Landlord:

- (a) where an emergency or apprehended emergency exists in the reasonable opinion of the Landlord, to permit the Landlord to enter and view the Lands and Buildings and the Landlord shall have the right, on prior written notice to the Tenant, to but shall not be obligated to, rectify the emergency;
- (b) at all other times during the Term, to permit the Landlord upon reasonable notice and at reasonable times, with a representative of the Tenant present if available, to enter and view the condition of or state of repair of the Lands and Buildings and the Tenant will repair same in accordance with notice in writing.

Notwithstanding the foregoing, all rights of entry are subject to applicable Laws affecting access to residential units.

ARTICLE 11 DAMAGE OR DESTRUCTION

11.1 Damage and Destruction

In the event that there is damage to or destruction of the Buildings or any portion thereof by any cause whatsoever during the Term, provided insurance proceeds are made available for that purpose the Tenant may, if it elects to do so in accordance with the Consortium Agreement, proceed at the Tenant's expense to repair, replace, restore, reconstruct and complete the Buildings or such damaged or destroyed parts thereof. The Tenant shall be entitled in its sole discretion to elect to revise the plans for such repair, reconstruction or restoration accordingly (it being acknowledged that the Tenant shall be entitled to complete such repair, reconstruction or restoration according to plans and specifications and working drawings other than those used in the original construction of the Buildings or any part thereof). Save as provided in Section 11.4 hereof, such partial, substantial or complete destruction of the Buildings by fire or any other casualty whatsoever shall not terminate this Lease in whole or in part or entitle the Tenant to surrender possession of the Lands or Buildings or any portion thereof or to demand any abatement or reduction of Rent under this Lease, any Laws or statute now or in the future to the contrary notwithstanding.

11.2 Commencement and Completion

If the Tenant elects to repair, replace, restore or reconstruct the Building pursuant to Section 11.1 the Tenant shall commence repairs, replacements, restoration, or reconstruction of the Buildings where required to do so by this Article 11 as expeditiously as is reasonably possible under the circumstances, and the Tenant shall proceed continuously and expeditiously to complete such repairs, replacements, restoration or reconstruction in a good and workmanlike manner and in accordance with all Laws and the provision of this Lease (in particular Sections 4.1 and 5.1 hereof), as soon as reasonably possible.

11.3 Substantial Destruction

In the event of damage to or destruction of a Building or Buildings in circumstances where the Tenant, in its discretion, determines that it would not be in the best interests of the Tenant and its continued operation of the Building or Buildings, to repair, rebuild or restore such Building or Buildings, the Tenant shall be entitled to elect on written notice to the Landlord not to repair, rebuild or restore the damage or destruction but rather to apply any insurance proceeds available to the Tenant to the demolition of the damaged or destroyed Building or any part thereof, and the removal from the Lands of any resultant debris. If the Tenant does not make any election to which it is entitled hereunder within one year from the date such damage or destruction occurred or is unable to obtain any written concurrence of the Leasehold Mortgagee, if any, the provisions of Section 11.2 shall be operative.

11.4 No Abatement

In the event of damage to or destruction of the Buildings or any part thereof, there shall be no abatement or reduction of the Rent (including Additional Rent). In the event of termination pursuant to Section 11.3, or otherwise, the Tenant shall not be entitled to any return of Base Rent and shall have no further obligation to pay Base Rent or Additional Rent from and after the effective date of such termination.

**ARTICLE 12
LANDLORD'S COVENANTS**

12.1 Quiet Possession

The Landlord hereby covenants with the Tenant that the Tenant shall and may peacefully possess and enjoy the Lands for the Term, without any interruption or disturbance from the Landlord, or any other person or persons lawfully claiming by, from or under the Landlord, except as provided in this Lease.

12.2 Representations and Warranties

The Landlord hereby represents and warrants that it is authorized, and has full power and authority, to enter into this Lease.

12.3 Non-Disturbance

Provided that, and so long as, any permitted subtenant of any portion of the Lands, or any Building thereon, duly observes and performs all of its covenants and obligations contained in any sublease granted by the Tenant in accordance with the terms of this Lease, neither the Landlord nor any party claiming through or under the Landlord shall be entitled to disturb such subtenant's possession, enjoyment and use of the premises so sublet to it by the Tenant.

12.4 Collateral Easements

The Landlord agrees to repair and maintain the infrastructure which is the subject of the Collateral Easements (including without limitation, roads, sidewalks, drains, ditches, pipes and ponds) to a reasonable standard, at the Landlord's cost.

**ARTICLE 13
GENERAL COVENANTS OF THE TENANT**

13.1 Construction Liens

- (a) The Tenant shall not permit any construction liens to be, or to remain registered against the title to the Lands or the Buildings by any of its contractors or subcontractors, and will take all steps necessary to cause such liens to be discharged or vacated, as the case may be, within thirty (30) days of receiving notice that such liens have been registered or, will provide to the Landlord such security for the damages and costs for removing such liens as is satisfactory to the Landlord provided that the foregoing shall not prevent the Tenant from contesting such construction liens.
- (b) The Tenant acknowledges that the Landlord did not request the construction of the Buildings on the Lands and is not to be accountable as an "owner" (as that term is defined in the *Construction Act* (Ontario)), with respect to construction of the Buildings by the Tenant.
- (c) The Tenant agrees to indemnify and save harmless the Landlord from any claims, liabilities, damage or expenses incurred by the Landlord as a result of construction liens registered against the title to the Lands or the Buildings by or on behalf of any contractor, subcontractor, suppliers or workmen of the Tenant.
- (d) All the references in this Agreement to the *Construction Act* (Ontario), and to construction liens, shall be deemed to apply to any successor legislation and any lien created pursuant to such legislation.

13.2 Waste

Subject to the provisions of Section 5.2 hereof, the Tenant shall not permit any waste or injury to the Lands and shall not use or occupy, or permit to be used or occupied the Lands or Buildings for any illegal or unlawful purpose, provided that leasehold improvements undertaken by, or on behalf of permitted subtenants, or reconstruction following damage or construction or alterations or demolition specifically permitted hereunder shall not be considered waste.

13.3 Nuisance

The Tenant shall not do, nor omit, nor permit to be done or omitted, upon the Lands anything which shall be, or result in a nuisance and where some act or omission occurs which was not in the control of the Tenant, the Tenant shall take such reasonable action as may in the opinion of

the Landlord (acting reasonably) be requisite in the circumstances to prevent or to remove the nuisance.

ARTICLE 14 INDEMNITY

14.1 Limitation of Liability

Unless resulting from the fault, negligence or wilful misconduct of the Landlord or those for whom the Landlord is in law responsible, the Tenant agrees that the Landlord shall not be liable for any bodily injury to or death of any person, or loss of or damage to any property belonging to the Tenant or those for whom the Tenant is in law responsible, or any other person in, on or about the Lands or the Buildings.

ARTICLE 15 ASSIGNMENT AND SUBLETTING

15.1 Assignment

No assignment of this Lease by the Tenant shall be permitted, except that the Tenant shall be entitled to assign this Lease without the Landlord's prior written consent provided that such assignment is made in accordance with the Consortium Agreement.

15.2 Subleases

The Tenant shall be entitled to sublease the Lands, in whole or in part, at any time and from time to time during the Term, without any requirement for the Landlord's consent.

ARTICLE 16 LEASEHOLD MORTGAGE

16.1 Tenant's Right to Mortgage Property

The following provisions shall apply throughout the Term of this Lease and shall apply whether or not there is a Leasehold Mortgage.

The Tenant shall have the right without obtaining the Approval of the Landlord to mortgage the Property, any portion thereof or such permitted subtenant's interest therein (whether by way of assignment, sublease or otherwise, including a deed of trust and mortgage) from time to time, and shall have the right to extend, modify, renew or replace any such Leasehold Mortgage, provided always that it shall be a term or condition of any such Leasehold Mortgage that any monies advanced thereunder shall be used solely to finance, or refinance the development of the Property, or any portion thereof and the construction, expansion, renovation, demolition or rebuilding of a Building or Buildings thereon. At the request of any Leasehold Mortgagee, the Landlord shall agree with such Leasehold Mortgagee that the Landlord will not terminate this Lease as a result of any default thereunder by the Tenant, provided that such default is remedied by the Tenant or Leasehold Mortgagee within the applicable time periods as set out in, and in accordance with a notice or notices given by the Landlord pursuant to Section 17.3 hereof failing which the Landlord, subject to any agreement to the contrary which it might have entered into with such Leasehold Mortgagee, may terminate this Lease in accordance with the provisions hereof.

Despite any rule of law as to the vesting of the title and ownership of the Buildings in the Landlord as owner of the freehold interest in the Lands, the Landlord hereby acknowledges that the Buildings shall belong to and be owned by the Tenant until the Term of this Lease has expired or been otherwise determined, in accordance with Section 2.1.

ARTICLE 17 DEFAULT

17.1 Default

A material or persistent failure by a Party to perform its covenants in this Lease shall constitute an **"Event of Default"**.

The Landlord hereby expressly waives any and all rights granted by or under any present or future Laws to levy or distrain for rent in arrears, in advance or both, upon all goods, merchandise, equipment, fixtures, furniture and other personal property of the Tenant or any of its subtenants or assignees.

Notwithstanding the foregoing, no matter or circumstance which is solely caused by or solely results from any act or omission of the Landlord shall constitute an Event of Default under this Lease.

17.2 Remedies Upon Default

The remedies of the Landlord in an Event of Default are cumulative and may be implemented independently or in conjunction with one another. Such remedies may only be exercised in accordance with Section 17.3. Such remedies include:

- (a) injunctive relief, including mandatory injunctive relief; and
- (b) damages.

17.3 Conditions to Exercising Remedies

The Landlord shall not exercise its remedies unless and only to the extent permitted by the Consortium Agreement. If permitted to exercise its remedies under the Consortium Agreement, the Landlord shall comply with the following provisions:

- (a) Subject to Subsections 17.3(b), the Landlord may exercise its remedies only after the Landlord shall have given to the Tenant at least thirty (30) days' notice of defaults in payment of Rent and at least ninety (90) days' notice of any other, non-monetary Event of Default, in each case specifying full particulars of the Event of Default.
- (b) The Landlord shall not exercise any of its remedies under Section 17.2 if the Tenant shall have cured such Event of Default within the period set out in the notice delivered pursuant to Subsection 17.3(a), or, where such Event of Default is not curable within such period of time, the Tenant shall have commenced within such period to cure such Event of Default and shall have completed such remedy within such longer period of time as may be reasonably required by the Tenant to do so (provided that the Tenant shall not be entitled to the advantage of such longer period of time within which to cure such Event of Default unless it is continuously and diligently proceeding to rectify such Event of Default and provides the Landlord from time to time with reasonable evidence satisfactory to the Landlord as to the steps being taken by the Tenant towards remedying the Event of Default so that the Landlord is kept fully informed of the steps being taken by the Tenant to remedy such Event of Default).

17.4 Termination

The Landlord shall have no rights to terminate of this Lease by notice, re-entry, Court Order or judicial proceeding, or any other means whereby this Lease may be terminated, or any remedy analogous to termination of this Lease; nor shall the Landlord exercise any rights of re-entry into possession without termination of this Lease unless the Consortium Agreement is first validly terminated.

ARTICLE 18 ON EXPIRATION OF TERM

18.1 Surrender

The Tenant covenants with the Landlord that the Tenant shall, at the expiration of the Term or a lawful termination of this Lease (save only for a termination pursuant to Section 11.3 hereof), surrender and deliver up to the Landlord the Lands in accordance with the provisions of the Consortium Agreement.

18.2 Overholding

If the Tenant remains in occupation of the Lands or Buildings after the expiration of the Term, without objection by the Landlord and without written agreement to the contrary, the Tenant shall be deemed to be a tenant from month to month at the Rent herein provided and all the covenants and agreements hereof shall apply to such monthly tenancy, mutatis mutandis.

**ARTICLE 19
DISPUTE RESOLUTION**

19.1 Dispute Resolution. In the event of any dispute with respect to this Lease, such dispute shall be resolved in accordance with the dispute resolution procedures under the Consortium Agreement.

**ARTICLE 20
GENERAL PROVISIONS**

20.1 Not Partnership or Joint Venture

It is understood and agreed that nothing contained in this Lease nor any acts of the Parties thereto shall be deemed to constitute the Landlord or the Tenant partners or joint venturers or to create any relationship between the Parties hereto other than the relationship of landlord and tenant.

20.2 Notices

Any and all notices, requests, consents and other communications to be given by a Party under this Agreement (hereinafter called a "**Notice**") shall be validly given if personally served on the other Parties or sent by registered prepaid mail or by e-mail to the following addresses. In the case of personal service such Notice shall be deemed to be given at the time of service; in the case of prepaid registered mail, such Notice shall be deemed to be given four (4) days after the date of mailing and in the case of e-mail, such Notice shall be deemed to be given on the date of transmission.

To the Landlord, at the following address:

Brock University
1812 Sir Isaac Way
St. Catharines, Ontario
L2S 3A1
Attention: Scott Johnstone
Email: sjohnstone@brocku.ca

To the Tenant, at each of the following addresses:

The Regional Municipality of Niagara
1815 Sir Isaac Brock Way, PO Box 1042
Thorold, Ontario
L2V 4T7
Attention: Brian Wilson
Email: Brian.Wilson@niagararegion.ca

and

City of St. Catharines
50 Church St., PO Box 3012
St. Catharines, Ontario
L2R 7C2
Attention: David Oakes
Email: doakes@stcatharines.ca

and



City of Thorold
3540 Schmon Parkway, PO Box 1044
Thorold, Ontario
L2V 4A7
Attention: Manoj Dilwaria
Email: Manoj.Dilwaria@thorold.ca

and

Brock University
1812 Sir Isaac Way
St. Catharines, Ontario
L2S 3A1
Attention: Scott Johnstone
Email: sjohnstone@brocku.ca

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized.

BROCK UNIVERSITY

By:		
Name:	Scott Johnstone	Josh Tonnos
Title:	Senior Associate Vice-President, Infrastructure & Operations	Associate Vice-President, Financial Services & Interim CFO

By: 
 Name: Gervan Fearon
 Title: President & Vice-Chancellor

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF ST. CATHARINES

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF THOROLD

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

I/We have authority to bind the Corporation.

THE REGIONAL MUNICIPALITY OF NIAGARA

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized.


BROCK UNIVERSITY


By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF ST. CATHARINES

By: 
Name: Walter Sendzik
Title: Mayor

By: 
Name: Bonnie Nistico-Dunk
Title: city clerk

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF THOROLD

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the Corporation.

THE REGIONAL MUNICIPALITY OF NIAGARA

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized.

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By: _____
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Title: _____

By: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF ST. CATHARINES

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF THOROLD

By: _____
Name: Terry Ogusko
Title: Mayor

By: _____
Name: Joanne Hyde
Title: City Clerk

I/We have authority to bind the Corporation.

THE REGIONAL MUNICIPALITY OF NIAGARA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized.

BROCK UNIVERSITY

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Title: _____

By: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF ST. CATHARINES

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF THOROLD

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

THE REGIONAL MUNICIPALITY OF NIAGARA

By: _____
Name: James Bradley
Title: Regional Chair

By: _____
Name: Ann-Marie Norio
Title: Regional Clerk

I/We have authority to bind the Corporation.

APPROVED FOR EXECUTION

[Handwritten signature]

LEGAL SERVICES

