

CONSORTIUM AND CO-TENANCY AGREEMENT

A M O N G:

THE CORPORATION OF THE CITY OF ST. CATHARINES

THE CORPORATION OF THE CITY OF THOROLD

THE REGIONAL MUNICIPALITY OF NIAGARA

BROCK UNIVERSITY

FOR

CANADA GAMES PARK

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CONSORTIUM AND CO-TENANCY AGREEMENT

THIS AGREEMENT dated as of the 19th day of May 2021,

BETWEEN:

THE CORPORATION OF THE CITY OF ST. CATHARINES
("St. Catharines")

OF THE FIRST PART,

- and -

THE CORPORATION OF THE CITY OF THOROLD
("Thorold")

OF THE SECOND PART,

- and -

THE REGIONAL MUNICIPALITY OF NIAGARA
("Niagara")

OF THE THIRD PART,

- and -

BROCK UNIVERSITY
("Brock")

OF THE FOURTH PART.

(collectively, the "**Parties**")

WHEREAS:

- A. The Canada Summer Games (the “**Canada Games**”) originally scheduled to occur in August of 2021 were postponed until August of 2022 due to continuing public health concerns relating to the ongoing COVID-19 pandemic;
- B. The Canada Games in 2022 will be held across all municipalities in the Niagara Region of Ontario;
- C. It is intended that prior to the Canada Games, there will be upgrades to existing sport facilities and the development of new sport infrastructure and equipment, and much of that new sport infrastructure and equipment is to be located at a new site to be known as “**Canada Games Park**” that will include among other related infrastructure, a new Sport and Ability Centre, a new twin pads ice arena, beach volleyball courts, a new running track, and parking areas, and will be located on lands owned by Brock, south of Sir Isaac Brock Blvd South and west of Merrittville Highway on Brock’s main campus;
- D. 2021 Canada Games Host Society Inc. (“**CGHS**”) is the steward tasked with hosting the Canada Games;
- E. CGHS undertook, in the first instance, the development and construction of Canada Games Park;
- F. Brock and CGHS have entered into an offer to lease dated December 4, 2019 in respect of certain lands owned by Brock, and now described as Parts 1 and 3 on Plan 59R-16723 south of Sir Isaac Brock Blvd South and west of Merrittville Highway on Brock’s main campus, approximately as depicted in blue on SCHEDULE C (the “**Games Lands**”), for the duration of the Pre-Legacy Period (as herein defined below), to allow for the development, construction and operation of Canada Games Park for the “2021 Canada Games” (the “**Offer to Lease**”);
- G. CGHS wishes to transition the development and construction of Canada Games Park to Niagara and Niagara has agreed to take over the development and construction of

Canada Games Park on terms and conditions set out in a transition agreement between CGHS and Niagara dated June 30, 2020, as extended and amended from time to time (the “**Transition Agreement**”);

- H. In connection with the performance of the Transition Agreement, the Offer to Lease will be terminated and a construction license has been entered into between Brock and Niagara dated June 30, 2020 (the “**Construction License**”) in respect of the Games Lands for the remainder of the Pre-Legacy Period, to allow for the development and construction of Canada Games Park, in accordance with the terms of the Transition Agreement and this Agreement;
- I. Leading up to the Canada Games, the Parties may grant to CGHS a license (the “**CGP Games License**”) to allow for preparations for the Canada Games at the Canada Games Park;
- J. Each of the Parties hereto has agreed to be a participant in a consortium initially to be called The Canada Games Park Consortium (the “**Consortium**”);
- K. Following Project Completion, it is the intention of the Parties, that a lease (the “**Legacy Lease**”) will be entered into between Brock, as landlord, and the Consortium, as tenant, in respect of lands owned by Brock, and described as Part of Lot 39, Part of Gore Lot 39 and Part of the Road Allowance between Lot 39 and Gore Lot 39, in the Geographic Township of Thorold, now in the City of Thorold, Regional Municipality of Niagara, designated as Part 1 on Plan 59R-16723 (the “**Legacy Lands**”) and the Consortium will have possession of the Legacy Lands for the Legacy Period (as herein defined below);
- L. It is desirable for the Parties to enter into an agreement to formally create the Consortium, to deal with a number of matters relating to the orderly planning, and construction of the Canada Games Park in a manner which responds to the various interests of the Consortium members in the Canada Games Park, and the activities and affairs of the Consortium and their co-tenancy of the leasehold title to the Legacy Lands pursuant to the Legacy Lease during the Legacy Period (the “**Co-Tenancy**”);

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants hereinafter set forth for good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the undersigned) the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Consortium Agreement, unless there is something in the context or subject matter inconsistent therewith:

- (a) **“Assigned Agreements”** means all of the agreements to which CGHS is a party (including all amendments and schedules thereto) that are assigned by CGHS to Niagara pursuant to the Transition Agreement, or if Niagara enters into a substitute agreement pursuant to the Transition Agreement, the Assigned Agreements are deemed to include the substitute agreements;
- (b) **“Budget”** means in respect of any fiscal year of the Consortium during the Legacy Period, the aggregate projected operating expenditures of the Consortium in respect of such fiscal year, as reflected in the Budget for such fiscal year as prepared by the Management Committee and as approved by the Parties with or without modifications;
- (c) **“Canada Games Park”** has the meaning given to it in Recital B;
- (d) **“CGHS”** has the meaning given to it in Recital C;
- (e) **“CGP Games License”** has the meaning given to it in Recital H;
- (f) **“CGP Proforma”** means the proforma budget prepared in respect of the operation of the Canada Games Park which is attached hereto as SCHEDULE E, as may be updated by agreement of the Parties from time to time;
- (g) **“Chair”** means the individual appointed pursuant to Section 10.1(c) hereof;
- (h) **“Co-Tenancy”** has the meaning given to it in Recital K;
- (i) **“Commissioning”** shall mean the process of:

- a. moving a building from a static condition to a dynamic condition;
- b. preparing a building, or a system for its intended use; and
- c. the management of testing, verifying, recording and documenting, and the training of the Consortium regarding the operation of systems within a building to assure specified operations through the range of operating conditions,

and shall include, for greater certainty but without limitation, the requirement that all active building system and technologies forming part of the Construction Works perform in accordance with the design intent, manufacturer's performance specifications and the Project Requirements;

- (j) "**Commissioning Agent**" means CFMS-West Consulting Inc. or any other successor or replacement contractor retained to Commission the Construction Works;
- (k) "**Commissioning Contract**" means the contract dated March 1, 2020 between CGHS and the Commissioning Agent, as assigned by CGHS to Niagara pursuant to the Transition Agreement;
- (l) "**Consortium**" means the consortium relationship among Brock, Niagara, St. Catharines and Thorold, including without limitation, the arrangements in respect of the Co-Tenancy, established by this Consortium Agreement;
- (m) "**Construction Act**" means the Construction Act R.S.O. 1990, c. C.30, and the regulations thereunder, including all amendments thereto;
- (n) "**Construction License**" has the meaning given to it in Recital G;
- (o) "**Construction Works**" shall mean all labour, materials, and services supplied for the construction of Canada Games Park;
- (p) "**Constructor**" means Aquicon Construction Co. Ltd. or any successor or replacement contractor retained to complete the Construction Works;

- (q) **“Constructor’s Contract”** means the construction contract between CGHS and Aquicon Construction Co. Ltd. to construct Canada Games Park dated December 4, 2019 as assigned by CGHS to Niagara pursuant to the Transition Agreement;
- (r) **“Effective Date”** means December 4, 2019, being the date on which the operations of the Consortium commenced;
- (s) **“Independent Operator”** shall have the meaning given to it in Section 16.1;
- (t) **“Leasehold Interest”** shall mean the leasehold interest in the Legacy Lands that will be owned by the Parties hereto pursuant to the Legacy Lease;
- (u) **“Legacy Operations”** means those elements of the Legacy Plan pertaining to commitments with respect to the future use of Canada Games Park during the Legacy Period;
- (v) **“Legacy Lands”** has the meaning given to it in Recital K;
- (w) **“Legacy Lease”** has the meaning given to it in Recital K;
- (x) **“Legacy Period”** means the period during which the Parties are to be in possession of the Legacy Lands pursuant to the Legacy Lease which is anticipated to commence on the occurrence of Project Completion and ending on the date that is thirty eight (38) years thereafter;
- (y) **“Management Committee”** means the committee constituted pursuant to Section 10.1 hereof;
- (z) **“Municipal Act”** means the Municipal Act, 2001, S.O. 2001, c. 25, and the regulations thereunder, including all amendments thereto;
- (aa) **“Offer to Lease”** has the meaning given to it in Recital E;
- (bb) **“Parties”** or **“Party”** shall have the meaning ascribed to such terms in the first recital to this Agreement;

- (cc) **“Pre-Legacy Period”** means the period of time during which the development and construction of the Canada Games Park is to take place on the Games Lands, which period is presently anticipated to be from the Effective Date until the date that Project Completion has occurred;
- (dd) **“Prime Consultant”** means MacLennan Jaunkalns Miller Architects or such other architect, engineer or entity licensed to practice in Ontario appointed in its place from time to time, and who is identified as performing the role of the “Consultant” in the Constructor’s Contract;
- (ee) **“Project Completion”** means when the following criteria have been satisfied:
- a. Substantial Performance of the Construction Works has been certified in accordance with Section 2(1) of the *Construction Act* and the certificate of substantial performance has been published in accordance with the requirements of the *Construction Act*;
 - b. All deficiencies and defects identified in the Punch List have been corrected to the satisfaction of the Consortium or have otherwise been waived by the Consortium in writing; and
 - c. The occupancy permit has been issued for Canada Games Park by St. Catharines and/or Thorold, as may be applicable.
- (ff) **“Project Manager”** shall mean Urban & Environmental Management Inc.;
- (gg) **“Project Manager Agreement”** means the agreement dated December 13, 2019 between Urban & Environmental Management Inc. and CGHS for the construction management of Canada Games Park, as assigned by CGHS to Niagara pursuant to the Transition Agreement;
- (hh) **“Project Requirements”** shall mean, collectively, the requirements described in SCHEDULE D;

- (ii) **“Proportionate Share”** shall mean each Party’s twenty-five (25%) percent share in the Consortium and Co-Tenancy;
- (jj) **“Punch List”** means the list(s) of deficiencies, defects and items of outstanding work created at the time of certification of Substantial Performance of the Construction Works;
- (kk) **“Substantial Performance”** has the same meaning as the substantial performance of a contract under Section 2(1) of the *Construction Act*;
- (ll) **“Transfer Payment Agreement”** means the agreement effective as of August 30, 2019 among Her Majesty the Queen in right of the Province of Ontario as represented by the Minister of Heritage, Sport, Tourism and Culture Industries and CGHS (as “Recipient” thereunder) and Brock, CGHS, Niagara, St. Catharines and Thorold (as “Participants” thereunder);
- (mm) **“Transition Agreement”** has the meaning given to it in Recital F;
- (nn) **“Transition Date”** means the date of closing of the transactions contemplated in the Transition Agreement;
- (oo) **“Variation”** means a change order or other variation in the Construction Works as contemplated in the Assigned Agreements as at the Transition Date which could reasonably be expected to be material to any Party including, without limitation, any variation that may reasonably be expected to materially impact the operational costs of Canada Games Park during the Legacy Period; and
- (pp) **“Working Committee”** means the committee constituted pursuant to Section 9.1 hereof.

1.2 Interpretation Not Affected by Headings. The division of this Agreement into articles, sections and paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

- 1.3 Number, etc.** Words importing the singular number only shall include the plural and vice versa, and words importing the masculine shall include the feminine and neuter genders and words importing persons shall include firms and corporations and vice versa.
- 1.4 Severability.** In the event that one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.
- 1.5 Brock as Landlord under Legacy Lease.** The adjudication of any exercise of discretion by Brock hereunder shall not have regard for Brock's interest as landlord under the Legacy Lease.
- 1.6 Amalgamation.** In the event of any amalgamation, consolidation, or merger of any two or more of the Parties, at any time prior to the expiry of the Legacy Lease, the remaining Parties hereto shall act in good faith towards agreeing to such amendments hereto as may be equitable in the circumstances.

ARTICLE 2 - FORMATION

- 2.1 Formation.** The Parties hereby constitute themselves as a consortium to be called "The Canada Games Park Consortium".

ARTICLE 3 – PRE-LEGACY PERIOD

- 3.1 Pre-Legacy Period Objectives.** During the Pre-Legacy Period the Consortium shall have the following objectives:
- (a) to support Niagara in the development and construction of Canada Games Park, and to provide comments, input, and approvals in respect thereof as further set out in this Agreement;
 - (b) to pursue and obtain a consent as contemplated in subsection 50(3)(f) of the *Planning Act* (Ontario) in respect of the demise of the Legacy Lands under the Legacy Lease for the

Legacy Period, which the Consortium agrees to act reasonably and cooperatively to achieve, and the costs of which shall be shared equally by the members of the Consortium; and

- (c) to negotiate and to finalize and implement the facilities programming agreement for the effective and efficient use of Canada Games Park by Brock, Thorold and its licensees and St. Catharines and its licensees, the guiding principles of which are attached to this Consortium Agreement as Schedule A (the “**Facilities Programming Agreement**”);

3.2 Costs and Expenses. The Parties acknowledge that the operation of the Consortium during the Pre-Legacy Period will function without a Budget and the Parties will fund their involvement in the Consortium from each of their own resources, unless specifically agreed to otherwise. For clarity, the foregoing does not relate to the commitments of any Parties to contribute to the cost of the development and construction of the Canada Games Park.

3.3 Transition Agreement and Assigned Agreements. The Parties hereby acknowledge having received and reviewed the terms of the Transition Agreement and Assigned Agreements.

3.4 Permits. The Parties hereby acknowledge having received and reviewed all permits and development approvals required in connection with the development and construction of Canada Games Park.

3.5 Transfer Payment Agreement. Brock, St. Catharines and Thorold, in their capacity as “Participants” under the Transfer Payment Agreement, agree to work collaboratively with and provide support to Niagara to ensure the funding granted by Canada and the Province thereunder for the Canada Games Park is advanced to Niagara.

3.6 Construction License and Offer to Lease. Brock agrees to effect the termination of the Offer to Lease, by whatever means Brock determines necessary and appropriate, upon two (2) Business Days’ written notice from Niagara (or such longer period as may be specified by Niagara in such notice). The parties acknowledge that the grant of license

contained in the Construction Licence shall become effective upon the date of the closing of the transactions contemplated in the Transition Agreement.

- 3.7 Improvements.** Brock agrees that, notwithstanding their being affixed to the Legacy Lands, the improvements constructed upon the Legacy Lands pursuant to the Assigned Agreements and the Construction License, pending the grant of the Legacy Lease, shall not become a part of the Legacy Lands but, the improvements shall remain the property of Niagara.
- 3.8 CGP Games License.** Brock and Niagara agree that they will work collaboratively to ensure that the CGP Games License includes appropriate provisions to allow for the orderly coordination of preparations for the Canada Games pursuant to the CGP Games License and the continued prosecution of the construction of Canada Games Park by Niagara pursuant to the Construction License.
- 3.9 Construction Works.** The Parties acknowledge and agree that, subject to the terms of this Consortium Agreement, Niagara shall be solely responsible for the development and construction of Canada Games Park from and after the Transition Date.
- 3.10 Project Requirements.** Niagara shall complete the Canada Games Park in accordance with the Project Requirements.
- 3.11 Project Manager.** The Parties acknowledge the appointment of the Project Manager who will report to, take direction from, and represent the interests of the Consortium with respect to the construction management of Canada Games Park. Niagara shall: (i) ensure that the Project Manager complies with the terms and conditions of the Project Manager Agreement; (ii) ensure that the Project Manager keeps the Working Committee informed as to the status and progress of construction of the Canada Games Park by ensuring that all deliverables produced by the Project Manager are made available to the Working Committee; and (iii) require that the Project Manager attend at any Working Committee meeting where the Consortium determines such attendance to be necessary.

- 3.12 Canada Games Park Commissioning.** Niagara shall cause the Commissioning Agent to perform all commissioning activities pursuant to any commissioning requirements set out in the Commissioning Contract. Niagara shall further cause the Constructor and/or Commissioning Agent, as appropriate, to deliver such training as may be required to render the Consortium fully knowledgeable about the operation of Canada Games Park which training shall include, without limitation, the delivery of any and all operation and maintenance manuals. The Working Committee will be informed of and permitted to attend all Commissioning related activities, including performance tests and demonstrations. Niagara shall cause the Prime Consultant (or such other consultant) to be responsible for the determination of the achievement of Substantial Performance of the Construction Works and inspection and certification of Project Completion of Canada Games Park.
- 3.13 Project Completion and Turnover.** Upon Project Completion, Niagara shall provide Brock, Thorold and St. Catharines with written notice thereof and, Niagara shall cause to be provided to the Working Committee all as-built drawings and any other reports, submissions, or documents related to or associated with the completion of Canada Games Park within its care, custody or control. The Parties acknowledge and agree that upon Project Completion, Canada Games Park shall be turned over to the Consortium.
- 3.14 Sponsorship Committee.** The Parties agree to work together during the Pre-Legacy Period in an effort to secure sponsorship revenue from the sale of long term naming rights in respect of Canada Games Park (the “**Sponsorship Revenue**”). Niagara shall establish and administer, or cause to be established and administered, a committee for the purpose of, *inter alia*, securing the Sponsorship Revenue consisting of appropriate community leaders from the Niagara Region and representatives of each of the Consortium members.
- 3.15 Legacy Plan.** CGHS has established and is administering a committee (the “**Legacy Committee**”) for the purpose of developing the 2022 Canada Summer Games Legacy Plan for sport (the “**Legacy Plan**”). The Legacy Committee includes representatives from the Federal and Provincial Governments, The Canada Games Council, CGHS and Niagara. The development of the Legacy Plan is a requirement of the Hosting Agreement between CGHS and The Canada Games Council dated December 12, 2018 and is

intended to address the legacy of sport infrastructure and programs in the Region of Niagara flowing from hosting the 2022 Canada Summer Games. To the extent that the Legacy Plan contemplates Legacy Operations at Canada Games Park, the Consortium agrees to use commercially reasonable efforts to implement those portions of the Legacy Plan that concern the Legacy Operations of Canada Games Park, provided that the Consortium has first expressly approved those portions of the Legacy Plan specific to Legacy Operations.

3.16 Legacy Lease. The Parties shall enter into the Legacy Lease on the form attached hereto as SCHEDULE F.

ARTICLE 4– LEGACY PERIOD

4.1 Legacy Period. During the Legacy Period the Consortium shall have the following objective:

(a) to operate, manage and maintain Canada Games Park during the term of the Legacy Lease and any extension thereto, as a facility used for recreational purposes for the benefit of residents of Niagara, Thorold, and St. Catharines, and community organizations serving them, and for the students, faculty, and staff of Brock and the broader community served by Brock, all in accordance with this Consortium Agreement and the Facilities Programming Agreement.

4.2 Consortium and Co-Tenancy Coincident. The Parties acknowledge that during the Legacy Period the Co-Tenancy and the Consortium shall be coincident, and as long as the Parties are co-tenants of the leasehold interest in the Legacy Lands this Consortium Agreement shall govern the relationship of the Parties in respect thereof.

4.3 Reformation of Consortium and Co-Tenancy. The Parties may by their mutual agreement, but shall not be required to, establish a new organization having the Parties as its stakeholders for the purposes of operating the Consortium and Co-Tenancy as described hereunder, including without limitation, a municipal service board, a municipal service corporation, a not-for-profit corporation, a share capital corporation, or a limited

partnership, provided doing so is compliant with applicable laws, and the constating documents of such organization shall substantively reflect the terms of this Consortium Agreement, *mutatis mutandis*.

ARTICLE 5 - OWNERSHIP

5.1 The respective interests of the Parties in the Leasehold Interest shall be owned by them as an undivided interest as tenants in common, each in their respective Proportionate Share, and not as joint tenants.

ARTICLE 6 - RIGHTS AND OBLIGATIONS BETWEEN CO-TENANTS

6.1 Except as otherwise expressly provided in this Consortium Agreement, no Party shall have any authority to act for or bind any other Party in any respect whatsoever and no Party shall be required to indemnify any other Party in respect of any obligation incurred by such Party hereunder. The liability of the Parties hereunder shall be several and not joint or collective. Each Party shall be responsible only for its own obligations as set forth herein.

6.2 Notwithstanding Section 6.1, any Party may, following a Decision by the Consortium, be delegated authority to act for the Consortium in connection with such Decision.

ARTICLE 7- COVENANTS OF THE PARTIES

7.1 Each of the Parties hereby undertakes, covenants, and agrees as follows:

- (a) to meet its commitments to the Consortium as set out in this Consortium Agreement;
- (b) to cooperate with each and every other Party according to the terms and spirit of this Agreement;
- (c) to use reasonable endeavours to perform and fulfil, promptly, actively and on-time, all of its obligations under this Consortium Agreement, including among other things, the supply of information or documents that the Management Committee, Working Committee and/or

Independent Operator may need to carry out the Consortium's objectives and the provisions of this Consortium Agreement;

- (d) to act cooperatively and diligently in Decision making;
- (e) to act in accordance with the principles of good faith and fair dealing;
- (f) to inform the other Parties, without undue delay of any matters of which it becomes aware (whether by formal notice from any third party, or otherwise) and which may materially affect the ability for the Consortium to carry out the objectives of the Consortium.

7.2 Nothing in this Consortium Agreement shall be construed as imposing any obligations on any Party with respect to any activity or business that is not the subject of this Consortium Agreement or as any limitation of the powers or rights of any Party to carry on any such activity or business for its sole benefit.

ARTICLE 8- OPERATIONS OF THE CONSORTIUM

8.1 The name under which the Consortium will carry on its activities shall be "The Canada Games Park Consortium" or such other name as the Management Committee may from time to time decide.

8.2 The principal office of the Consortium shall, until the commencement of the Legacy Lease be located at 1815 Sir Isaac Brock Way, PO Box 1042, Thorold, Ontario and thereafter be located at Canada Games Park, unless changed by the Management Committee.

8.3 The financial records and accounts of the Consortium shall be kept on the basis of a fiscal year end date of December 31. However, the unaudited financial statements of the Consortium to April 30th of each year shall be made available to Brock, by no later than May 12th in the same year, to coincide with Brock's fiscal year end.

8.4 The auditors of the Consortium shall be such firm of independent chartered accountants as may be designated from time to time by the Management Committee.

ARTICLE 9 - ORGANIZATION OF THE CONSORTIUM – PRE-LEGACY PERIOD

9.1 Working Committee

During the Pre-Legacy Period, a Working Committee shall be established as a means of keeping Brock, St. Catharines and Thorold informed as to the status and progress of construction of the Canada Games Park, and as a forum for Decision making in accordance with ARTICLE 17.

- (a) **Number and Composition.** The Working Committee shall be composed of four (4) individuals each with a right to cast votes. The Working Committee shall be composed as follows:
- (i) each of the original Parties to this Consortium Agreement shall designate one (1) individual as its representative;
 - (ii) the Parties anticipate that the constitution of a Working Committee may evolve with representatives of different expertise as the construction of the Canada Games Park progresses through its phases to completion;
 - (iii) from time to time during the Pre-Legacy Period each Party may substitute its representative with a person by written notice to the other Parties;
 - (iv) from time to time during the Pre-Legacy Period each Party's representative may delegate its authority to another representative of the Party on an *ad hoc* basis, provided such delegation shall not unduly delay Decision making by the Working Committee;
 - (v) the Working Committee shall meet on a regular basis during the construction of the Canada Games Park;
 - (vi) the Working Committee shall meet promptly (having regard for the timely pursuit of construction of Canada Games Park) following notice from any Party;

- (vii) the Parties hereby consent to the members of the Working Committee participating in any meeting of the Working Committee by means of a telephone or other communication facilities which permits all representatives participating in the meeting to hear each other, and a representative participating in a meeting by such means shall be deemed to be present at the meeting;
- (viii) the Parties acknowledge that meetings of the Working Committee may take place contemporaneously with, or in tandem with, site meetings of the constructor of the Canada Games Park and/or meetings with the Project Manager of the Canada Games Park, and the Parties agree to require their representative to participate in all such meetings, as may be appropriate;
- (ix) a chair of the Working Committee will be identified and agreed upon from the representatives of the Working Committee on an *ad hoc* basis, as and when required, provided that the identification of the chair shall be presumptively be Niagara's representative; The chair of the Working Committee shall always be a member of the Working Committee and be entitled to cast a vote, but not a second or tie breaking vote;
- (x) minutes of the Working Committee shall be prepared by a representative of one of the Parties on a rotating basis, within ten (10) business days following the meeting, and if such minutes are not disputed within five (5) business days of delivery thereof, such minutes shall be deemed to be approved by the Working Committee;
- (xi) each Party shall bear its own costs (and those of its representatives and invitees) of participation on the Working Committee; and
- (xii) without derogating from ARTICLE 17, the Parties agree that the Working Committee shall be the forum of first resort for Decision making and for the establishment of communication protocols among the Parties, the receipt and dissemination of information to be exchanged between the Parties and the informal resolution of any dispute that arises between the Parties.

- (b) **Voting Rights.** Each representative of the Working Committee shall be entitled to one vote either by being present in person or by written proxy.
- (c) **Quorum.** A quorum for a meeting of the Working Committee shall be three (3) representatives of the Working Committee.
- (d) **Proxies.** Every representative entitled to vote at meetings of the Working Committee may, by means of a proxy, appoint another representative of the Working Committee as his or her nominee, to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy. A proxy shall be in writing from the representative entitled to vote and specifically identify the meeting or meetings at which the proxy is intended to be effective.
- (e) **Attendance.** Each Party shall use commercially reasonable efforts to cause its Working Committee representative to be present at all meetings of the Working Committee for which reasonable prior notice has been given.

ARTICLE 10- ORGANIZATION OF THE CONSORTIUM – LEGACY PERIOD

10.1 Management Committee

During the Legacy Period the activities of the Consortium will be governed and managed by a Management Committee, which, subject to the minimum requirements set out in this Consortium Agreement, shall govern its actions and meetings according to such rules of procedure as the Management Committee may adopt from time to time.

- (a) **Number and Composition.** The Management Committee shall be composed of four (4) individuals each with a right to cast votes. The Management Committee shall be composed as follows:
 - (i) each of the original Parties to this Consortium Agreement shall designate one (1) individual as its representatives on the inaugural Management Committee;

- (ii) during the Legacy Period, each representative of the Management Committee shall be appointed for a term of three (3) years, renewable;
 - (iii) during the Legacy Period, each representative of the Management Committee may be appointed or reappointed from time to time by written notice to the other Parties by the corresponding Party;
 - (iv) vacancies shall be filled by nominees of the corresponding Party.
- (b) **Voting Rights.** Each representative of the Management Committee shall be entitled to one vote either by being present in person or being represented by written proxy.
- (c) **Chair.** The Chair of the Management Committee will serve for a non-renewable term of two (2) years. The role of Chair shall rotate between Consortium members in the following order: (1) Niagara, (2) Brock, (3) Thorold, (4) St. Catharines. The Chair of the Management Committee shall always be a member of the Management Committee and be entitled to cast a vote, but not a second or tie breaking vote.
- (d) **Meetings.**
- (i) Regular meetings of the Management Committee shall be held quarterly and special meetings of the Management Committee shall be at the call of the Chair and following the request of any Party.
 - (ii) Notice of special meetings shall be given to members no less than five (5) calendar days prior to the meeting, or such shorter time period as the circumstances may require.
 - (iii) The location for quarterly meetings will be agreed upon by the members of the Management Committee. The location for special meetings will be determined by the Chair.
 - (iv) The Parties hereby consent to the members of the Management Committee participating in any meeting of the Management Committee by means of a

telephone or other communication facilities which permits all representatives participating in the meeting to hear each other, and a representative participating in a meeting by such means shall be deemed to be present at the meeting.

- (e) **Quorum.** A quorum for a quarterly or special meeting shall be the presence of three (3) members of the Management Committee eligible to vote either present, in person, or represented by proxy.
- (f) **Proxies.** Every member entitled to vote at meetings of the Management Committee may, by means of a proxy, appoint a person who need not be another member of the Management Committee as his or her nominee, to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy. A proxy shall be in writing, shall be executed by the member entitled to vote and a witness, and ceases to be valid one (1) year from its date.
- (g) **Chairperson.** In the absence of the Chair the members present shall select a chairperson from the Management Committee for that meeting only. The chairperson shall be entitled to cast a vote, but not a second or tie breaking vote.
- (h) **Attendance.** Each Party shall use commercially reasonable efforts to cause its Management Committee representative to be present at all meetings of the Management Committee for which reasonable prior notice has been given.
- (i) **Responsibilities.** The Management Committee shall:
 - (i) be responsible for planning, setting priorities, and supervising the implementation and management of the affairs of the Consortium;
 - (ii) coordinate and discuss planning and priority issues;
 - (iii) recommend to the Parties annual budgetary priorities, including annually establishing rental rates for the Canada Games Park facilities;
 - (iv) review and approve Operating Budgets;

- (v) review and approve Capital Budgets;
- (vi) appointment and supervision of the Independent Operator.

ARTICLE 11– CANADA GAMES PARK MAINTENANCE

11.1 Capital Maintenance. Not less than once every five (5) years beginning forthwith following the commencement of the Legacy Period, the Parties shall:

- (a) Cause the preparation of a financial and technical review and update (a “**Lifecycle Report**”) which shall include:
 - (i) a physical analysis of each component comprising the Canada Games Park,
 - (ii) a recommendation of capital repairs and replacements of the Canada Games Park,
 - (iii) a financial forecast of the reasonable costs and expenses of undertaking the capital repairs and replacements described in (ii) above for the anticipated life of the Canada Games Park.
- (b) A Lifecycle Report shall take the form of formal report and be prepared by an independent, reputable, nationally recognized consultant.
- (c) The Parties shall cause the each Lifecycle Report to be prepared with reference to any previous Lifecycle Report and based upon terms of reference which incorporate the specifications and standards adopted by the Parties in respect of each of their own facilities, and which are consistent with industry practices and the CGP Proforma, which terms of reference shall be determined as a Decision.
- (d) The Parties will evaluate, as a Decision, the acceptance or rejection of the analysis and recommendations of a Lifecycle Report in accordance with ARTICLE 17, acting reasonably.

- (e) Subject to ARTICLE 21, any Lifecycle Report shall assume the Canada Games Park is to be lifecycled on the basis that it is to have a life ending at the end of the Legacy Period.

11.2 Reserve Fund.

- (a) Commencing on the first anniversary of the Legacy Period and on each anniversary thereof during the Legacy Period, each Party shall deposit its Proportionate Share of an amount equal to one point five (1.5%) percent of the initial hard costs of constructing the Canada Games Park (which amount will be confirmed by the Parties as set out in Section 11.2(b)), indexed annually in accordance with the RSMeans Construction Index, into a segregated trust account in the name of the Parties (the “**Capital Trust Account**”), which shall be held as an asset of the Parties, in common, identified at the bank concerned as a trust account, for its intended purpose.
- (b) On or before the commencement of the Legacy Period, the Parties will confirm, as a Consensus Decision, the initial hard costs of constructing the Canada Games Park in accordance with ARTICLE 17, acting reasonably.
- (c) The amount in the Capital Trust Account, together with interest earned thereon, shall be used solely for the lifecycle requirements as contemplated in the current Lifecycle Report (as distinct from obligations for payments with respect to maintenance, operations and other required repairs).
- (d) Except as otherwise provided herein, any surplus remaining in the Capital Trust Account at the end of the Legacy Period shall be distributed to the Parties in each of their Proportionate Share.
- (e) The Parties shall determine from time to time, as a Consensus Decision, whether additional funds (in addition to the funds contributed by the Parties in accordance with Section 11.2(a)) are required to be deposited in the Capital Trust Account as a result of any recommendations in a Lifecycle Report which have been approved by the Parties pursuant to Section 11.1(b).

11.3 Operational Maintenance. The Parties agree that the operational maintenance for the Canada Games Park shall be carried on to specifications and standards that will be developed by the Parties which shall be based upon specifications and standards adopted by the Parties in respect of each of their own facilities, and which are consistent with industry practices and the CGP Proforma, which operational specifications and standards shall be determined as a Decision.

ARTICLE 12- CAPITAL BUDGETS AND REQUIREMENTS

12.1 The Parties shall, on an annual basis, cause the Independent Operator to prepare (having due regard for any approved Lifecycle Report) an annual capital budget (a “**Capital Budget**”).

12.2 The Parties acknowledge that it is anticipated that each Capital Budget is to be funded from the Capital Trust Account, provided that no Capital Budget may draw upon the Capital Trust Account such that it may be reasonably anticipated not to sustainably fund future Capital Budgets (having regard for the then current Lifecycle Report). If any Capital Budget cannot be funded from the Capital Trust Account, that fact shall be explicitly stated, together with details, in the Capital Budget.

12.3 Each Capital Budget shall be approved by the Management Committee as a Decision.

12.4 The Parties shall fund any deficiency in the funding of any approved Capital Budget to the extent of their Proportionate Share.

ARTICLE 13 – OPERATING BUDGETS AND REQUIREMENTS

13.1 The Parties shall, by not later than October 1 annually, cause the Independent Operator to prepare an operating budget (an “**Operating Budget**”) for the subsequent fiscal year, to be approved by the Management Committee as a Decision.

13.2 The Parties acknowledge, that notwithstanding that each of the Consortium members holds its Proportionate Share of the Leasehold Interest, the primary use and benefit of Canada Games Park shall be enjoyed by Brock, St. Catharines and Thorold, all as set out

in the Facilities Programming Agreement. Accordingly, the Parties have agreed that Niagara is not entitled to participate in operating revenues or obligated to participate in the operating costs of the Canada Games Park, and the operating revenue and cost thereof shall be shared by Brock, St. Catharines and Thorold in equal one-third (1/3) shares. Brock, St. Catharines and Thorold shall fund the Operating Budget including any deficits, to the extent of their respective equal one-third (1/3) shares. Any surplus from an Operating Budget shall be retained by the Consortium and applied on behalf of all of the Parties on account of the Capital Budget.

13.3 Each Operating Budget shall include rental rates for subtenants, occupants and other users of the Canada Games Park, which shall be established annually having regard for: market rates for similar facilities in comparable and relevant markets rental rates. The Parties acknowledge that the expected rental income will not likely be sufficient to offset the operating costs of the Canada Games Park, and Brock, St. Catharines and Thorold shall fund deficiency in the funding of any approved Operating Budget in accordance with Section 13.2. Niagara shall not be entitled to vote on the Decision to establish rental rates, which shall be a Majority Decision determined by the majority of the votes of the other Parties.

13.4 Canada Games Park shall be operated pursuant to the following, copies of which have been provided to the other Parties:

- (a) Brock's Smoking and Vaping Policy;
- (b) Brock's Respectful Work and Learning Environment Policy;
- (c) Brock's Outdoor Spill Contingency and Pollution Prevention Plan; and
- (d) Brock's Environmental Sustainability Plan 2018; and
- (e) rules and regulations which are adopted by the St. Catharines, Thorold and Niagara in other similar municipal facilities from time to time,

and in the event of any conflict between any of the foregoing, the Canada Games Park shall be operated pursuant to the more restrictive policy, plan, rules or regulations.

ARTICLE 14- MUNICIPAL CAPITAL FACILITY

- 14.1** The Parties agree that the Legacy Lands are for public use for recreational purposes and as such are an eligible municipal capital facility as defined in s. 110 of the *Municipal Act, 2001* (the “**Municipal Act**”) and O. Reg 603/06 as amended.
- 14.2** Thorold agrees that it shall take the necessary steps pursuant to the *Municipal Act* to request its municipal council to pass a bylaw to designate the Legacy Lands a municipal capital facility to exempt the Legacy Lands from property taxation for municipal or school purposes, and shall provide notice to the other Parties when it has done so.
- 14.3** The Parties agree that for the purposes of s. 110(1) of the *Municipal Act* this Agreement shall be the agreement required for that purpose and that no further agreement is required.
- 14.4** 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.

ARTICLE 15 - SHORT FALL LOANS

- 15.1** Where any Party (hereinafter referred to as the “**Non-Advancing Party**”) does not pay any amount required to be paid or advanced pursuant to any term or provision of this Consortium Agreement, the other Parties or any of them (hereinafter referred to as a “**Contributing Party**”) may deliver a written notice of default to the Non-Advancing Party which notice will specify the amount unpaid, the term or provision pursuant to which such amount is required to be paid and notifying the Non-Advancing Party that such amount may be paid by the Contributing Party pursuant to this Section 15.1. If the Non-Advancing Party has not paid such amount within fifteen (15) days following the delivery of the notice, then the Contributing Party may, but shall not be required to, advance all or any part of the amount so payable or to be advanced by the Non-Advancing Party for the purpose for

which it is required, and without limiting any other right or remedy the Parties other than the Non-Advancing Party shall have for such default, such amount or expense actually paid by the Contributing Party shall be deemed to be a demand loan (a “**Short Fall Loan**”) made by such Contributing Party to the Non-Advancing Party and which the Non-Advancing Party hereby covenants and agrees to repay with interest at a rate of nine (9%) percent per annum, forthwith on demand.

- 15.2** To the extent that any amount derived from the Leasehold Interest is to be disbursed to the Parties pursuant to this Consortium Agreement, or there is any other amount which is payable to the Non-Advancing Party pursuant to this Consortium Agreement, the portion payable to the Non-Advancing Party shall be directed to the Contributing Party on account of the Shortfall Loan.

ARTICLE 16 - DUTIES OF THE INDEPENDENT OPERATOR

- 16.1** During the Legacy Period, the Parties shall appoint an independent and reputable facility manager (the “**Independent Operator**”) to manage the day-to-day operations of Canada Games Park and carry on such other activities which are reasonable and appropriate in the ordinary course of the efficient operation of Canada Games Park, including without limitation, the following:
- (a) to report, at times prescribed by the Management Committee, on results of all efforts relating to Consortium activities;
 - (b) annually prepare a facility operating plan (a “**Facility Operating Plan**”) and Operating Budget for the approval of the Management Committee as a Decision;
 - (c) Operate, repair and maintain the Canada Games Park, its equipment, apparatus, FF&E, and other Canada Games Park property in accordance with (i) the most recently approved Lifecycle Report, Capital Budget, Facility Operating Plan and Operating Budget, and (ii) the tenant’s obligations under the Legacy Lease;

- (d) Allocate utilization of Canada Games Park amongst the Brock, St. Catharines and Thorold as set out in the Facilities Programming Agreement;
- (e) Market, secure and manage Canada Games Park rentals / utilization outside of the time allocations to Brock, St. Catharines and Thorold as set out in the Facilities Programming Agreement;
- (f) To recommend contracts, agreements, leases, sub-leases, rentals, licenses or concessions for Canada Games Park;
- (g) Retain its own staff and train, supervise, discipline and dismiss as may be necessary from time to time, persons required for the proper operation and management of the Canada Games Park;
- (h) Maintain proper payroll records with respect to its staff;
- (i) Manage, direct and supervise persons for the operation and maintenance of heating, air conditioning and other equipment which is required to operate and maintain the Canada Games Park;
- (j) Specify duties and arrange, schedule and direct the activities of personnel and persons employed to work at the Canada Games Park;
- (k) Arrange for the supply of electricity, natural gas, fuel, material, water, sewer, waste removal, telephone, cable, equipment, cleaning, snow removal, landscaping and other services required for the proper operation of the Canada Games Park;
- (l) Arrange for insurance coverage, including policies for fire and other perils, rental income, business interruption, plate glass, public liability, fidelity, money loss, boiler and machinery, and other insurance;
- (m) Arrange for the supply of materials, goods, equipment, technology or services, as may be required to implement the approved Facility Operating Plan and Operating Budget;

- (n) Cause the preparation of Lifecycle Reports for approval by the Management Committee as a Decision;
 - (o) Prepare a Capital Budget for approval by the Management Committee as a Decision;
 - (p) Implement any approved Capital Budget;
 - (q) Generally do and perform those things necessary for the proper and efficient management of the Canada Games Park;
 - (r) Maintain bank accounts and ensure the prompt payment of Canada Games Park expenses; and
 - (s) Maintain detailed financial records and annually prepare audited financial statements for the approval of the Management Committee.
- 16.2** The Independent Operator shall be appointed following a joint procurement by the Parties in accordance with a procurement process which shall be approved by the Parties as a Consensus Decision.

ARTICLE 17 – DECISION MAKING

- 17.1 Decisions.** The Parties agree that certain decisions (each a “**Decision**”) of the Consortium as set out on SCHEDULE B must be made by the Management Committee or Working Committee, as applicable, in accordance with the following rules:
- (a) During the Legacy Period, Decisions under the heading “Majority Decisions” in SCHEDULE B (“**Majority Decisions**”) shall be by an affirmative vote of greater than one-half (1/2) of the representatives of the Management Committee;
 - (b) From the date of the closing of the transactions contemplated in the Transition Agreement and for the duration of the Pre-Legacy Period thereafter, Decisions under the heading “Pre-Legacy Decisions” and during the Legacy Period, Decisions under the heading “Decisions by Consensus” in SCHEDULE B (“**Consensus Decisions**”) shall be by an

affirmative vote of every representative of the Management Committee or Working Committee, as applicable;

- 17.2 Certain Requirements.** Decisions that must be made as Consensus Decisions must be made at a meeting in which all representatives of the Management Committee or Working Committee, as applicable, are represented in person or by proxy, or by a written resolution executed by the required number of representatives of the Management Committee or Working Committee, as applicable.
- 17.3 Absence of Authority.** Any Decision which is reasonably asserted as requiring authority from the decision making body(ies) of a Party (a “**Deferred Party**”) may be deferred until a meeting of the Management Committee or Working Committee, as applicable, to be convened forthwith following the next regularly convened meeting of such decision making body(ies), provided that having regard to the urgency of a Decision, upon reasonable request of any Party, the Management Committee or Working Committee (as applicable) representative of a Deferred Party shall use reasonable efforts to obtain the authority of its decision making body(ies) at a special meeting to be scheduled prior to the next regularly convened meeting of such decision making body(ies).
- 17.4 More Information.** It is acknowledged that in the course of making a Decision, the Management Committee or Working Committee, as applicable, or representatives of it, may reasonably require greater information, or alternative options, to make an informed Decision.
- 17.5 Contractual Approvals Not Decisions.** For clarity, any matter which is, by the express terms of this Consortium Agreement subject to the consent, approval or agreement of a Party, shall not be decided by the Management Committee or Working Committee, as applicable.
- 17.6 Decision Dissatisfaction.** In the event, following the making of any Decision by the Management Committee or Working Committee, as applicable, any Party is dissatisfied with any Decision, any Party may initiate the process (an “**Escalation Review**”) set out in

Section 17.7 and thereafter propose a reconsideration of the Decision, having regard for the following principles:

- (a) That the expression of such dissatisfaction and the pursuit of any Escalation Review shall be made having regard for the need to make Decisions in a timely manner, recognizing the circumstances surrounding the Decision;
- (b) That an Escalation Review may be appropriate in circumstances where the failure of the Management Committee or Working Committee, as applicable, to approve a matter, as a Decision, leaves the matter materially unresolved including, for example, that the failure to approve the Decision may:
 - (i) threaten the Consortium's compliance with the Legacy Lease;
 - (ii) threaten Niagara's compliance with any of its obligations under or entered into pursuant to the Transition Agreement;
 - (iii) threaten Niagara's compliance with any of the Assigned Agreements;
 - (iv) threaten Niagara's compliance with any of its obligations under the Construction License;
 - (v) unduly delay the construction of the Canada Games Park;
 - (vi) result in the cost of construction of the Canada Games Park exceeding the then approved budget;
 - (vii) have a material operations impact on the Canada Games Park during the Legacy Period; or
 - (viii) materially impact the quality of the Canada Games Park.
- (c) That Escalation Reviews shall be initiated in good faith and as an extraordinary measure having regard for the consequences of the Decision to the Parties or any of them;

- (d) That any Party proposing an Escalation Review shall provide written details regarding the proposal for an Escalation Review including relevant supporting information (a “**Review Notice**”), as appropriate, and the Parties shall endeavour to make Decisions without the need for an Escalation Review.
- (e) The Parties shall not be bound to participate in any Escalation Review, and provision for Escalation Reviews hereunder is intended to promote balanced and effective decision making by the Parties and not to bind the Parties to modify a Decision.

17.7 Escalation. If a Party proposes an Escalation Review with respect to a Decision by escalation, they shall follow the following procedure:

- (a) The Party shall give to the other Parties a Review Notice.
- (b) On service of the Review Notice the:
 - (i) Regional Treasurer of Niagara;
 - (ii) Deputy Chief Administrative Officer of St. Catharines;
 - (iii) Director of Public Works of Thorold; and
 - (iv) Project Manager of Brock

shall in good faith review the Decision and attempt to resolve the matter to the satisfaction of the Parties;

- (c) if the officers listed in Section 17.7(b) do not resolve the matter to the satisfaction of all the Parties within five (5) days of service of the Review Notice, the Review shall be referred to the:
 - (i) Chief Administrative Officer of Niagara;
 - (ii) Chief Administrative Officer of St. Catharines;

(iii) Chief Administrative Officer of Thorold; and

(iv) Senior Associate Vice-President, Infrastructure & Operations of Brock

who shall in good faith review the Decision and attempt to resolve the matter to the satisfaction of the Parties.

17.8 Notwithstanding any Escalation Review, the Parties shall continue to perform their respective obligations in accordance with the provisions of this Agreement while such Escalation Review is continuing.

ARTICLE 18 - DEFAULT BY PARTY

18.1 If a Party fails to perform or observe any of its obligations under this Consortium Agreement and fails to commence to cure such default within fourteen (14) days after having been given notice of such default by the Management Committee or Working Committee, as applicable, or if such default reasonably requires a longer period to cure (and the Parties hereby acknowledge that it shall be reasonable for a cure to be delayed because the Party requires authority from its governing decision making body(ies) at the next regularly convened meeting thereof, provided that if the matter is of significance and time is of the essence in respect of the alleged default, such Party shall make reasonable efforts to cause of a special meeting(s) of such decision making body(ies)), such longer period, provided that Party works continuously and diligently to cure such default, then such Party shall be considered to be in default and the non-defaulting Parties shall have the following rights which may be exercised individually or in combination, provided that any decision regarding the exercise of such rights shall have been unanimously approved by the non-defaulting Parties:

(a) if the default is a default in the payment of any amount required to be paid or advanced pursuant to this Consortium Agreement, proceed in accordance with ARTICLE 15;

(b) the defaulting Party's rights to use the Canada Games Park pursuant to the Facilities Programming Agreement may be suspended and the non-defaulting Parties shall be

entitled to use the Canada Games Park in their place for any period during which the defaulting Party is in default;

- (c) the defaulting Party shall continue to receive notices of Working Committee and/or Management Committee meetings and shall be entitled to attend and participate therein, but the non-defaulting Parties and their representatives on the Working Committee and/or the Management Committee shall be solely empowered to make any and all Decisions as required in connection with the Consortium's activities, including without limitation any Majority Decisions and Consensus Decisions, to the absolute exclusion of the defaulting Party and its representative on the Working Committee and/or the Management Committee. Any Decisions so made or given shall be fully binding on the defaulting Party;
- (d) subject to compliance with the Transfer Payment Agreement (which restricts disposals of Canada Games Park to certain persons without the consent of the Her Majesty the Queen in right of the Province of Ontario until the later of five years following substantial completion of the Canada Games Park or October 31, 2026) the non-defaulting Parties shall have the right to expel the defaulting Party from the Consortium;
- (e) to bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by the Parties that damages may be an inadequate remedy for a default, breach or threatened breach of this Consortium Agreement; and/or
- (f) to bring any action pursuant to applicable laws as may be permitted in order to recover damages.

18.2 In the event of expulsion pursuant to Section 18.1, the expelled Party:

- (a) shall be required to assign its Proportionate Share of the Leasehold Interest to the non-defaulting Parties *pro rata*; in connection with such assignment, the expelled Party shall:

- (i) not be entitled to any compensation or equity in exchange for its Proportionate Share of the Leasehold Interest, or otherwise pursuant to this Consortium Agreement;
 - (ii) not be entitled to any reimbursement of any amounts paid by it into the Capital Trust Account;
 - (iii) remain liable for any Short Fall Loans;
 - (iv) pay to the remaining Parties an amount equal its expected contributions to the Capital Trust Account for the remaining term of the Legacy Period following the date of such expulsion.
- (b) remains bound by its obligations of confidentiality as set out in this Consortium Agreement;
- 18.3** The provisions of this ARTICLE 18 shall be deemed to be additional to and not in substitution for any and all other rights and remedies which the non-defaulting Parties may have under this Consortium Agreement against the Defaulting Party.

ARTICLE 19 - INTEREST IN THE CONSORTIUM

- 19.1** Unless otherwise explicitly set out in this Consortium Agreement, the Parties shall not establish common assets when pursuing the objectives of this Consortium Agreement. If it is not possible to avoid undivided common ownership of any rights and/or assets, such undivided common ownership shall only refer to each respective right and/or asset separately and not to the aggregate of the rights and/or assets.
- 19.2** No Party shall undertake or incur any obligations, liabilities or commitments on behalf of any other Party.
- 19.3** It is understood and agreed that since the Consortium is not a legal entity, it may not acquire any ownership or interest in any property or assets of any of the Parties. No Party will acquire any ownership or interest in any property or assets of any other Party except as explicitly provided for in this Consortium Agreement.

ARTICLE 20 – INSURANCE

- 20.1 Commercial General Liability.** Each of the Parties shall maintain, during the Legacy Period, a Commercial General Liability policy for limits of no less than \$5,000,000 per occurrence with respect to personal injury, bodily injury, death or property damage suffered by others arising out of liability with respect to the Consortium’s use and operations of the Legacy Lands and Canada Games Park or its employees, agents, or permitted subtenants or otherwise arising out of or in connection with any occurrence on the Legacy Lands and Canada Games Park. The policy of insurance shall include, but not be limited to, coverage for bodily injury, personal injury, death, property damage, cross liability and severability of interest clauses and shall be written on an occurrence basis. The policy shall name each of the Parties as insureds with respect to liability arising out of the Consortium’s use and operations.
- 20.2** During course of the initial construction of Canada Games Park, Niagara shall enforce the provisions of the Assigned Agreements with respect to the obligations of the respective contractor(s) thereunder to maintain the insurance policies as set out therein. Niagara shall ensure that any other contracts entered into during the course of construction shall include insurance requirements in amounts and forms usual and prudent for owners or managers of similar properties. All such policies shall include all interests as required.
- 20.3** Prior to substantial completion, the Parties agree to purchase and maintain a property policy for the full replacement value of the Canada Games Park which insures against “All Risks” of direct physical loss or damage, and/or time element coverages except as excluded.
- 20.4 Policy Requirements.** All policies of insurance shall be subject to requirements to be determined by the Consortium as a Decision.

ARTICLE 21 - DAMAGE AND DESTRUCTION

- 21.1 Damage or Destruction** If there is damage to or destruction of the Canada Games Park or any portion thereof by any cause whatsoever, and regardless whether such damage or

destruction shall have partially, substantially or completely destroyed the Canada Games Park, the determination to reconstruct, repair, modify, restore or demolish the Canada Games Park shall be a Decision, provided that in any event, the Canada Games Park shall be brought into compliance with Laws within a reasonable period following such damage or destruction.

ARTICLE 22 - INDEMNITIES

22.1 Each Party hereby covenants and agrees with each of the other Parties (the party so covenanting and agreeing to indemnify the other Parties being hereinafter in this ARTICLE 20 referred to as the “**Indemnifying Party**” and the Parties to be indemnified being hereinafter called the “**Indemnified Parties**”) to indemnify and save harmless, without duplication, the Indemnified Parties from and against any and all costs, claims, demands, suits, actions and judgments made, brought or recovered against the Indemnified Parties or any of them by any person arising from the Indemnifying Party’s:

- (a) negligent or wilfully wrong acts, omissions,
- (b) breach of this Agreement, and/or
- (c) unilateral action taken in a manner which is inconsistent with this Agreement.

This indemnity shall survive each Party’s cessation of participation in the Consortium.

22.2 Promptly after receipt by an Indemnified Party of notice of any claim or the commencement of any action against it by a third party, the Indemnified Party shall, if a claim in respect thereof is to be made against the Indemnifying Party, notify the Indemnifying Party in writing of the claim or the commencement of the action, provided that failure to notify the Indemnifying Party shall not relieve the Indemnifying Party from liability which it may have to the Indemnified Party. If any such claim or action is brought against one or more of the Indemnified Parties and it has notified the Indemnifying Party thereof, the Indemnifying Party will be entitled at its own cost to participate in the negotiations with respect thereto and, to the extent that the Indemnifying Party wishes, to assume the defence thereof with

counsel satisfactory to the Indemnified Party or Indemnified Parties, as applicable, acting reasonably, and in such event, the Indemnified Party or Indemnified Parties shall be kept advised of the status of the claim or action and shall be entitled to participate in any discussions with respect to the defence thereof.

ARTICLE 23 – DURATION OF CONSORTIUM AND CO-TENANCY, EXTENSION OF LEGACY LEASE AND TERMINATION OF LEGACY LEASE

23.1 The Consortium shall come into effect on the Effective Date and shall be co-terminus with the Legacy Lease (and Legacy Period).

23.2 Extension Discussions. It is the intention of all of the Parties at the time of execution of this Agreement that the Consortium is to continue operating beyond the initial Legacy Period.

(a) On or about the date that is thirty (30) years following the commencement of the Legacy Period any Party may initiate discussions with the other Parties regarding proposed terms and conditions upon which the term of the Legacy Lease (and Legacy Period) may be extended for a further term. Any such discussions and terms and conditions shall have regard to the following:

(b) It is in the interests of the Parties to finalize any extension of the Legacy Lease (and Legacy Period) on or about the date that is thirty (30) years following the commencement of the Legacy Period so that lifecycling of the Canada Games Park during such extension can be planned for and funded in an orderly and prepared manner;

(c) In the event of any extension of the Legacy Lease, the basis upon which any Lifecycle Report will be prepared following such extension shall assume a life ending on the extended term of the Legacy Lease; and

(d) Any proposed agreement to extend shall contemplate the further extension of the Legacy Lease (and Legacy Period) not later than ten (10) years prior to the end of the extended term, on the same terms as this Section 23.2, *mutatis mutandis*.

The parties shall be under no obligation to extend the Legacy Lease.

23.3 Yielding Up. For clarity, the Parties acknowledge that:

- (a) the costs to the tenant under the Legacy Lease, if any, of complying with the yielding up provisions of the Legacy Lease shall be borne by the Parties in accordance with their Proportionate Shares, and
- (b) the entitlement to compensation payable to the tenant under the Legacy lease, if any, in connection with the yielding up and surrender provisions of the Legacy Lease shall be shared by the Parties in accordance with their Proportionate Shares.

23.4 Waiver of Partition and Sale. Each of the Parties waives the benefit of all provisions of law, as now in effect or as hereinafter enacted, relating to actions for a partition and/or administration of real and personal property (or for actions for sale in lieu thereof) including, without limiting the generality of the foregoing, the *Partition Act*, R.S.O. 1990, c.P.4, as amended or re-enacted from time to time, and each of the Parties agree that it will not resort to any action at law or in equity to partition (or sale in lieu thereof) the Leasehold Interest or to seek administration in respect thereof; except in each case as herein provided.

23.5 If by the day that is thirty (30) years from the commencement of the Legacy Period there is no agreement in place to extend the term of the Legacy Lease, the Consortium shall forthwith begin taking, and shall continue to take for the subsequent eight (8) year period, all reasonable steps to reduce capital, operational, and maintenance spending when considering the approval of any Lifecycle Report, Operating Budget, or Capital Budget, with the goal of the Consortium being to wind down the operations and to wind down the use of Canada Games Park as a multi-sport recreation centre by no later than the end of the Legacy Period.

ARTICLE 24 - CONFIDENTIALITY AND INFORMATION DISSEMINATION

- 24.1** Each of the Party's shall keep in strict confidence and shall bind all of its employees involved in Consortium activities to keep in strict confidence all the commercial and technical information received, or to which it obtains access to, directly or indirectly from the other Parties in connection with this Agreement and shall not at any time disclose such information to any third party or make use of any such information for any purpose other than as permitted under this Agreement, until such time as publication is authorized by the Management Committee.
- 24.2** The restrictions referred to in Section 21.1 shall not apply with respect to:
- (a) information which at the time of disclosure is generally available to the public through no breach of this Consortium Agreement;
 - (b) information which after disclosure becomes generally available to the public through no fault of the Party receiving the information;
 - (c) information which was in the possession of the Party receiving the information prior to its disclosure and of which documented proof exists and which was not acquired directly or indirectly from the other Parties;
 - (d) information which the Party receiving the information received from a party outside the Consortium without any obligations of confidentiality and of which documented proof exists and which was not acquired directly or indirectly from the other Party(s).
- 24.3** The confidentiality provisions contained in Section 21.1 shall survive the termination or cessation of participation of each Party in the Consortium.
- 24.4** It is understood and agreed that information or press releases relating to activities of the Consortium will require the prior approval of the Management Committee or Working Committee, as applicable, when any reference is made to the Consortium.
- 24.5** Notwithstanding the foregoing, the Parties acknowledge that:

- (a) information that is in the custody or under the control of any or all of Niagara, St. Catharines and Thorold is subject to the access provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) (“**MFIPPA**”) and accordingly that those parties cannot guarantee that the confidentiality of such information will be maintained if a request for access is made under MFIPPA; and
- (b) information that is in the custody or under the control of Brock is subject to the access provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario) (“**FIPPA**”) and accordingly that Brock cannot guarantee that the confidentiality of such information will be maintained if a request for access is made under FIPPA.

24.6 Niagara, St. Catharines or Thorold shall inform the other Parties of any request made for access to information supplied to them by the other Parties, permit the other Parties an opportunity to make representations on the disclosure of such information, and consider any such representations prior to disclosing or permitting access to the information.

ARTICLE 25 - GOVERNING LAW

25.1 This Agreement shall be interpreted and governed in all respects in accordance with the laws of the Province of Ontario.

ARTICLE 26 - PROHIBITION AGAINST TRANSFERS

26.1 No Party shall sell, transfer, assign, charge, encumber or otherwise deal in any manner whatsoever with all or any part of its interest in the Consortium or this Agreement without the prior written consent of the other Parties and any attempt to do so shall be void. The foregoing shall not apply to an assignment of a Party's Proportionate Share pursuant to Section 18.2.

ARTICLE 27 - NOTICE

27.1 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 telecopier 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 telecopier, such Notice shall be deemed to be given on the date of transmission.

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

and in the case of notice to Niagara at:

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

and in the case of notice to St. Catharines at:

 50 Church St., PO Box 3012
 St. Catharines, Ontario
 L2R 7C2
 Attention: David Oakes

Email: doakes@stcatharines.ca

and in the case of notice to Thorold at:

3540 Schmon Parkway, PO Box 1044

City of Thorold, Ontario

L2V 4A7

Attention: Manoj Dilwaria

Email: Manoj.Dilwaria@thorold.ca

27.2 A Party may by notice to the other Parties change its address for purposes of this Agreement.

ARTICLE 28 - WAIVER

28.1 No consent or waiver, express or implied by a Party of any breach or default of the other Party(s) in performing its obligations under this Agreement shall be deemed or construed to be a consent or waiver of any other breach or default by such other Party(s) of the same or any other obligation hereunder. Failure on the part of any Party to complain of any act or failure to act of the other Party(s) or to declare the other Party(s) in default shall not constitute a waiver by such Party of its rights hereunder.

ARTICLE 29 - FURTHER ASSURANCES

29.1 Each Party agrees that it will from time to time at the reasonable request of the other Parties execute and deliver such further instruments and take such further action as may be reasonably required to accomplish the purposes of this Agreement.

ARTICLE 30 - ENTIRE AGREEMENT

30.1 This Agreement constitutes the entire Agreement between the Parties pertaining to the Consortium and the Co-Tenancy and supercedes all prior agreements, understandings,

negotiations and discussions, whether oral or written, of the Parties, including without limitation the Preliminary Agreement, and there are no warranties, representations or other agreements between the parties in connection with the Consortium except as specifically set forth herein.

ARTICLE 31 - SEVERABILITY

31.1 If any covenant, obligation or agreement of this Agreement, or the application thereof to any Party or person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to the Parties or persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

ARTICLE 32 - SUCCESSORS AND ASSIGNS

32.1 This Agreement is binding upon and shall operate for the benefit of the parties hereto and their respective successors and permitted assigns.

ARTICLE 33- AMENDMENTS IN WRITING

33.1 No amendment, modification or change to this Agreement shall be binding unless in writing, signed by all the Parties hereto.


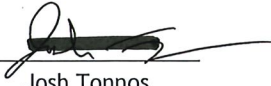
ARTICLE 34 - COUNTERPARTS

34.1 This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Signature Page Follows

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.

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: *Terry Ugutina*
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.

**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

APPROVED FOR EXECUTION
BW
LEGAL SERVICES

By: _____
Name: James Bradley
Title: Regional Chair

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

I/We have authority to bind the Corporation.

SCHEDULE A
FACILITIES PROGRAMMING AGREEMENT GUIDING PRINCIPLES

***Annual allocation of time
Arenas***

First to Brock for Varsity competitions (five hour blocks a maximum of two times per week per team – typically during Prime-Time)

Second to St. Catharines and Thorold on an equal basis for all remaining Prime Time ice time

Third to Brock University for Varsity practices (generally weekdays during Non-Prime Time) and for intramural hockey (Sundays through Thursdays from 11pm)

Remaining ice times (principally Non-Prime Time during the Winter Season and Non-Prime Time and Prime Time during the Summer Season) are the responsibility of the Independent Operator to program / sell available time

Brock agrees that its Club Ringette and Figure Skating teams will not require more than 4.5 hours of Prime Time ice time per week (with some of its requirements occurring during Non-Prime Time hours)

Annual Allocation

The Parties agree that the above allocation of ice time will comprise a fixed annual allocation and will remain in effect regardless of future changes in circumstances (i.e., Brock will be allocated and will pay for a set number of Prime Time and Non-Prime Time hours for its Varsity teams; similarly, St. Catharines and Thorold will be allocated the remaining Prime Time hours regardless of future changes in demand)

Financial Responsibility

The Parties will annually pay to the Facility an amount equal to their allocation times the then rental rate charged by the Facility as determined by the Consortium as a Majority Decision (per the CGP Proforma, this anticipated amount is \$200 (plus HST) per hour for Prime Time and \$140 (plus HST) per hour for Non-Prime Time). If Brock, St. Catharines, or Thorold are not able to use or assign any portion of their ice allocation to users, Brock, St. Catharines, or Thorold would still be required to pay the Facility for their entire allocation.

Bumping Rights

Should Brock Varsity Teams (hockey, figure skating, ringette) qualify for playoffs, the Party's agree that Brock will have "bumping rights" in the scheduling and hosting of playoff games. Should bumping occur for Brock Playoff games, the cost of such ice would transfer from St. Catharines / Thorold to Brock

The Parties also agree to relinquish any portion of their annual ice allocation required to accommodate "Major Events" that may be attracted and programmed into the Facility from time to time (such "major events" would comprise major regional, provincial, national and international events requiring the use of the ice surfaces, the gymnasiums or other Facility components). The attraction and scheduling of such major events would typically occur well in advance of the annual ice allocation and for allocation purposes, would take precedence. The Parties would not be "charged" for ice time relinquished for Major Events

Assignment

Each of Brock, St. Catharines, and Thorold are permitted to assign or sublease all or portions of their annual ice allocation to community user groups (for example, minor hockey, figure skating, ringette, sledge hockey, etc.). St. Catharines and Thorold would be permitted to charge a lower hourly rate than the rate charged by the Facility as prescribed by the Consortium. However, should St. Catharines or Thorold charge a higher hourly rate than charged by the Facility, St. Catharines or Thorold would then pay the Facility the higher rate charged to the user.

**Annual allocation of time
Gymnasium**

First to Brock for Non-Prime Time weekday use (*i.e.*, 7:00 am to 6:00 pm) for three of the gymnasium's courts during the academic year (September through April)

Second to Brock for Non-Prime Time weekday use (*i.e.*, 7:00 am to 6:00 pm) during summer season for three of the gymnasium's courts for the staging of summer camps

The fourth court and all remaining usage times for the other three courts (*i.e.*, excluding the times reserved for Brock, as set out above) will be made available for public use, including for use by Thorold, Brock, and St. Catharines.

Exclusivity

The Parties agree that Brock would have the license to offer camps within the Facility. The other Parties may also offer camps within the Facility, provided that these camps do not compete directly with Brock's camps during the time in which they are provided. For greater certainty, another Party will be considered to be competing against Brock if it offers a camp which provides activities to a particular age-group which are substantially similar to those being offered by Brock at the same times

Bumping Rights

The Parties also agree to relinquish any portion of their annual allocation required to accommodate “Major Events” that may be attracted and programmed into the Facility from time to time (such “major events” would comprise major regional, provincial, national and international events requiring the use of the ice surfaces, the gymnasia or other Facility components). The attraction and scheduling of such major events would typically occur well in advance of the annual gymnasium allocation and for allocation purposes, would take precedence. The Parties would not be “charged” for gymnasium time relinquished for Major Events

Financial Responsibility

The Parties will annually pay to the Facility an amount equal to their allocation times the then rental rate charged by the Facility (per the June 2019 PwC report, this amount is \$125 (plus HST) per hour for Prime Time and \$75 (plus HST) per hour for Non-Prime Time). If Brock, St. Catharines, Thorold or Niagara are not able to use to assign any portion of their gymnasium allocation to users, Brock, St. Catharines, Thorold and Niagara would still be required to pay the Facility for their entire allocation.

Bumping Rights

Should Brock users of the gymnasium qualify for playoffs, the Party’s agree that Brock will have “bumping rights” in the scheduling and hosting of playoff games. Should bumping occur for Brock Playoff games, the cost of such “bumped” use would transfer from St. Catharines / Thorold to Brock.

The Parties also agree to relinquish the portion of their annual gymnasium allocation needed to accommodate “Major Events” that may be attracted and programmed into the Facility from time to time (such “major events” would comprise major regional, provincial, national and international events requiring the use of the gymnasia). The attraction and scheduling of such major events would typically occur well in advance of the gymnasium time allocation. The Parties would not be “charged” for gymnasium time relinquished for Major Events.

Assignment

Each of Brock, St. Catharines, and Thorold are permitted to assign all or portions of their annual gymnasium time allocation, if any, to community user groups. Should St. Catharines or Thorold acquire an annual gymnasium time allocation, St. Catharines and Thorold will be permitted to charge a lower hourly rate than prescribed by the Facility as prescribed by the Consortium. However should St. Catharines or Thorold charge a higher hourly rate than charged by the Facility St. Catharines or Thorold would then pay the Facility the higher rate charged to the user. .

***Reconciling
Conflicts***

Scheduling

The Independent Operator will serve as a “facilitator” settling disputes between the Partners with respect to facility utilization

SCHEDULE B

PRE-LEGACY DECISIONS

- A. The making of any Variation;
- B. The extension of the Construction Completion Deadline;
- C. The making of changes to the Project Requirements;
- D. Any agreements related to the permanent naming rights, licensing, signage, sponsorship or the allocation of any similar rights related to Canada Games Park;
- E. The decision to reconstruct, repair, modify, restore or demolish in the event of damage or destruction in accordance with Section 21.1;
- F. Any decision regarding sponsorship, advertising or naming rights arrangements, or legacy commitments in connection with the Canada Games Park (including the decision to provide approvals in accordance with Section 3.16);
- G. Any agreements related to the allocation of physical space, building use or programming of Canada Games Park; and
- H. Any other action or decision that could reasonably be expected to have a material impact on any member of the Consortium or their respective facilities, operations, students, faculty, staff, residents or other user groups, as applicable.

LEGACY DECISIONS

MAJORITY DECISIONS

- A. The decision to change the name of the Consortium;
- B. The approval of Facility Operating Plans;
- C. The approval of annual audited financial statements;
- D. The decision to terminate the Independent Operator;
- E. The establishment of rental rates for the Canada Games Park facilities (subject to voting rights as set out in Section 13.3);
- F. The approval of Operating Budgets;
- G. The approval of any Capital Budget which is to be funded entirely from the Capital Trust Account in accordance with Section 12.2;
- H. The adoption of rules and regulations pursuant to Section 13.4;

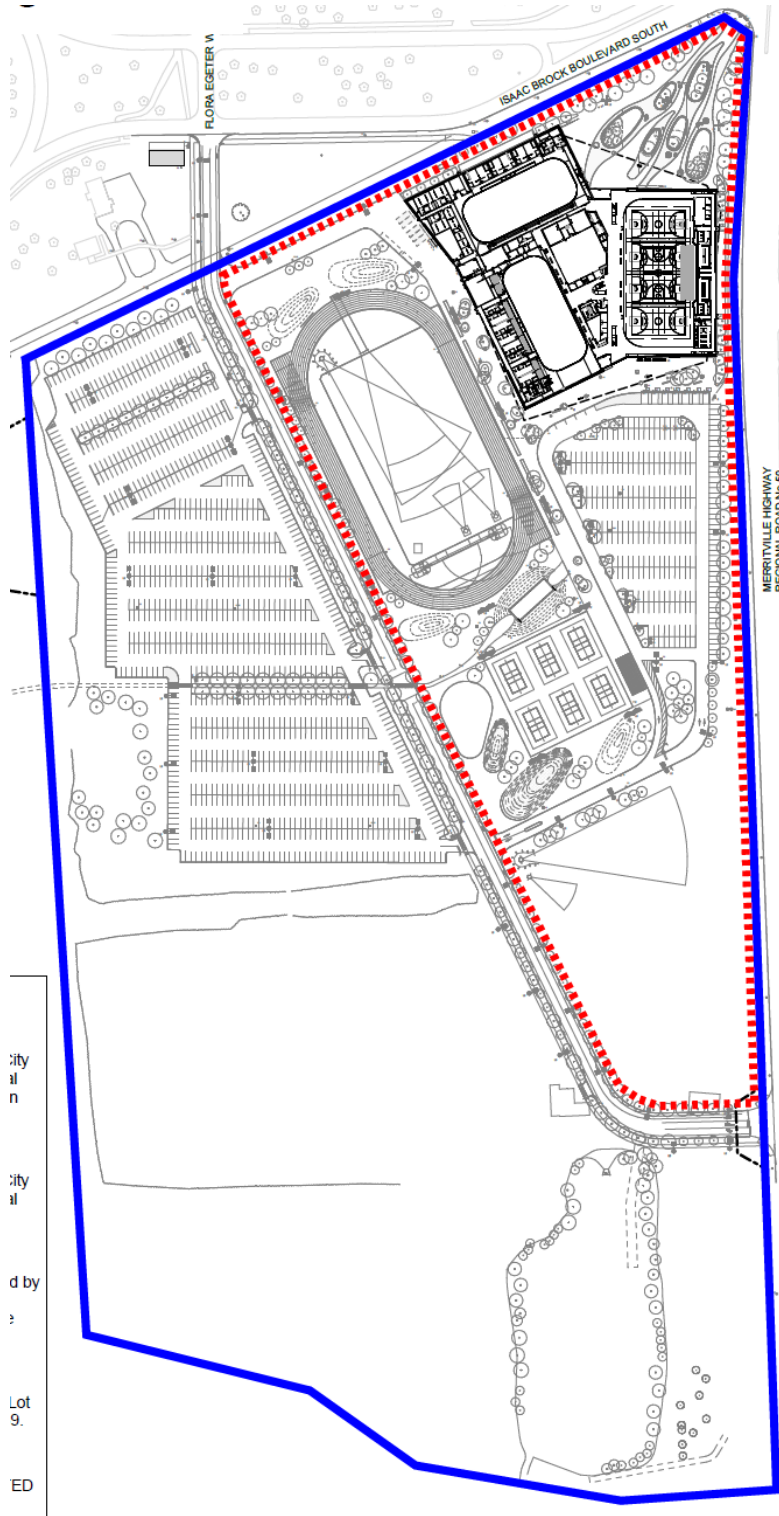
- I. The settlement of any claims which may be reasonably anticipated to significantly impact the reputation of the Parties;
- J. Any other Decision provided for in this Agreement which is not described herein as a Consensus Decision.

DECISIONS BY CONSENSUS

- A. The joint procurement process for the appointment of the Independent Operator and the decision to appoint the Independent Operator;
- B. The decision to reconstruct, repair, modify, restore or demolish in the event of damage or destruction in accordance with Section 21.1;
- C. The confirmation of the hard costs of construction of the Canada Games Park in accordance with Section 11.2(b);
- D. The approval of any additional funds to be contributed to the Capital Trust Account pursuant to Section 11.2(e);
- E. The approval of any Capital Budget which is not to be funded entirely from the Capital Trust Account in accordance with Section 12.2 such that funding of the deficiency is required in accordance with Section 12.4;
- F. The approval of terms of reference for any Lifecycle Report pursuant to Section 11.1(c);
- G. The acceptance or rejection of a Lifecycle Report;
- H. The approval of specifications and standards for operational maintenance of the Canada Games Park pursuant to Section 11.3;
- I. To mortgage the Legacy Lease;
- J. Any decisions in respect of sponsorship or legacy commitments of the Consortium in respect of Canada Games Park;
- K. Spending outside of approved budgets in excess of \$50,000;
- L. The decision to exercise any rights and remedies following a default by a Party pursuant to Section 18.1 (including without limitation the decision to expel a defaulting Party from the Consortium), and for clarity, the defaulting Party is not entitled to participate in this Decision;
- M. Any binding proposal to be made by the Parties as tenant under the Legacy Lease to amend the terms of the Legacy Lease or extend the term of the Legacy Lease; and
- N. Any decision regarding sponsorship, advertising or naming rights arrangements, or legacy commitments in connection with the Canada Games Park (including the decision to provide approvals in accordance with Section 3.15);
- O. Any decisions in respect of insurance of or at Canada Games Park (including any determination made in accordance with Section 20.2) or the proceeds thereof;

- P. Any decision to delegate authority to a Party to act for the Consortium in accordance with Section 6.2.
- Q. Any other decisions in respect of the Consortium or Canada Games Park which are objectively significant.

SCHEDULE C GAMES LANDS



SCHEDULE D PROJECT REQUIREMENTS

Minimum Requirements

The minimum requirements for the Canada Games Park are as follows:

- 1) Water and wastewater servicing from Merrittville Hwy. to enable the future development of Brock's South Campus;
- 2) Integrating and designing space in Canada Games Park for the Brock Niagara Centre for Health and Well-Being;
- 3) Construction of a twin-pad arena;
- 4) Construction of a new 400m track with related track and field infrastructure;
- 5) Construction of six beach volleyball courts;
- 6) the works required to install utilities to service the Games Lands to be constructed on part(s) of lands owned by Brock;

Project Description

The establishment of Canada Games Park, which will be made up of the following facilities:

i. Sport and Abilities Centre – Sport Performance Centre

- a. Establishment of a Sport Performance Centre to provide sport services and programs for high-performance and developing athletes and coaches.
- b. The Sport Performance Centre of approximately 6,000 square feet will include sport services facilities such as workout space, high-performance training equipment, testing facilities, change rooms and support spaces including offices, a lounge, and practitioner spaces.

ii. Sport and Abilities Centre – Brock Niagara Centre for Health & Wellbeing

- a. Establishment of a Health & Wellbeing Centre that will provide exercise and educational programs for Niagara residents, with a particular focus on persons with special needs and seniors.

- b. The Health & Wellbeing Centre will account for approximately 10,000 square feet of space and will include specialized training equipment, two studio rooms and a main training area.

iii. Sport and Abilities Centre – Parasport Gymnasium

- a. The Parasport Gymnasium will be housed within a multipurpose fieldhouse and address the need for additional parasport and other accessible recreation facilities in the Niagara Region.
- b. The multipurpose fieldhouse will include 4 full-sized gymnasiums, a 200m suspended indoor track, seating for approximately 700, storage spaces, a male change room, a female change room, and a universal change room. The ceiling height will accommodate volleyball.

iv. Sport and Abilities Centre – Combative Sports Centre

- a. The Combative Sports Centre will also be housed within the multipurpose fieldhouse and address the need for competition and training facilities for a number of combative sports including wrestling.
- b. The multipurpose fieldhouse will include 4 gymnasiums, a 200m suspended indoor track, seating for approximately 700, storage spaces, a male change room, a female change room, and a universal change room. Mats and other equipment will be available for training and competition and stored in the available storage spaces.

v. Sport and Abilities Centre – Twin Pad Arena

- a. The Twin Pad Arena will replace aging community arenas and be used by a number of ice and dry floor user groups.
- b. The Twin Pad Arena will include two NHL-sized ice pads, spectator seating, six change rooms per arena, two Officials rooms per arena, three permanent team rooms, and Coach/Trainer/video rooms.
- c. One pad will be spectator focused with seating for approximately 1000, with bench seating for approximately 200 on the second pad. Space for media workspaces

will be available on one pad. Hospitality areas will be available adjacent to the main concourse and overlook pad one and the outdoor track facility. Additional storage space will be available. Artificial turf for lacrosse use will be included.

vi. Sport and Abilities Centre – Sport Offices

- a. Approximately 10,000 square feet of office space will be provided and be made available to sport organizations and other sport service providers.
- b. Meeting spaces will double as hospitality spaces overlooking one arena pad.
- c. Café with seating is also planned to provide food services for the sport offices and other users of Canada Games Park.
- d. Administrative space for Canada Games Park, is included at the south entrance of the Sport and Abilities Centre.

vii. Sport and Abilities Centre – Outdoor Cycling Pavilion and Environmental Sustainability Centre

- a. Canada Games Park will include storage for outdoor equipment such as athletics and beach volleyball equipment, bike racks, bike repair stations, and a staging area for cyclists to access the many trails and courses surrounding Canada Games Park.
- b. Sustainability education and awareness materials will also be provided at Canada Games Park to ensure that users are educated regarding the many environmental features on the trails and courses.

viii. Sport and Abilities Centre – Athletics Facility and Beach Volleyball Centre

- a. The Athletics Facility will provide a new competition and training venue. It will include a 400m outdoor track, and facilities for all jumps and throws (e.g. triple jump, long jump, pole vault, discuss, hammer, javelin, and shotput) with a grass infield.
- b. Various equipment will also be provided such as hurdles, jump covers, and mats. Permanent bench seating will be available along the main straightaway with

concrete concourses built into the landscaping plan to accommodate temporary seating for major events. Permanent outdoor storage will also be constructed.

- c. Additional warm-up and training facilities for the Athletics field events will be located in the area south of the Beach Volleyball Centre/Sport and Abilities Centre parking access road, and to the north of the southern entrance at Merrittville Highway.
- d. The Beach Volleyball Centre will be a permanent facility with six competition courts.
- e. Accessible pathways will connect the beach volleyball and athletics facilities with the Sport and Abilities Centre indoor facilities.
- f. Approximately 300 parking spaces will be available to all users of Canada Games Park.

**SCHEDULE E
CGP PROFORMA**

Canada Games Park

Preliminary Financial and Operational Assessment

Update to November 2017 Report
September 6, 2019



Agenda

1. Scope of Review	3
2. Project Description	5
3. Potential Utilization	8
4. Operating Assumptions	12
5. Updated Preliminarily Estimated Cash Flows	16
6. General Assumptions and Limiting Condition	18

Any person who is not an addressee of this Report, or has not been acknowledged as a recipient of this Report in the Engagement Letter, or who has not signed and returned to PwC a Release Letter, is not authorized to have access to this Report.



Scope of Review



Scope of Review

Introduction

- In March 2017, Niagara Region was announced as host of the 2021 Canada Games, a high-level multi-sport event held every two years alternating between the Canada Winter Games and Canada Summer Games. In support of this event, a multi-sport athletics facility is proposed to be developed on lands leased from Brock University. This facility, and the lands upon which it would be constructed, is to be known as “Canada Games Park” (“CGP”, the “Project” or the “Facility”).
- In October 2017, PricewaterhouseCoopers LLP (“PwC”) was retained by the 2021 Canada Games Host Society (“CGHS”) and the City of St. Catharines (the “City”) to assist in evaluating the CGP, and specifically to assist identifying the potential capital costs and potential operating metrics associated with the Facility following its potential handover to the City after the completion of the Games. PwC issued its report in November 2017.
- Since PwC issued its *Preliminary Financial and Operational Assessment* Report, the CGHS, the City of St. Catharines, the City of Thorold and the Regional Municipality of Niagara have continued to advance the planning and design of the Facility.
- With the Facility now at a more advanced stage of design and costing, CGHS again retained PwC to update its November 2017 Report to reflect the realities of the Facility as it is currently envisioned.

Scope of Work

The scope of work completed by PwC included the following:

- Obtained and examined revised plans, drawings and cost estimates for the Project;
- Held discussions with the Project’s architects, engineers and cost consultants to better understand the revised plans;

- Obtained and evaluated other business, financial and operating plans prepared by staff of Brock University, the City of St. Catharines, the City of Thorold and / or the Regional Municipality of Niagara;
- Held discussions with Brock University, City of St. Catharines, City of Thorold and Niagara Region officials who prepared those business, financial and operating plans;
- Held discussions with Brock University athletics and recreation staff, and with City of St. Catharines and City of Thorold parks and recreation staff, to understand current use and programming requirements for the Project;
- Held discussions with City of St. Catharines and City of Thorold parks and recreation staff to understand current use and programming trends at city-run facilities (including rates and fees);
- Undertook additional research, as required;
- Evaluated the operating assumptions utilized in the November 2017 Report and made adjustments / updates as necessary; and
- Updated the preliminary operating proforma for the Facility.

Scope of this Report

- This Report provides an update to the “Preliminary Financial and Operational Assessment” report prepared by PwC and dated November 2017.

Report Limitations

This Preliminary Report is for the 2021 Canada Games Host Society. Permitted recipients of this report include Brock University, the City of St. Catharines, the City of Thorold and the Regional Municipality of Niagara.

Any person who is not an addressee of this Report, or has not been acknowledged as a recipient of this Report in our Engagement Letter with the CGHS, or who has not signed and returned to PwC a Release Letter, is not authorized to have access to this Preliminary Report.



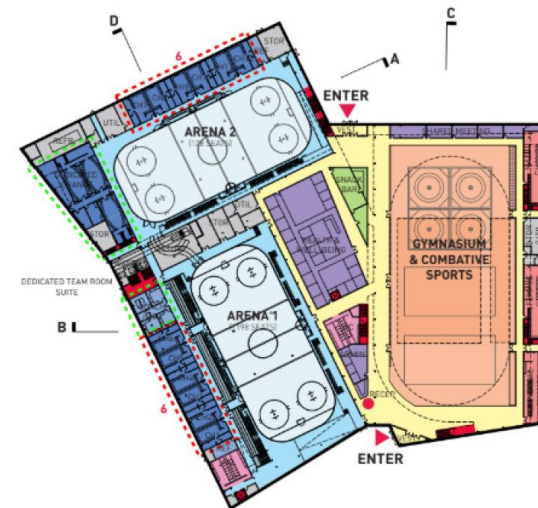
Project Description



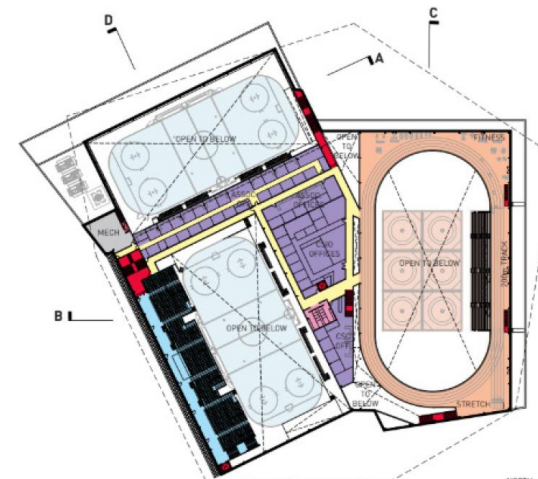
Project Description

Indoor Facilities

- CGP is envisioned to occupy a building footprint in the range of 155,000 square feet and contain roughly 180,400 square feet of space on two levels. Uses / facilities to be included in the Facility are:
 - A twin-pad arena (80,000 square feet):
 - one ice pad with approximately 1,000 fixed-seats, serving as the home arena for Brock University's men's and women's varsity hockey teams;
 - a second pad with approximately 200 seats;
 - during the summer season, it is envisioned that both ice pads would be utilized for indoor floor uses (box lacrosse and ball hockey);
 - A "quad gymnasium (measuring some 35,100 square feet) with a 200 metre track circling the gymnasium on a second level;
 - A regional centre for the Canadian Sport Institute – Ontario ("CSIO") of approximately 6,000 square feet;
 - A 10,000 square foot health and wellness centre (the Brock Centre for Health & Wellness);
 - Approximately 9,000 square feet of additional office space (including office space for various sport groups and organizations);
 - Approximately 1,000 square feet of food service areas; and
 - Lobby, circulation and building administration space (39,000 square feet).



GROUND FLOOR PLAN



SECOND FLOOR PLAN

Project Description

Outdoor Facilities

- Outdoor facilities at CGP are planned to include:
 - a 400 metre running track with interior grass field;
 - an area for athletics (jumping / throws) and storage;
 - temporary seating for the track facility;
 - a beach volleyball facility with six courts; and
 - an open air bike pavilion connecting the Project to nearby trails.
- Additional facilities include:
 - parking for approximately 1,540 cars (with roughly 260 used for the CGP and 1,280 used by Brock).



Building Components	Size	
Twin Pad Arena	68,000 sf	6,300 m ²
Quad Gymnasium plus track	48,000 sf	4,500 m ²
Brock Centre for Health & Well-Being	9,700 sf	900 m ²
CSIO	6,000 sf	700 m ²
Additional Office / Leased Space	9,000 sf	800 m ²
Food Service / Circulation / Administration	39,700 sf	3,700 m ²
TOTAL BUILDING AREA	180,400 sf	16,900 m²

Outdoor Sport Facilities	Estimated Land Area	
Track and Grass Field	164,300 sf	15,300 m ²
Beach Volleyball	36,500 sf	3,400 m ²
Storage	2,200 sf	200 m ²
Cycling & Environmental Sustainability	1,600 sf	150 m ²
TOTAL OUTDOOR AREA	204,600 sf	19,050 m²



Potential Utilization



Potential Utilization

Arenas - Winter

- Based on discussions with the City of St. Catharines and the City of Thorold, we understand that each city will commit to closing one ice pad and will agree to transfer that utilization to CGP. As such, most of the “Prime Time ice” (i.e., between 5pm and 11pm on weekdays and between 8am and 11pm on weekends) would be utilized
- In addition, we understand that Brock University will commit to using CGP for its varsity Men’s and Women’s hockey teams. These teams would be provided five-hour blocks of Prime Time ice (generally Friday evenings, Saturday afternoons / evenings and / or Sunday afternoons) for games. Teams would also be provided with two two-hour time blocks (primarily Monday through Thursday) for practices. Finally, Brock would be provided with ice time for various intramural sports, including hockey (Sunday through Thursday from 11pm to 1am), as well as Prime Time and Non-Prime Time hours for figure skating and ringette.
- Additional Prime Time (defined above) and Non-Prime Time (generally 7am to 5pm on weekdays and after 11pm on weekdays and on weekends) would be programmed with ice rentals to various sport groups (whether minor boys and girls hockey, ringette, figure skating, speed skating, sledge hockey, etc.), as well as to various adult hockey organizations from both St. Catharines and Thorold.
- In addition, it is presumed that if a private operator were utilized, they could establish their own men’s and women’s hockey leagues (competitive and recreational, day-time and evenings, assuming availability of ice and demand), charging players a rate (per team or per player) which includes ice, jerseys, referees, timekeepers and on-line stats / standings. Such use would serve to increase overall facility utilization.
- Finally, it is assumed that various “drop in” events could be staged during Non-Prime Time hours, including shinny and “stick and puck”.

- Utilization of the ice pads is assumed to average 65% over the winter season, with Prime Time averaging 97.5% and Non-Prime Time approximately 35% to 40% driven by rentals from St. Catharines and Thorold groups and by Brock University.
- During the summer season, it is assumed that one ice pad would have its ice removed on or about April 1, while the second would have its ice removed on or about May 1, allowing for dry-floor use for box lacrosse and ball hockey. Ice would be reinstalled on or about August 15 each year, allowing for pre-season training camps and other hockey skills camps to be run.
- At such utilization levels, they are projected to be comparable, albeit slightly higher than utilization levels currently being realized in St. Catharines and Thorold arena facilities.
- Average rental rates charged at the Facility are assumed to be \$200 per hour (excluding HST) for Prime Time and \$140 per hour (excluding HST) for Non-Prime Time during both the winter and summer seasons.

Arenas - Summer

- As noted above, ice is assumed to be taken out for the summer period, allowing the Facility to be used for dry-floor uses, including box lacrosse and ball hockey.
- Per a discussion with local lacrosse officials, we understand that sufficient demand would exist during weeknight Prime Time to utilize both areas for an approximately three-month period (weekend Prime Time would not generally be demanded).
- Utilization of the various ice pads is assumed to average 40% over the summer season, with Prime Time averaging 60% and Non-Prime Time approximately 25%.

Potential Utilization

Arenas – Summer (continued)

- Average rental rates charged at the Facility are assumed to be \$150 per hour (excluding HST) for Prime Time and \$100 per hour (excluding HST) for Non-Prime Time during the summer season.

Quad Gymnasium

- As noted in PwC's November 2017 report, City of St. Catharines staff and CGHS provided the results of a survey of some 42 potential user groups of the CGP. This survey enquired about their potential utilization of the various CGP facilities, as well as provided background information on the size of their organization (number of participants) and facility use requirements (time of year and day / night / weekend requirements).
- In addition, Brock has indicated a desire to utilize all Non-Prime Time hours at three of the gymnasium's courts (Monday through Friday).
- Based on the foregoing, it was estimated that the gymnasium could achieve utilization during Prime Time periods of approximately 80% and achieve overall utilization of between 50% and 55% during the winter season.
- During the summer season, the gymnasium's utilization was assumed to fall. As such, it was assumed that the gymnasium would achieve Prime Time utilization of approximately 60% and overall utilization of between 40% and 45% during the summer period.
- Assumed rental rates are \$125 (excluding HST) per hour during Prime Time and \$75 (excluding HST) in Non-Prime Time.

Canadian Sport Institute - Ontario

- It is assumed, based on rents which the CSIO pays at both the Toronto Pan Am Sport Centre and Milton Velodrome, that they would pay \$25 per square foot (gross) for the 6,000 square feet they would occupy in this component of the Project.

Brock Centre for Health & Well-Being

- It is assumed that the 9,700 square foot Brock Centre for Health & Well-Being would also pay rent in the range of \$25 per square foot (gross), allocated between base rent of \$14 per square foot (on a five-year basis) and \$11 per square foot for facility operating costs recoveries (on a pro-rata basis). Facility operating cost recoveries are assumed to increase annually.

Additional Office / Leased Space

- It is assumed other office / leased space (totaling some 9,000 square feet) would also pay rent in the range of \$25 per square foot (gross), allocated between base rent of approximately \$12 per square foot (on a five-year basis) and roughly \$13 per square foot for facility operating costs (on a pro-rata basis). Facility operating cost recoveries are assumed to increase annually. A 10% vacancy allowance is also assumed for this space.

Track / Track Infield

- Based on the results of the survey provided by the City and CSG Host Society, it was estimated that utilization of the track would be somewhat limited. It was assumed that the track would be available at no charge to walkers / runners during certain times during the day. The track would, however, be reserved for high performance athletes and clubs at other times, paying a reserve rate of \$75 per hour. Facility rentals to clubs, local school boards and other organizations for meets could also be secured for the assumed \$75 per hour rate (\$500 per day).

Beach Volleyball

- PwC's previously-issued November 2017 Report assumed that utilization of the beach volleyball courts could achieve utilization levels of approximately 60% during summer Prime Time hours. Rental rates were assumed at \$10 per hour per court.

Potential Utilization

Beach Volleyball (continued)

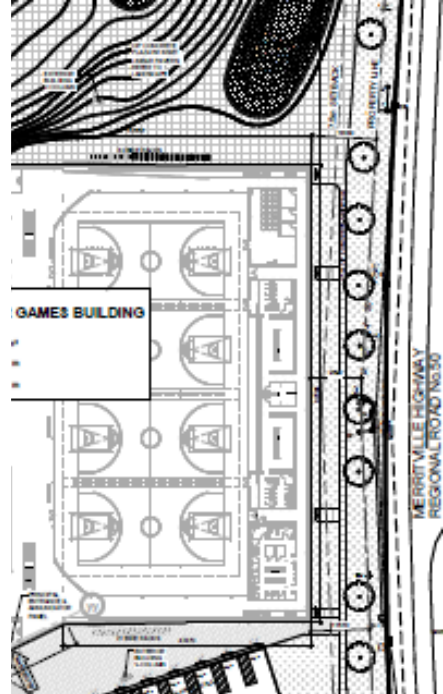
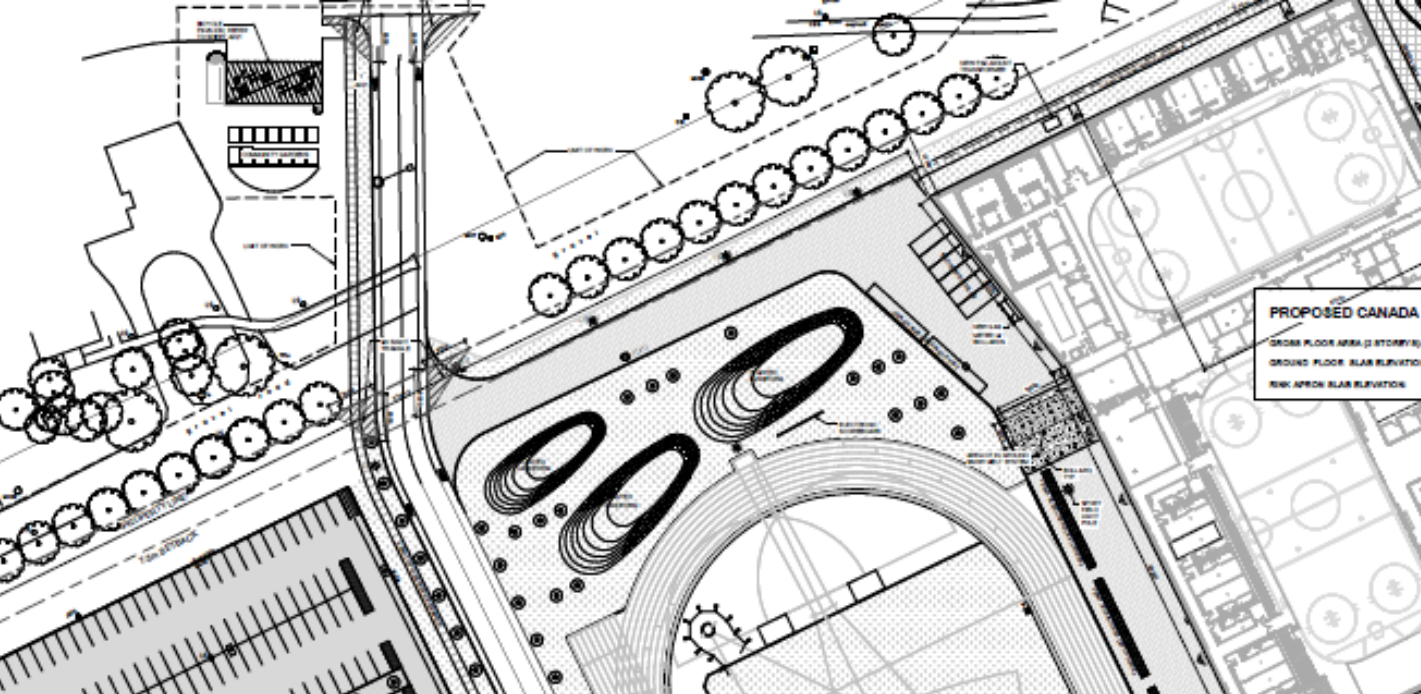
- Based on discussions with the Ontario Volleyball Association (“OVA”), we understand that the OVA has entered into multi-year agreements with a number of municipalities to gain exclusive access to beach volleyball courts. While paying a fee of approximately \$1,000 per court for the exclusive right to use those facilities, the OVA also assumes responsibility to replacing the sand in the courts, as well as maintaining / replacing the volleyball nets and poles.
- For the purpose of this updated assessment, it is assumed that the beach volleyball courts would be exclusively leased to the OVA for \$6,000 per season, with the OVA responsible to maintaining the sand and sports equipment.

Storage and Cycling

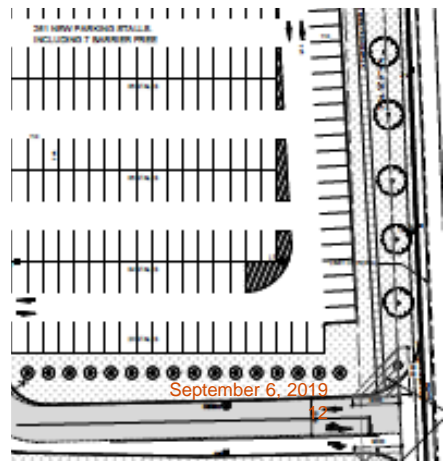
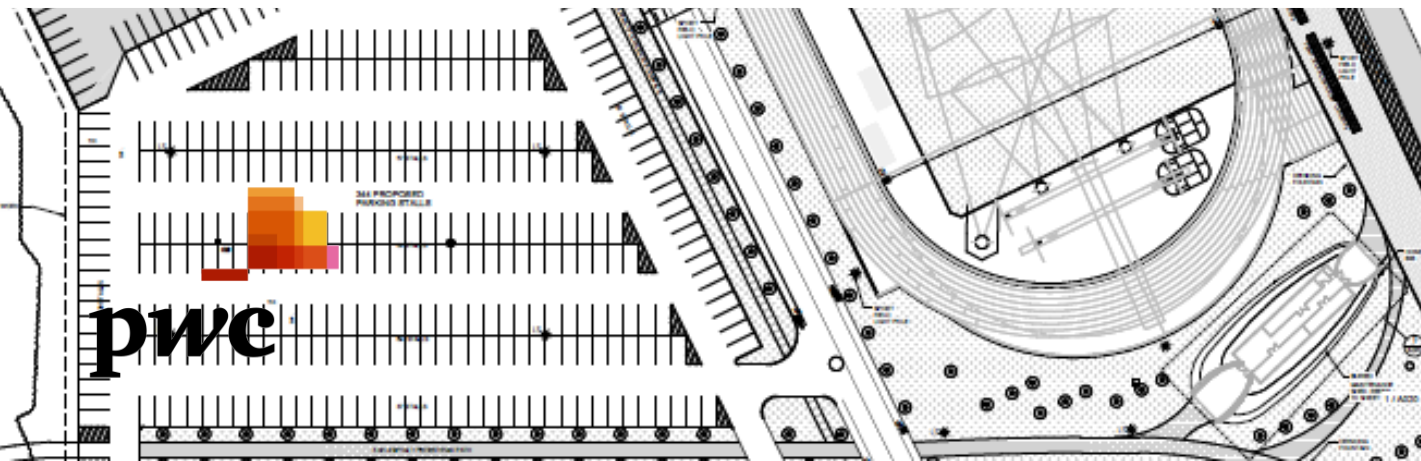
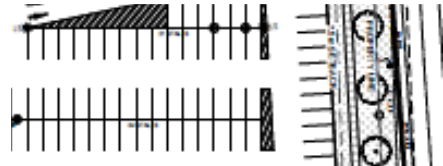
- Similar to PwC’s November 2017 Report, no revenue is assumed from the storage and cycling facilities.

Exclusive Dressing Rooms

- The Arena components are assumed to include dressing rooms for Brock’s Men’s and Women’s varsity hockey teams (plus coaches’ offices).
- For the purpose of this assessment, no revenue has been assumed from the exclusive assignment of this space to Brock.



Operating Assumptions



Operating Assumptions

Operating Proforma

- In assessing how the Project could potentially operate, PwC reviewed and revised the multi-year proforma cash flow model previously prepared to depict the potential operations of this Facility. In deriving a proforma cash flow model, PwC benchmarked the operations of similar facilities, including facilities in St. Catharines and Thorold, to identify a range of estimates for Facility use, revenue and operating expenditures.
- As noted previously, PwC again assumed that operating revenue from arena programming would only be derived from ice rentals; revenues received by operating leagues have not been included and are presumed to provide additional income should a third party operator be retained.

Operating Revenue

Utilization

- Facility utilization is assumed to occur as outlined above.

Facility Rental Rates

- Facility rental rates are assumed as outlined above.

Concessions / Vending Revenue

- For the purpose of this assessment, it has been assumed that total net revenue from concessions, vending and dining could approximate \$75,000 per year, with such revenue being generated by the Facility self-operating the concessions.
- Brock University has expressed a desire to operate the Facility's concessions / food and beverage operations; a business case should be prepared by Brock illustrating the level of gross and net revenue projected to be generated, and the base rent and additional rent that would be paid to the Facility from such an arrangement (for example, from a lease / concession to Brock).

Facility Sponsorships and Advertising

- It has been assumed revenues from the sale of advertising (on scoreboards, the ice resurfacers, on the rink dashboards, on the ice surfaces, and within the interior spaces of the building), and from sponsorships (including naming rights of certain Project components, product exclusivities, etc.) could amount to some \$40,000 to \$45,000 per year.
- Major sponsorships (such as naming rights for the CGP and capital fundraising) have not been included.

Parking

- Revenue from parking has not been assumed

Estimated Operating Revenue

- Based on the foregoing, it is preliminarily estimated that the CGP Project could generate in the range of \$2.199 million in gross income annually, with the majority of this income being derived from ice rentals.
- It should be noted that the ability of the Project to achieve these projected levels of revenue will be dependent upon a number of factors, including:
 - the City of St. Catharines and the City of Thorold each agreeing to close at least one arena facility;
 - local lacrosse organizations agreeing to utilize CGP for its summer programming at the rates noted; and
 - the Facility being able to secure office, medical clinic and sport organization tenants at the rates assumed herein.
- Should these events not occur, there will be risk in the ability of the Project to generate the projected level of revenue.

Operating Assumptions

Operating Revenue (continued)

- Additional revenue from leagues and events organized by a third-party operator could be expected but have not been assumed in this report.

Operating Expenses

- Operating expenses have again been divided into the following categories for comparison with operating information from other facilities. Expense categories include salaries and benefits, utility costs, building repair and maintenance costs, office and administrative costs (including marketing), facility contract costs, equipment maintenance and repairs costs, insurance, property taxes and capital reserves.

Staffing

- Salaries and benefit costs were benchmarked from comparable facilities (both public and private). Salary and benefits are projected to approximate \$1.310 million annually. Staffing positions assumed include:
 - General Manager (1);
 - Scheduler / Assistant / Marketing (2);
 - Operations Manager (1);
 - Lead Hand (3);
 - Operations Staff (6); and
 - Part-time staff (8 FTE).

Utilities

- Costs for utilities (electricity, natural gas, propane and water) have been estimated to approximate some \$700,000 per year.

Building Repairs & Maintenance

- Building repairs and maintenance include expenditures associated with the day-to-day upkeep of the Facility, including janitorial

expenses, cleaning supplies, minor building repairs, other maintenance, etc. Annual costs associated with such expenditures have been estimated to approximate \$200,000 annually.

Office / Administration / Marketing

- Office, administration and marketing costs include expenditures for advertising, bank charges, office supplies, professional fees, telephone charges, etc. Annual costs associated with such expenditures have been estimated to be in the range of \$75,000 per year.

Contracts

- Contracts relate to third-party service arrangements for building operations, snow removal, etc. Annual costs associated with such expenditures have been estimated to be in the range of \$125,000 per year.

Cleaning

- An allowance has been assumed for a third-party cleaning contract based on discussions with Brock University, the City of St. Catharines, the City of Thorold and the Regional Municipality of Niagara. Based on discussions with a private venue manager, and acknowledging that some staffing duties and building repairs and maintenance expenses include cleaning and janitorial, an allowance of \$200,000 has been assumed.

Security

- Our understanding is that the Facility, given its location on Brock University property, will require on-site security (whether through a direct arrangement with Brock University or through a contracted service). An allowance of \$100,000 has been assumed for security.

Operating Assumptions

Operating Expenses (continued)

Equipment maintenance and rental

- Equipment maintenance and rental expenditures are associated with the maintenance and repair of major building systems and equipment, including ice resurfacers, engineers fees, and equipment rental costs. Annual costs associated with such expenditures have been estimated to be in the range of \$100,000 per year.

Insurance

- Insurance costs have been estimated to be in the range of \$100,000 per year.

Property Taxes

- The obligation of the Facility to pay property taxes will ultimately be dependent upon the ownership of the Facility. For the purposes of this assessment, it is assumed that the Facility will be exempt from the payment of municipal property taxes, including the education portion of property taxes.
- Leased office space is assumed to be separately assessed, with the tenants of such space responsible for the payment of property taxes.

Grounds Maintenance

- Given the Project sits on a large site area, an additional allowance of \$75,000 is assumed for grounds maintenance.

Capital Reserves

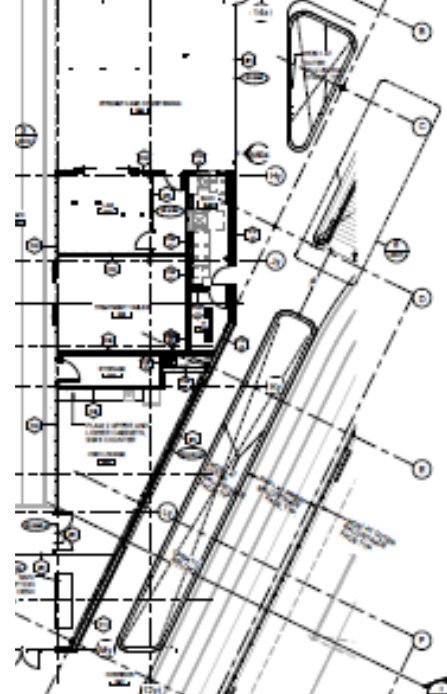
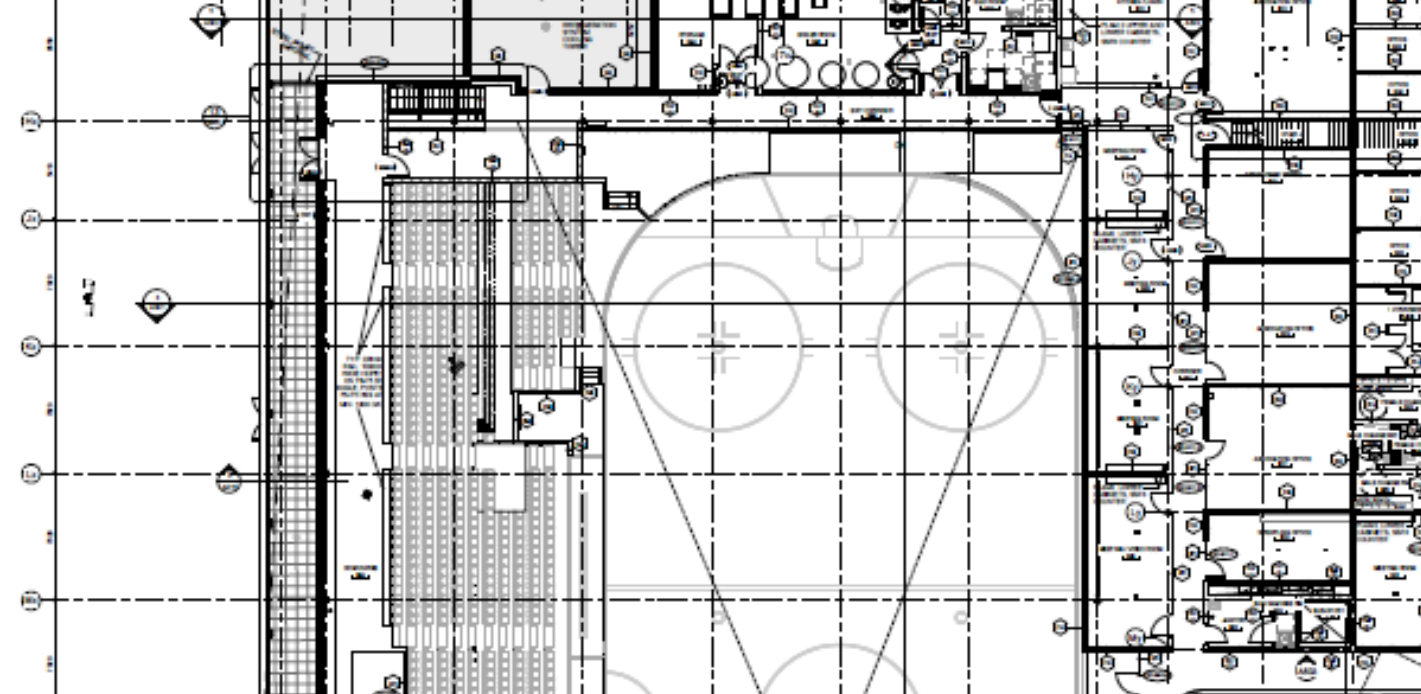
- A Capital Reserve allowance, representing a specific reserve account set up to fund future capital improvements or repairs, has been estimated using practices adopted in other arena facilities, and is based on a yearly allocation based on the hard capital cost of the building. A capital reserve allowance of \$1.125 million (based on 1.5% of the estimated hard costs only of the Project, estimated to be in the range of \$75.0 million) has been assumed.

Facility Management Fee

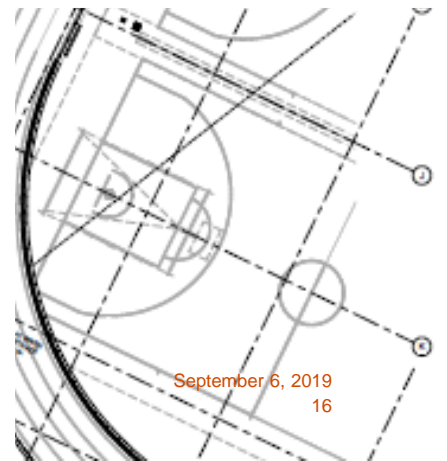
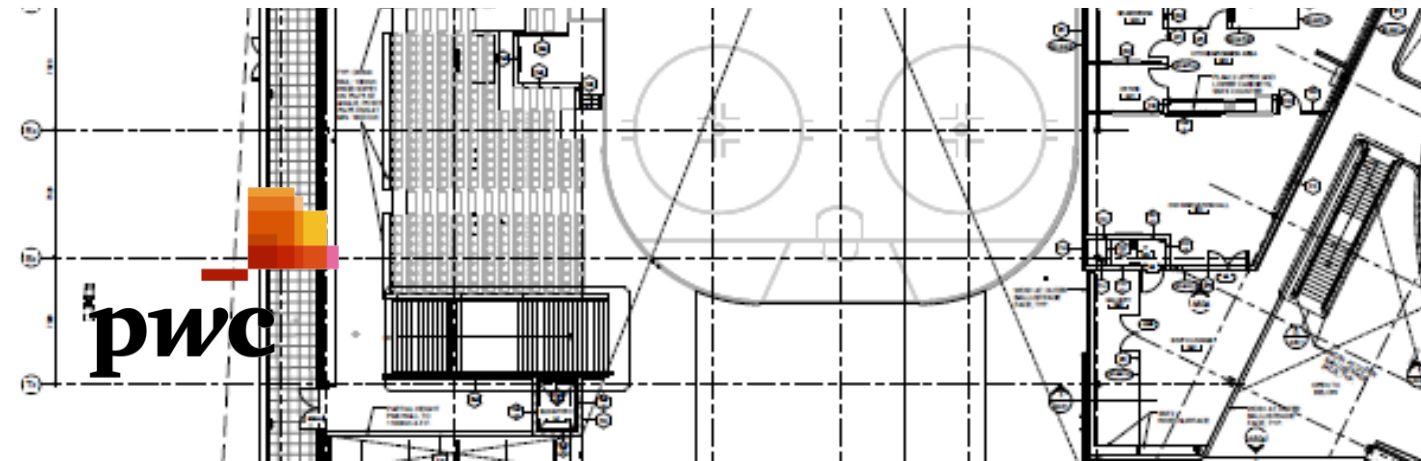
- Finally, a Management Fee, in the range of \$125,000 annually has again been assumed. This management fee represents a fee paid to a professional facility / venue management organization / company who would then be responsible for the day-to-day management, operations, programming and marketing of Facility. For greater clarity, this cost represents the fee paid to a third party management company for access to its company-wide resources, knowledge and industry-specific insights, best practices and contacts (it excludes direct salary and benefits, marketing and other costs which are direct operating charges to the Facility and have been estimated above). We understand that a decision to utilize third party management has not been made.

Estimated Operating Expenses

- Based on the foregoing, it is preliminarily estimated that the CGP Project could incur operating expenses in the range of \$4.208 million on an annual basis (\$2.958 million excluding management fees and capital reserves).



Updated Preliminary Estimated Cash Flows



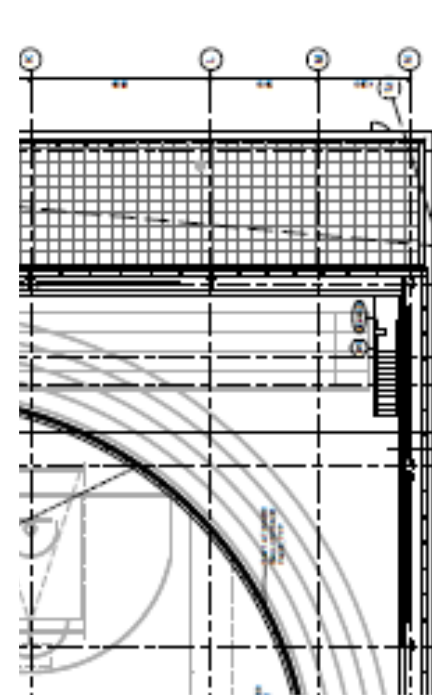
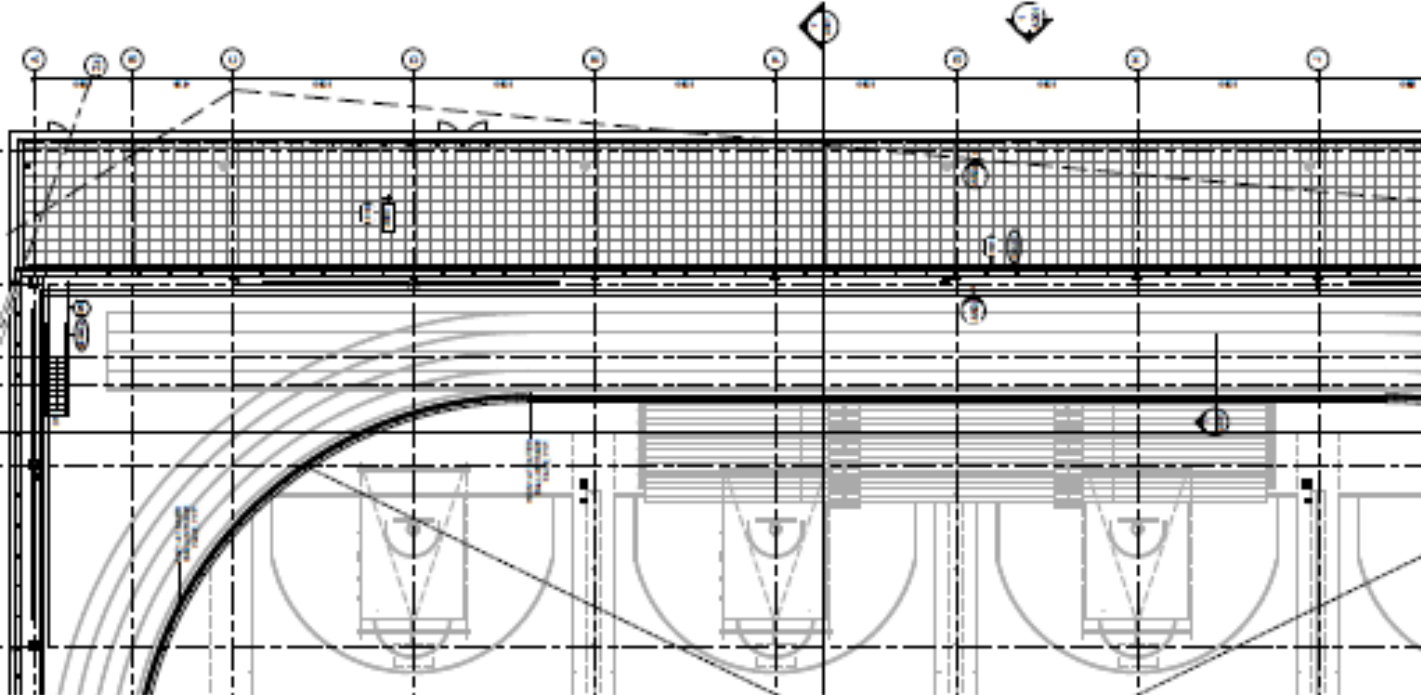
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Updated Preliminarily Estimated Cash Flow

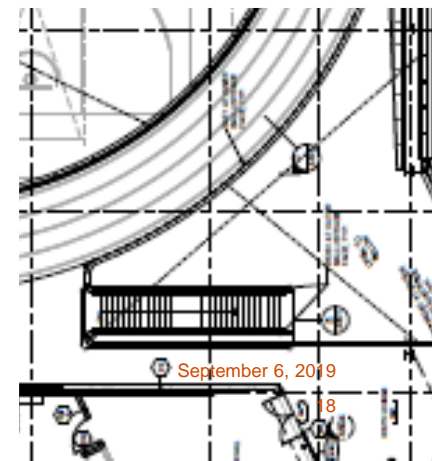
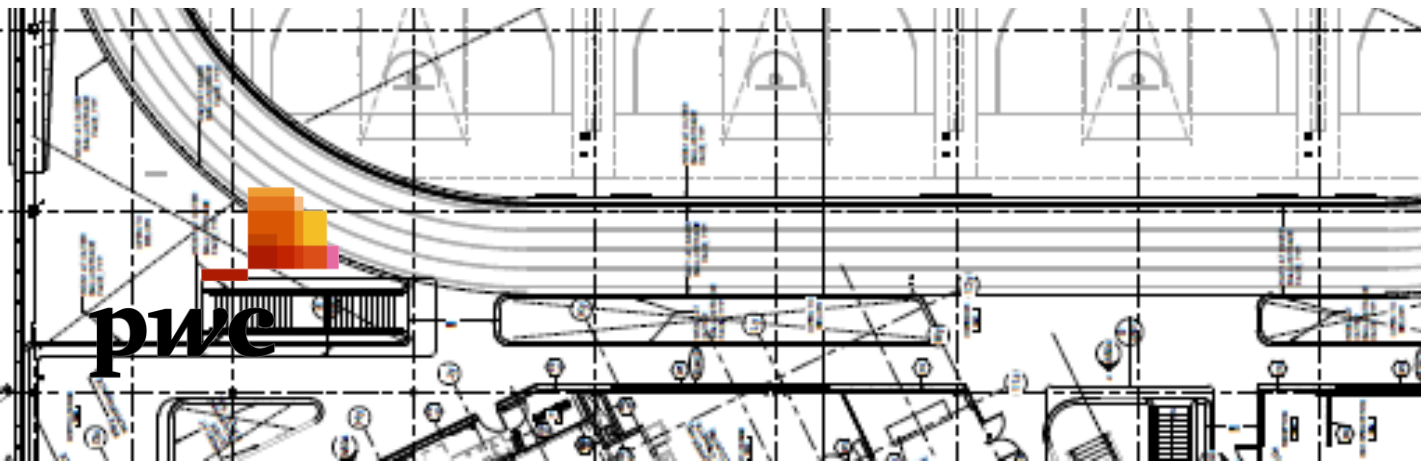
Net Facility Operations

- Based on the above presented estimates of Facility utilization, Facility rental rates, and other revenue assumptions, combined with the above presented discussion of Facility operating costs, it is preliminarily estimated that the operations of the CGP Project could generate total revenue from operations in the range of \$2.199 million in Year 1 and incur operating expenses, prior to management fees and capital reserves, in the range of \$2.958 million, yielding an operating deficit in Year 1 in the range of \$759,800.
- Including the optional venue management fees of \$125,000 and capital reserves of some \$1.125 million, the net operating position of the Project is estimated to be a deficit of \$2.010 million in Year 1.

	Year 1	Year 2	Year 3	Year 4	Year 5
FACILITY REVENUE					
Revenue from Arenas	\$ 1,127,900	\$ 1,156,100	\$ 1,185,000	\$ 1,214,600	\$ 1,245,000
Revenue from Gymnasium - Brock University	98,800	101,300	103,800	106,400	109,100
Revenue from Gymnasium - Other Rentals	227,000	232,700	238,500	244,500	250,600
Revenue from Track	15,000	15,400	15,800	16,200	16,600
Revenue from Beach Volleyball	6,000	6,200	6,400	6,600	6,800
CSIO, Office Rental (base rent)	167,800	167,800	167,800	167,800	167,800
Brock Centre for Health & Well-Being (base rent)	115,400	115,400	115,400	115,400	115,400
Operating cost recoveries	323,200	332,600	342,300	352,400	362,800
Other Revenue	117,400	120,400	123,400	126,500	129,600
Total Revenue	\$ 2,198,500	\$ 2,247,900	\$ 2,298,400	\$ 2,350,400	\$ 2,403,700
FACILITY EXPENSES					
Salaries & Benefits	\$ 1,308,300	\$ 1,341,000	\$ 1,374,500	\$ 1,408,900	\$ 1,444,100
Hydro / Water / Natural Gas	700,000	735,000	771,800	810,400	850,900
Building Repairs & Maintenance	200,000	205,000	210,100	215,400	220,800
Office / Administration / Marketing	75,000	76,900	78,800	80,800	82,800
Contracts (snow, landscaping, janitorial, etc.)	125,000	128,100	131,300	134,600	138,000
Cleaning	200,000	205,000	210,100	215,400	220,800
Security	100,000	102,500	105,100	107,700	110,400
Equipment Maintenance & Rental	75,000	76,900	78,800	80,800	82,800
Insurance	100,000	102,500	105,100	107,700	110,400
Grounds Maintenance	75,000	76,900	78,800	80,800	82,800
Total Expenses	\$ 2,958,300	\$ 3,049,800	\$ 3,144,400	\$ 3,242,500	\$ 3,343,800
Net Cash Flow	\$ (759,800)	\$ (801,900)	\$ (846,000)	\$ (892,100)	\$ (940,100)
Management Fee (if a third party manager is retained)	125,000	128,100	131,300	134,600	138,000
Capital Reserve (if established and maintained)	1,125,000	1,153,100	1,181,900	1,211,400	1,241,700
Net Operating Position	\$ (2,009,800)	\$ (2,083,100)	\$ (2,159,200)	\$ (2,238,100)	\$ (2,319,800)



General Assumptions and Limiting Conditions



General Assumptions and Limiting Conditions

1. The use of any Projection made in conjunction with this Report may not be appropriate for use outside of its intended purpose. The Projection, which will not reflect actual development, economic, demographic and / or financial results, may reflect a possible scenario for the operations of the planned Canada Games Park in Thorold / St. Catharines, Ontario, during the Projection Period, given PwC's judgment as to a probable set of economic conditions, together with the hypotheses which are consistent with the purpose of the Projections. Scenarios produced in conjunction with our analysis may contain hypotheses and assumptions which are based on a set of economic conditions or anticipated courses of action that are not unreasonable, are consistent with the purpose of the projections, but which will not materialize as set out therein. The hypotheses represent plausible circumstances, but need not be, and may not have been fully supported.

Since future events are not subject to precise projections, some assumptions will not materialize in the exact form presented by our analysis. In addition, other unanticipated events and circumstances may occur which could influence the future performance of the Facility. Therefore, the level of growth which will occur in the future will vary from the analysis of prospective market and economic conditions set out therein. While there is no recourse to predicting these matters with certainty apart from informed and reasoned judgments, it must be stated that future events will lead to variations in performance which may materially alter the success and performance of the Facility. PwC does not warrant that actual results achieved during the Projection Period will be the same, in whole or in part, as those shown in the Projection. The Projection is based on hypotheses and there is a significant risk that actual results will vary, perhaps materially, from the results projected.
2. Responsible ownership and competent property management are assumed.
3. Information furnished by others upon which all or portions of this report are based, is believed to be reliable, but has not been verified in all cases. No warranty is given as to the accuracy of such information.
4. Our report and work product cannot be included, or referred to, in any prospectus, securities and exchange commission filing or other public investment document.
5. The intended use of this report is as a preliminary financial and operational assessment of the Canada Games Park to inform the 2021 Canada Games Host Society and the City of St. Catharines on the potential development and operation of Canada Games Park.
6. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, provincial, or national government or private entity or organization have been, or can readily be obtained, or renewed for any use on which the estimates provided in this report are based.
7. No investigation has been made of, and no responsibility is assumed for, the legal description or for legal matters including title or encumbrances. The site upon which the Canada Games Park is to be built and operated is assumed to be free and clear of liens, easements, encroachments and other encumbrances unless otherwise stated.
8. Full compliance with all applicable federal, provincial and local zoning, use, occupancy, environmental, and similar laws and regulations is assumed, unless otherwise stated.

General Assumptions and Limiting Conditions

9. No responsibility is taken for changes in market conditions and no obligation is assumed to revise this report to reflect events or conditions which occur subsequent to the effective date of this report.
10. Any financial structure within this report is predicated on the market conditions prevailing as of the date of this report.
11. Areas and dimensions of any property referenced in this report were obtained from sources believed to be reliable. Maps or sketches, if included in this report, are only to assist the reader in visualizing the property / site and no responsibility is assumed for their accuracy. No independent surveys were conducted.
12. It is assumed that there are no hidden or unapparent conditions of the site, subsoil, or structures that affect value. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
13. No soil analysis or geological studies were ordered or made in conjunction with this report, nor was an investigation made of any water, oil, gas, coal, or other subsurface mineral and use rights or conditions.
14. Neither PwC any individuals signing or associated with this report shall be required by reason of this report to give further consultation, to provide testimony or appear in court or other legal proceedings, unless specific arrangements thereof have been made.
15. This report has been made only for the purpose stated and shall not be used for any other purpose. Neither this report nor any portions thereof (including without limitation any conclusions as to value, the identity of PwC or any individuals signing or associated with this report, or the professional associations or organizations with which they are affiliated) shall be disseminated to third parties by any means without the prior written consent and approval of PwC.
16. We have not been engaged nor are qualified to detect the existence of hazardous material which may or may not be present on or near the property. The presence of potentially hazardous substances such as asbestos, urea-formaldehyde foam insulation, industrial wastes, etc. may affect the value of the property. The estimates presented herein are predicated on the assumption that there is no such material on, in, or near the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them. The client should retain an expert in this field if further information is desired.

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**SCHEDULE F
LEGACY LEASE**

**GROUND LEASE
(CANADA GAMES PARK)**

THIS INDENTURE made as of the ___ day of _____, 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

A Party may by notice to the other Parties change its address for purposes of this Agreement.

20.3 Time of the Essence

Time is of the essence in this Lease and all the provisions hereof

20.4 Amendment

This Lease may not be modified or amended except by an instrument in writing signed by the Parties hereto or by their successors or permitted assigns.

20.5 Further Assurances

The Tenant and the Landlord will execute such further assurances of the Lands and the rights and benefits conferred in this Lease as may be reasonably required by the other Party, in each case at the expense of the Party requesting such further assurances.

20.6 Registration of Notice of Lease

The Parties agree that a short form or Notice of this Lease in an Approved form may be registered against the title to the Lands by either Party, at its expense.

20.7 Successors and Assigns

- (a) Whenever the term Landlord or Tenant is referred to in this Lease it shall be interpreted as including their respective successors and assigns, or permitted assigns, as the case may be.
- (b) This Lease shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns, or permitted assigns, as the case may be.

20.8 Enforceability

The provisions of this Lease shall have effect, despite any statute to the contrary. If any provision of the Lease should be found by a Court of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall not apply and the Lease shall remain in full force and effect without such provision.

[Remainder of page intentionally left blank – Execution Pages follow]

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:
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.

BROCK UNIVERSITY

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the Corporation.

SCHEDULE "A" PLAN 59R-16723 AND SKETCH OF LANDS

