

UNIVERSITY OF WATERLOO

- and -

[DEVELOPER]

- and -

[INDEMNIFIER]

DEVELOPMENT AGREEMENT

■, 200■

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DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the ■ day of ■, ■.

B E T W E E N:

**UNIVERSITY OF WATERLOO,
("UW")**

OF THE FIRST PART,

- and -

■,
(the "Developer")

OF THE SECOND PART,

- and -

■,
(the "Indemnifier")

OF THE THIRD PART.

WHEREAS the capitalized words used herein have the meaning ascribed thereto in Section 1.1 unless the context otherwise requires;

AND WHEREAS the parties have agreed to enter into this agreement to set out the terms upon which the Project Lands shall be developed;

AND WHEREAS the Indemnifier has agreed to provide a guarantee and indemnity in respect of the obligations of the Developer under this Agreement;

NOW THEREFORE in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the parties hereto) the parties hereby covenant, agree and declare as follows:

ARTICLE 1
DEFINITIONS

1.1 **Definitions**

The following definitions shall apply in the interpretation of this Agreement:

"Affiliate" means with respect to any Person, any legal entity which: (i) directly or indirectly Controls or is Controlled by such Person; (ii) is directly or indirectly Controlled by a second Person which directly or indirectly Controls such Person;

"Amenity Services" has the meaning ascribed thereto in the definition of "Prohibited Uses";

"Applicable Law" means all mandatory laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licences, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers of governments, Canadian, provincial and municipal, ordinary or extraordinary which now or at any time hereafter may be applicable to and enforceable against the relevant work in question or any part thereof;

"Business Day" means any day which is not a Saturday, Sunday or a day observed as a statutory or civic holiday under the laws of the Province of Ontario or the federal laws of Canada applicable therein;

"Claims" means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis, interest, demands and actions of any nature or any kind whatsoever;

"Closing Date" means the date on which UW is to execute and deliver to the Developer the Land Lease in respect of the Project Lands, such date to be the first day of the month next following the end of the Preconstruction Period for the Project Lands;

"Concept Design" means the concept design for the Project attached hereto as Schedule A;

"Control" or **"Controlled"** means the right to direct the management and policies of a Person, whether directly or indirectly, or to elect a majority of the board of directors or the trustees of a Person, whether through the ownership of voting securities or by contract or otherwise;

"Developer" means ■ and its successors and permitted assigns;

"Development Guidelines" means the development and design guidelines for the Technology Park as contained in the Development Handbook and Guidelines attached hereto as Schedule B;

"Development Schedule" means the development schedule set out herein as Schedule C hereto in respect of the Project as the same may be amended or modified from time to time with the approval of UW;

"Event of Default" means:

- (a) in the case of the Developer, the occurrence of an Event of Insolvency as to the Developer or the Indemnifier;
- (b) in the case of UW, the occurrence of an Event of Insolvency as to UW; and
- (c) in the case of any of UW, the Developer or the Indemnifier, if such person fails, or defaults, in the performance of an obligation under this Agreement, and if such failure or default continues unremedied for a period of 20 days after notice from another party hereto of such failure or default and a demand for performance,

observance or compliance has been given with such notice by such other party hereto to the defaulting party;

"Event of Insolvency" means with respect to a Person the occurrence of any one of the following events:

- (a) if such Person shall:
 - (i) be wound up, dissolved, or liquidated, or become subject to the provisions of the *Winding-up Act* (Canada), as amended or re-enacted from time to time, or have its existence terminated or have any resolution passed therefor, unless, in any such case it forms part of a *bona fide* corporate reorganization not forming part of any relief being sought under any present or future law relative to bankruptcy, insolvency or other relief for debtors,
 - (ii) make a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act* (Canada) as amended or re-enacted from time to time, or shall be declared bankrupt or insolvent by a court of competent jurisdiction, or
 - (iii) propose a compromise or arrangement under the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation, from time to time, or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future law relative to bankruptcy, insolvency or other relief for debtors; or
 - (iv) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against any such Person seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors, and such Person shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 45 Business Days (whether consecutive or not) from the day of entry thereof; or if any trustee in bankruptcy, receiver or receiver and manager, liquidator or any other officer with similar powers shall be appointed for any such Person, or of all or any substantial part of its property with the consent or acquiescence of such Person, or such appointment shall remain unvacated and unstayed for an aggregate of 45 Business Days (whether or not consecutive);

"Fair Market Value" means the price in cash, or its equivalent, at which the Project Lands would be sold as a result of *bona fide* bargaining between a willing buyer and a willing seller,

neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts, considering all uses for which the Project Lands is permitted to be used as of the Preconstruction Deadline, if offered for sale in the open market on the Preconstruction Deadline, with a reasonable time allowed to find a purchaser and assuming that the Plan of Subdivision is registered, that the public roads as laid out thereon are completed and open and that all services necessary for the proper functioning of the Project are available to the lot line;

"FMV Notice" has the meaning ascribed thereto in Section 3.2;

"Force Majeure" means any happening, condition or thing beyond the control of a Person which could not reasonably have been anticipated and avoided by such person which delays or prevents such person from performing any of its obligations hereunder, financial inability excepted;

"Guidance Statement" means UW's guidance statement for Development of UW Lands dated February 4, 1997 as supplemented on October 28, 2003 and attached hereto as Schedule D, as it may be amended from time to time;

"Indemnifier" means ■ and its successors and permitted assigns;

"Land Lease" means the land lease pursuant to which the Developer is to lease the Project Lands from UW a copy of which is attached hereto as Schedule E;

"Lessee" means the Developer as lessee under the Land Lease;

"Master Plan" means the UW's Campus Master Plan dated July 1992, as it may be amended from time to time;

"North Campus Lands" means the entire north campus as shown in the Master Plan;

"Permitted Encumbrances" means the Land Lease, the UW Security, the Permitted Encumbrances (as defined in the Land Lease) and such other encumbrances as the parties may approve in writing from time to time;

"Permitted Users" has the meaning ascribed thereto in the definition of "Prohibited Uses";

"Person" or **"person"** means any individual, partnership, corporation, joint venture, association, joint stock company, trust, unincorporated organization, university, government or any agency or potential subdivision thereof, and "corporation" shall include "company" and vice versa;

"Plan of Subdivision" means the plan of subdivision registered on title to the Project Lands as Plan ■;

"Preconstruction Deadline" means ■, as such date may be extended by either party hereto, on written notice to the other, by reason of Force Majeure only, and in any event to be no later than ■;

"Preconstruction Period" means the period commencing on the date of this Agreement and ending on the Preconstruction Deadline;

"Preliminary Project Site Plan" means the preliminary site plan for the Project, as set out herein as Schedule F, as the same may be altered in accordance with the terms hereof;

"Prime Rate" means the floating annual rate of interest established from time to time by the Canadian Imperial Bank of Commerce as a reference rate of interest in Canada for Canadian dollar loans to commercial customers in Canada and designated as its prime rate;

"Prohibited Uses" means:

- (a) uses that are not permitted by Applicable Law;
- (b) any light manufacturing uses which in the aggregate exceed 40% of the leased area in the Project occupied by the tenant/Space Tenant carrying on such uses;
- (c) educational uses which compete with UW;
- (d) uses which involve the sale of goods or services which compete with goods or services sold on UW's south campus;
- (e) residential uses;
- (f) uses which, having regard to the quality and location of the Project and the accepted public standards at the time would either be in breach of such standards or would diminish the overall quality of the Technology Park or the Project; and
- (g) such exclusive uses as may be undertaken or permitted by UW on other parts of the UW Lands;
- (h) so long as the TechTown Lease is in effect, any Restaurant, daycare centre or fitness centre uses (collectively, the "**Amenity Services**") other than Amenity Services developed by the Lessee or any Space Tenant which are:
 - (i) in compliance with the Development Guidelines for the Technology Park;
 - (ii) ancillary to the primary operations of the Lessee or any Space Tenant, as the case may be, conducted at the Project;
 - (iii) wholly contained upon: (A) in the case of the Lessee, that portion of the Project Lands occupied by the Lessee; or (B) in the case of any Space Tenant, that portion of the Project Lands occupied by such Space Tenant pursuant to a Space Lease; and
 - (iv) solely available to:

- (A) in the case of the Lessee, those employees or permitted occupants of the Lessee working at that portion of the Project Lands occupied by the Lessee; or
- (B) in the case of any Space Tenant, those employees or occupants of such Space Tenant working at that portion of the Project Lands occupied by such Space Tenant pursuant to a Space Lease,

which, for greater certainty, shall not include any members of the general public visiting the Project Lands or any portion thereof, which determination, if necessary, shall be made by the Lessor in its sole and absolute discretion (collectively, the "Permitted Users").

For greater clarity: (x) the Amenity Services permitted above may be delivered or provided through the use of independent contractors provided that such Amenity Services continue to be solely available to the Permitted Users and no others; and (y) the term "independent contractor" (as used above) means a Person retained by the Lessee or the Space Tenant, as the case may be, to deliver or provide any Amenity Services for the benefit of the Lessee or the Space Tenant, as the case may be, and its employees or permitted occupants provided that the independent contractor shall not become a Space Tenant pursuant to a Space Lease.

"Project" means, collectively, the Project Lands and all improvements to be constructed thereon;

"Project Budget" means the budget in respect of the development of the Project as set out herein as Schedule G, as the same is amended by the Developer from time to time as approved by UW;

"Project Lands" means that portion of the Technology Park Lands municipally described as ■, Waterloo and otherwise identified in Schedule H hereto;

"Project Plans" means the construction plans and specifications relating to the construction and development of the Project evolving from the Concept Design and the site plan for the Project, as amended from time to time, with the approval of UW;

"Restaurant" means any business establishment in which food and/or drink are prepared (whether such preparation is completed at the location of sale or otherwise (i.e. on-site or off-site)) and/or sold for consumption (whether eat-in or take-out), including, without limitation, any establishment which is considered a "restaurant", "restaurant (drive-in)", "restaurant (take-out)" or "coffee shop or tea room" as defined in the applicable then-current municipal by-law for the City of Waterloo;

"Space Lease" has the meaning ascribed thereto in the Land Lease;

"Space Tenants" means tenants, licensees, concessionaires or other occupants of premises within the Project;

"Technology Park" means in the aggregate the Technology Park Lands and the technology park complex including the Project;

"Technology Park Infrastructure Work" means the infrastructure work being undertaken by or on behalf of the Regional Municipality of Waterloo and the City of Waterloo to the portions of Technology Park Lands not designated for private development, generally as identified in the Development Handbook and Guidelines; notwithstanding the foregoing, the Technology Park Infrastructure Work servicing the Project Lands shall exclude all switchgear (which shall be the sole responsibility of the Developer), but shall include the existing electrical vault (provided that any relocation of the existing electrical vault shall be the sole responsibility of the Developer);

"Technology Park Lands" means that portion of the North Campus Lands constituting approximately 120 acres upon which the technology park complex is to be developed, as shown on Schedule I hereto, as the same may be modified by the parties hereto from time to time;

"TechTown Lease" means the land lease made as of August 1, 2006 between UW, as lessor, and Columbia Developments LP, as lessee, with respect to those lands municipally described as 340 Hagey Boulevard, Waterloo, Ontario and legally described as Part of Block 1, Plan 58M-272 designated as Parts 1 and 2 on Reference Plan 58R-15373, notice of which was registered on title to the foregoing lands on September 27, 2006 as Instrument No. WR248033 (as the same may be amended, modified, renewed, extended, replaced, supplemented or restated from time to time);

"UW" means the University of Waterloo and its successors and assigns;

"UW Security" has the meaning ascribed thereto in the Land Lease.

1.2 References

Except as otherwise specifically indicated, all references to Article, Section and Subsection numbers refer to Articles, Sections and Subsections of this Agreement and all references to Schedules refer to the Schedules attached hereto. The words "herein", "hereof", "hereunder", "hereinafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Subsection hereof.

1.3 Accounting Terms

The accounting terms used herein refers to generally accepted accounting principals, unless otherwise defined, shall have the meaning accorded thereto from time to time by Canadian generally accepted accounting principles.

1.4 Number and Gender

Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.

1.6 Calculation of Interest

In calculating interest payable under this Agreement for any period of time, the first day of such period shall be included and the last day of such period shall be excluded. Interest shall accrue from day to day on the basis of a 365 day year, for the actual number of days elapsed it should be compounded semi-annually. Where the calendar year of calculation contains 366 days, each rate of interest herein shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) as such rate multiplied by 366 and divided by 365.

1.7 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be reference to such statute or section as amended, restated or re-enacted from time to time.

1.8 Currency

All references to money herein are references to lawful money of Canada.

1.9 Headings

The table of contents hereto with the headings of any article section or part thereof are inserted for purposes of convenience and do not form part hereof.

1.10 Interpretation

The interpretation of this Agreement shall not permit a revenue, expense, liability, recovery, receipt, payment, reserve or reimbursement to be duplicated.

1.11 Schedules

The Schedules attached to this Agreement and listed below shall have the same force and effect as if the information contained therein were contained in the body of this Agreement:

- Schedule A - Concept Design
- Schedule B - Development Guidelines
- Schedule C - Development Schedule
- Schedule D - Guidance Statement for Development of UW Lands
- Schedule E - Form of Land Lease
- Schedule F - Site Plan

Schedule G	-	Preliminary Project Budget
Schedule H	-	Sketch of the Project Lands
Schedule I	-	Sketch of the Technology Park Lands

ARTICLE 2

DEVELOPMENT ARRANGEMENTS

2.1 Appointment of Developer

UW hereby appoints and retains the Developer as an independent contractor, on a sole and exclusive basis, to carry out the construction and development of the Project on and subject to the terms and conditions set out in this Agreement.

2.2 Acceptance

The Developer hereby accepts its appointment and, in accordance with the terms of this Agreement, covenants and agrees to perform the services and functions to be performed by it under this Agreement, as developer of the Project Lands.

2.3 Developer as Independent Contractor

The duties to be performed and the obligations assumed by the Developer as developer under this Agreement shall be performed and assumed by it as an independent contractor and not as agent or in any other way as a representative of UW, except to the extent that the Developer is expressly authorized by this Agreement or otherwise by UW.

2.4 UW Objectives

UW confirms and the Developer acknowledges that UW's goal in proceeding with the Technology Park (and this Agreement as a part thereof) is to create a self sustaining research/technology complex that is seen as a natural extension of the University. The Master Plan, the Guidance Statement and the Design Guidelines shall be used as a basis for review and approval by UW in exercising its approval rights hereunder and under the Land Lease and any deviation will be treated on an exception basis.

2.5 UW's Approval Rights

UW shall have overall approval rights with respect to the Project, not to be unreasonably withheld, including as to:

- (a) the Concept Design and site plan for the Project;
- (b) the finalization of the Project Plans for the Project, including a site location survey and including all material amendments or modifications to the site plan or the Concept Design which form part of the Project Plans for the Project;
- (c) the Development Schedule;

- (d) the Project Budget;
- (e) the identity of the general contractor, Project Architect and other Principal Consultants for the Project;
- (f) the Space Tenants; and
- (g) the form and content of all material agreements, contracts, permits, licences, consents, bonds, guarantees, warranties and surveys pertaining to the construction or operation of the Project and any amendments or modifications thereto or terminations thereof.

UW, in exercising its approval rights hereunder, shall have regard to:

- (a) the overall quality and character of the Project;
- (b) compliance with the Development Guidelines;
- (c) the integration of the Project as a whole with the balance of University of Waterloo;
- (d) the impact of the Project on parking and other vehicular and pedestrian traffic matters;
- (e) the suitability of the Project for its contemplated uses;
- (f) potential violations by the Project of agreements or arrangements in existence for University of Waterloo; and
- (g) the requirements of any other authorities having jurisdiction over University of Waterloo.

UW shall be entitled to regular periodic updates and reviews as to ongoing matters with reasonable access to all relevant plans, drawings, development documentation and other relevant materials. UW shall promptly identify any concerns which it may have as a result of such updates and reviews.

2.6 Site Integration

The following terms shall apply to the integrated development and operation of the Project Lands and the balance of Technology Park Lands:

- (a) the Project Lands shall be delivered "as is";
- (b) the Developer shall use all reasonable efforts to organize and coordinate its construction activities so as to minimize disruption to the balance of UW's lands;

- (c) UW shall use all reasonable efforts to organize and coordinate the Technology Park Infrastructure Work in a manner which minimizes disruption to the work on the Project and which ensures convenient access to the Project Lands.

2.7 Standard of Performance

The Developer shall perform the services and functions to be performed by it hereunder in a diligent and efficient manner, in keeping with the standards of the industry for projects comparable to the Project and in that regard, shall exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent person who is experienced in performing like services and functions for projects of similar size, quality and use to those of the Project.

2.8 Indemnity by the Developer

The Developer will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify UW and each of its officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which may be brought against or made upon UW, its officers, employees and agents, or any of them, and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by UW, its officers, employees and agents, or any of them, by reason of, or on account of, or in consequence of the execution and performance of the Developer's obligations hereunder and/or the non-execution or imperfect execution thereof and/or the supply or non-supply of plant and material therefor, or by reason of any negligence or wilful default of the Developer, its officers, employees, agents or persons for whom it is responsible in law in connection with the performance of the Developer's obligations hereunder and will pay to UW and to each such officer, employee or agent on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by UW or by any of its officers, employees and agents in consequence of any such action, suit, claim, lien, execution or demand and any monies paid or payable to UW, or any of its officers, employees or agents in settlement or in discharge or on account thereof.

ARTICLE 3
PRECONSTRUCTION PERIOD

3.1 Good Faith Obligations

Subject to the terms hereof, each party shall proceed in good faith and as expeditiously as possible to perform and shall use its best efforts to satisfy its respective obligations as set out in this Article 3, in each case, within the relevant time periods. In that regard the parties shall each co-operate with one another and, subject to their rights hereunder, shall each provide such support as is reasonably required to enable such obligations to be performed and such pre-conditions to be met.

3.2 UW's Preconstruction Obligations

UW shall during the Preconstruction Period:

- (a) assist in obtaining all government permits, licences, etc. required in connection with the development and/or construction of the Project;
- (b) act diligently and reasonably in granting all approvals required by this Agreement;
- (c) meet and consult with the Developer on an ongoing basis;
- (d) proceed to negotiate and finalize the terms of the Land Lease for the Project;
- (e) be responsible for the cost of its own consultants and for the ongoing carrying costs (principally, property taxes) for the Project Lands up to the end of the Preconstruction Deadline other than costs (including incremental carrying costs) arising in connection with the proposed Project;
- (f) oversee the Technology Park Infrastructure Work and enter into all necessary development, site plan, servicing and other governmental and utility agreements in respect thereof;
- (g) join in or consent to any and all applications for permits, licences or other authorizations required by authorities in connection with any work undertaken by the Developer on the Project Lands where such work is in accordance with the terms hereof and is in connection with any use of the Project Lands permitted hereunder pursuant to the terms hereof and enter into any development, site plan or other agreement necessary or desirable to give effect thereto, provided that the Developer has agreed to indemnify and hold harmless UW from any and all liability, expense or cost incurred as a result of or in connection with UW entering into, joining with the Developer in or consenting to any such application, development, site plan or other agreement;
- (h) within 60 days prior to the Preconstruction Deadline, determine the Fair Market Value of the Project Lands as at the Preconstruction Deadline and deliver to the Developer a copy of such calculation (the "FMV Notice");
- (i) obtain a site location survey by a duly qualified Ontario land surveyor identifying the location of the site for the Project, all access and other easements or rights of way that pertain thereto and any encroachments thereon, all in form sufficient for registration of the same on title as a reference plan.

3.3 Developer Preconstruction Obligations

In respect of the Project, the Developer shall, at its own cost and expense, prior to the Preconstruction Deadline:

- (a) retain and oversee the performance of the Project Architect and the other Principal Consultants for the Project;

- (b) ensure that all agreements with the Project Architect and the other consultants are on terms that provide for a release of any copyright in plans, designs and other similar property (to the extent that such plans, designs and other similar property may be used in the Project) and on terms that permit UW the right to assume such agreements without interference by the other contracting party and without payment of any penalty;
- (c) obtain all other necessary governmental and other third party approvals pertaining to development and operation of the Project, including any necessary site plan approvals;
- (d) enter into all necessary development, site plan, servicing and other governmental and utility agreements in respect of the Project;
- (e) obtain all necessary excavation permits, building permits and other governmental approvals, consents, permits and licences required for the construction and operation of the Project in accordance with the Project Plans and Applicable Law;
- (f) continue to consult with UW as to the matters for which it has approval rights pursuant to Section 2.5;
- (g) oversee the preparation of the tender packages, the bidding process and the selection of the successful contractors for the Project;
- (h) ensure that the general construction contract and the other construction contracts and consulting agreements permit UW the right to assume such contracts without interference by the other contracting party and without payment of any penalty;
- (i) ensure that such performance bonds, labour and materials bonds, other bonds and sureties and such guarantees and warranties as are required by UW have been provided or arranged, with UW being shown as an obligee thereunder or other party benefited thereby;
- (j) arrange for satisfactory construction insurance for the Project;
- (k) be responsible for all costs pertaining to the proposed development of the Project and all third party costs and expenses incurred by or on behalf of the Developer during the preconstruction phase in respect of the Project and the preconstruction activities pertaining to the Project;
- (l) establish, review, update and finalize the Development Schedule and the Project Budget;
- (m) obtain lease commitments from Space Tenants approved by UW, acting reasonably, for the leasable area of the Project, such approval to be made with regard to the likelihood of the following objectives being achieved:

- (i) the enhancement of University programs;
 - (ii) the provision of University expertise and resources to Project enterprises;
 - (iii) the establishment of a job base for students, co-ops and graduates; and
 - (iv) the development of research and advisory positions for UW faculty and staff;
- (n) satisfy UW as to the financial strength of the Developer and the Indemnifier including as to its ability to fund, and that it is funding at least 25% of the development costs for the Project as equity or subordinated debt;
- (o) have in place a formal financing agreement on terms and with an institutional lender satisfactory to UW sufficient to fund those development costs for the Project not being funded by the Developer as equity;

3.4 UW's Access

UW, its representatives, and consultants shall have access to the Project Lands at all times during construction and shall have the right to attend regular site meetings, in each case, among other things, for the purpose of monitoring pre-construction activities and confirming that such pre-construction activities are being proceeded with substantially in accordance with the Project Plans and shall have access, upon reasonable prior notice at all reasonable times, to all of the material, reports (including inspection and testing reports), studies, models and other documentation related to the Project Plans, including, without limitation, shop drawings, working drawings and construction details and upon request, shall be expeditiously provided with copies of all such documentation at the expense of the UW.

3.5 Reports by Developer

The Developer shall provide to the UW:

- (a) not less than quarterly, reports current to the end of the previous quarter, as to pre-construction progress, with reference to the Project Plans and the Development Schedule and the Project Budget and containing such information and detail as requested by the UW, acting reasonably; and
- (b) whenever the pre-construction progress report referred to in Subsection 3.5(a) indicates that pre-construction activities are falling behind the Development Schedule, a supplement accompanying such pre-construction progress report as to the actions that will be taken by the Developer prior to the next such report in order to attempt to ensure that it will be brought back on schedule.

3.6 Non-Liability

Neither the UW, nor any employee, representatives or consultant of the UW shall, by reason of the review of any of the Project Plans or by reason of any inspection of the pre-construction site incur any liability for any defect in the Project Plans or the Project or any damages arising therefrom and no such review or inspection by such persons, nor any actual or deemed approval of the UW relating thereto, shall relieve any other Person from liability for any damages arising from the Project Plans or the construction of the Project.

**ARTICLE 4
CLOSING**

4.1 Closing Deliveries

Subject to and in accordance with the terms and conditions hereof, the parties hereto each agree that on the Closing Date they shall complete the closing of the transaction herein contemplated in respect of the Project and in that regard:

- (a) UW (in each case to the extent it is a party) shall execute and deliver, or otherwise provide on the Closing Date, as the case may be, those documents which are referenced in Section 4.3; and
- (b) The Developer shall execute and deliver, or cause to be executed and delivered, or otherwise provide on the Closing Date, as the case may be, those documents which are referenced in Section 4.2.

4.2 Conditions Benefiting UW

UW's obligation to execute and deliver the documentation and complete the transaction referred in Section 4.1 in respect of the Project is subject to the fulfilment of each of the following conditions on or before the Closing Date, unless waived in writing by UW on or prior to the Closing Date:

- (a) all documents or copies of documents required to be executed and/or delivered to UW by the Developer hereunder in respect of the Project shall have been so executed and delivered;
- (b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Developer on or prior to the Closing Date in respect of the Project shall have been complied with or performed;
- (c) the Developer shall have satisfied all of its Preconstruction Obligations pursuant to Section 3.3 by no later than the Preconstruction Deadline;
- (d) the parties shall have settled the Fair Market Value of the Project Lands in accordance with Article 6 and the Annual Basic Rent (as defined under the Land Lease) shall have been determined;

- (e) the Land Lease and UW Security shall have been finalized, executed and delivered.

In the event that any one or more of the above-noted conditions has not been fulfilled on or prior to the Closing Date and has not been waived by UW as aforesaid, UW may, by notice in writing to the Developer terminate this Agreement pursuant to Subsection 5.1(a), without prejudice however to any rights it may have as a result of any breach by the Developer of any of its obligations hereunder.

4.3 Conditions Benefiting the Developer

The Developer's obligation to carry out the transaction contemplated herein is subject to the fulfilment of each of the following conditions on or before the Closing Date unless waived in writing by the Developer on or before the Closing Date:

- (a) all documents or copies of documents required to be executed and delivered to the Developer by UW hereunder in respect of the Project shall have been so executed and delivered;
- (b) the parties shall have settled the Fair Market Value of the Project Lands in accordance with Article 6 and the Annual Basic Rent (as defined under the Land Lease) shall have been determined;
- (c) the Land Lease shall have been finalized, executed and delivered; and
- (d) all of the terms, covenants and conditions of this Agreement to be complied with or performed by UW at or prior to the Closing Date in respect of the Project shall have been complied with or performed.

In the event that any one or more of the above-noted conditions has not been fulfilled on or prior to the Closing Date and has not been waived by the Developer as aforesaid, the Developer may, by notice in writing to UW terminate this Agreement pursuant to Subsection 5.1(b) without prejudice however to any rights it may have as a result of any breach by UW of its obligations hereunder.

4.4 Deemed Satisfaction

If a notice is not given pursuant to Section 4.2 or Section 4.3 by the party entitled to deliver such notice, indicating that a condition has not been fulfilled and has not been waived, by no later than the date for satisfaction of such condition, such party shall, unless the date set for the satisfaction of such condition has been extended by mutual consent in writing, deemed to have been satisfied with respect to or have waived that particular condition and shall be deemed to have given notice of satisfaction or waiver thereof, without prejudice, however to their rights in respect of any other precondition hereunder.

4.5 Adjustments

If applicable, fuel, taxes, water rates, sewage charges, charges for electricity and any other utilities or services shall be apportioned and allowed up to the Closing Date, the Closing Date itself to be apportioned to the Developer as tenant under the Land Lease. UW shall cancel any insurance coverage with respect to the Project as of the Closing Date in which event there should be no adjustment for insurance premiums and the Developer shall be responsible for placing insurance as required pursuant to the Land Lease commencing with the Closing Date.

4.6 Other Closing Matters

In connection with the completion of the closing herein:

- (a) the closing shall commence at 10:00 a.m. in the offices of Davies Ward Phillips & Vineberg LLP or at such other time or place as the parties may determine;
- (b) the Land Lease and the UW Security shall be duly registered;
- (c) any land transfer taxes or goods and services taxes or other similar taxes payable in connection with the Land Lease shall be the responsibility of the Developer; and
- (d) the obligation of any party to convey any interest pursuant hereto is expressly subject to compliance with the provisions of Section 50 of the *Planning Act* (Ontario) and amendments thereto, and the compliance therewith shall be the obligation of the Developer.

ARTICLE 5 **TERMINATION**

5.1 Rights of Termination

This Agreement shall terminate in any one of the following cases:

- (a) upon a notice given by UW to the Developer pursuant to Section 4.2 if any one or more of the conditions listed in Section 4.2 has not been fulfilled on or prior to the relevant Closing Date and has not been waived by UW in writing;
- (b) upon a notice given by the Developer to UW pursuant to Section 4.3 if any one or more of the conditions listed in Section 4.3 has not been fulfilled on or prior to the relevant Closing Date and has not been waived by the Developer in writing;
- (c) upon a notice given by UW to the Developer if an Event of Default shall have occurred and be continuing in respect of the Developer; and
- (d) upon a notice given by the Developer to UW if an Event of Default shall have occurred and be continuing in respect of UW.

5.2 **Rights of UW upon Termination**

Upon the termination of this Agreement pursuant to Section 5.1:

- (a) UW shall have a period of 30 days, commencing on the date of notice of termination, to determine whether it wishes that it or its nominee be assigned the rights, and assume the obligations, of the Developer under:
 - (i) contracts in respect of the materials or goods acquired for the development or construction of the Project and the warranties and guarantees issued by the supplier of such material or goods;
 - (ii) contracts in respect of services in connection with the development or construction of the Project;
 - (iii) the rights of the Developer in and to the Project as well as in and to all reports, studies, models and other design materials relating to the Project; or
 - (iv) contracts entered into by the Developer or relating to the construction and development of the Project;

and UW shall be or shall have been provided with copies of, or access to, such contracts, for the purpose of making such determinations;

- (b) if UW determines that either it or its nominee shall be assigned, and shall assume, any such contract or obligations, such contract or obligation shall be assigned to UW or its nominee without the payment of any penalty or other charge for such assignment by UW or its nominee;
- (c) if UW does not advise the Developer within such 30 day period that it wishes it or its nominee to assign the rights and to assume the obligations, of the Developer under such contract or obligations, the Developer may terminate such contract or obligations;
- (d) UW shall or shall cause its nominee to, in respect of contracts in respect of which it or its nominee shall have been assigned the rights of the Developer:
 - (i) assume all the obligations arising under such contract;
 - (ii) assume and indemnify the Developer against any liability by reason of anything done or required to be done under such agreements or contracts after the date of the termination other than liability arising as a result of the default of the Developer prior to the date of termination; and
 - (iii) provide to any Governmental Authority such letters of credit as may be required by the Governmental Authority and use its reasonable efforts to

obtain releases of any letters of credit which the Developer has provided to the Governmental Authority to ensure the performance of obligations under development or other similar agreements, and UW shall indemnify the Developer for all reasonable costs which the Developer may incur with respect to any outstanding letters of credit until such letters of credit are released by the Governmental Authority; and

- (e) UW or its nominee shall be entitled to receive original copies of all records, documents and books of accounts maintained by the Developer with respect to the Project pursuant to the terms of this Agreement which are in the possession or control of the Developer, provided that the Developer may elect to retain notarial or other copies of such records, documents and books of account, and UW shall produce the originals of such records, documents and books of account whenever reasonably required to do so by the Developer for the purposes of legal proceedings or dealings with any Governmental Authority or any other purpose reasonably required by the Developer.

5.3 Remedies

Any termination of this Agreement shall be without prejudice to the rights of the parties to such remedies as are available at law for the breach or default by a party.

ARTICLE 6 DETERMINATION OF FAIR MARKET VALUE

6.1 Fair Market Value

(a) If the Developer disagrees with UW's determination of the Fair Market Value of the Land as at the Preconstruction Deadline, as set out in the FMV Notice, the Developer may dispute the Fair Market Value as therein set out provided the Developer advises UW in writing (the "Dispute Notice") of its intention to dispute the Fair Market Value, which notice shall be delivered to UW within 5 days following the delivery to the Developer of the FMV Notice, failing which it shall be deemed to be acceptable.

(b) Upon receipt of the Dispute Notice, the Developer and UW shall meet and attempt to appoint an assessor, with qualifications as specified in Subsection 6.1(c) (the "Assessor"). If the Developer and UW are unable to agree upon the Assessor within 10 days of delivery of the Dispute Notice, either one of them may apply, on 5 days prior written notice to the other, to a judge of the Superior Court to appoint the Assessor. The Assessor shall be deemed to be acting as an expert and not as an arbitrator. The fees and expenses of the Assessor shall be shared equally between the UW on the one hand and the Developer on the other hand.

(c) The Assessor, shall be an independent, accredited member in good standing of either the Appraisal Institute of Canada or the Appraisal Institute of America (or a successor of either such institute) or other similar organization of the same or better reputation, have the

designation "AACI" or "MAI" or equivalent designation, and shall have had at least 10 years experience with such designation in valuing major commercial properties.

(d) The Assessor shall make a determination of the Fair Market Value of the Project Lands as if the Project Lands were unencumbered which determination shall be completed on or prior to the date which is 10 days prior to the Preconstruction Deadline and calculated as of such date. In determining such Fair Market Value the Assessor shall be directed to take into consideration the highest and best use for the Project Lands as then zoned, subdivided (i.e. a whole lot) and as serviced to the lot line and to the extent applicable or reasonable, any other factors as the Assessor may deem relevant.

(e) For the purpose of determining the Fair Market Value, the Assessor shall have access to all books of account and records of all vouchers, cheques, papers and documents of or which may relate to the Project Lands and which may relate to the business of the Developer to be carried on at the Project. The determination of Fair Market Value shall be final, binding and conclusive upon the Developer and UW.

ARTICLE 7

INDEMNIFICATION

7.1 Indemnity by the Developer

The Developer will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify UW and each of its officers, employees and agents of, from and against all Claims which may be brought against or made upon UW, its officers, employees and agents, or any of them, and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by UW, its officers, employees and agents, or any of them, by reason of, or on account of, or in consequence of the execution and performance of the Developer's obligations hereunder and/or the non-execution or imperfect execution thereof and/or the supply or non-supply of plant and material therefor, or by reason of any negligence or wilful default of the Developer, its officers, employees, agents or persons for whom it is responsible in law in connection with the performance of the Developer's obligations hereunder and will pay to UW and to each such officer, employee or agent on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by UW or by any of its officers, employees and agents in consequence of any such Claims and any monies paid or payable to UW, or any of its officers, employees or agents in settlement or in discharge or on account thereof.

7.2 Indemnity by UW

UW will, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the Developer and each of its officers, employees and agents of, from and against all Claims which may be brought against or made upon the Developer, its officers, employees and agents, or any of them, and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the Developer, its officers, employees and agents, or any of them, by reason of, or on account of, or

in consequence of the execution and performance of UW's obligations hereunder and/or the non-execution or imperfect execution thereof or by reason of any negligence or wilful default of UW, its officers, employees, agents or persons for whom it is responsible in law in connection with the performance of UW's obligations hereunder and will pay to the Developer and to each such officer, employee or agent on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the Developer or by any of its officers, employees and agents in consequence of any such Claims and any monies paid or payable to the Developer, or any of its officers, employees or agents in settlement or in discharge or on account thereof.

7.3 Guarantee and Indemnity by the Indemnifier

In consideration of UW entering into this Agreement with the Developer, the Indemnifier hereby covenants and agrees with UW as follows:

- (a) the Indemnifier shall use their best efforts to cause the Developer at all times to fully and faithfully perform its obligations pursuant to this Agreement;
- (b) the Indemnifier hereby irrevocably and unconditionally guarantees payment and performance by the Developer of all of the Developer's obligations pursuant to this Agreement and covenants and agrees that if any of the Developer's obligations pursuant to this Agreement are not paid or performed when due, the Indemnifier shall assume, pay and perform such obligations on demand;
- (c) the Indemnifier shall be primarily liable, jointly and severally with the Developer and not merely as surety or guarantor, for the payment and performance of all of the Developer's obligations pursuant to this Agreement. Such liability shall be absolute and unconditional (save as to any applicable conditions to the Developer's obligations contained in this Agreement) and shall not be released, discharged, limited, lessened or otherwise affected by any of the following:
 - (i) any amendment to this Agreement made between UW and the Developer (the Indemnifier acknowledging that UW and the Developer may amend the provisions of this Agreement other than this Section 7.3 without requiring the consent of or signatures from and without notice to the Indemnifier);
 - (ii) any grant of time, extensions, waivers or other indulgences granted by UW to the Developer;
 - (iii) the making by the Developer or acceptance by UW of any proposals or compromises with respect to the Developer's obligations; and
 - (iv) any dealings between UW and the Developer or any act or omission by UW or the Developer in relation to this Agreement that would otherwise release or exonerate the Indemnifier from or constitute a defence to the Indemnifier' obligations under this Agreement, it being expressly

acknowledged that the Indemnifier hereby irrevocably and unconditionally waives all such defences;

- (d) the Indemnifier, as a separate and distinct obligation, shall indemnify and hold harmless UW from and against any Claims that may be made against or suffered or incurred by UW, directly or indirectly arising in whole or in part from, in connection with or in respect of any default by the Developer in the performance of any of its obligations pursuant to this Agreement; and
- (e) UW shall not be bound to exercise or exhaust its rights, remedies or recourse against the Developer or any other Person before being entitled to demand payment from the Indemnifier under this Section 7.3.

7.4 Duration

The obligations to indemnify contained in Sections 7.1, 7.2 and 7.3 shall survive any termination of this Agreement, anything in this Agreement to the contrary notwithstanding. Nothing in Sections 7.1, 7.2, 7.3 and 7.4 shall create or extend any right for the benefit of any third party, save and except for any transferee permitted hereunder.

ARTICLE 8 **GENERAL**

8.1 Confidentiality

UW and the Developer and their respective agents and advisors shall keep the terms of this Agreement in strict confidence, except as may be required by Applicable Law or as otherwise mutually agreed. UW and the Developer agree that prior to making any press releases concerning this Agreement, each of them shall consult with the other and obtain the other's approval with respect to such press releases, which approval shall not be unreasonably withheld or delayed (except in the case of financial information, which may be unreasonably withheld). All information received by either party pursuant to this Agreement shall be used only in the course of performing their duties hereunder and may not be disclosed by such party to any other Person except with the consent of the other party. The foregoing covenants shall not apply to the disclosure of such information to its actual or potential consultants, professional advisors, lenders, or pre-qualified builder or developer who themselves agree or are otherwise under an obligation to treat it confidentially or in legal proceedings among the parties or to the extent such information is in the public domain (although not through a breach of this covenant by a party hereto).

8.2 Notices

Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if served personally upon an executive officer of the party for whom it is intended, or mailed by registered mail, return receipt requested or sent by telex, telecopy or telegram and in the case of:

- (a) UW, addressed to it, at:

University of Waterloo
Needles Hall
200 University Avenue West
Waterloo, Ontario
N2L 3G1

Attention: University Secretary
Telephone No.: (519) 888-4012

Fax No.: (519) 888-6337

- (b) ■

Attention: ■
Telephone No.: ■
Fax No.: ■

or to such other address or in care of such other officers as a party may from time to time advise to the other parties by notice in writing. The date of receipt of any such notice, demand, request, consent, agreement or approval if served personally or by telex, telecopy or telegram shall be deemed to be the date of delivery thereof, or if mailed as aforesaid, the date of delivery by postal authority.

8.3 Index and Headings

The index hereto and the headings of any Articles, Section or part thereof are inserted for purposes of convenience only and do not form part hereof.

8.4 Invalidity of Provisions

The invalidity of any provision of this Agreement or any covenant herein contained shall not affect the validity of any other provision or covenant hereof or herein contained.

8.5 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of each party hereto. This Agreement shall not be assigned by either party without the prior written consent of the other party hereto, which consent may be arbitrarily withheld.

8.6 **Tender**

Any tender of documents or money under this Agreement may be made on the Developer or UW or upon counsel acting for the Developer or UW from time to time, and money may be tendered by negotiable cheque certified by a chartered bank or trust company.

8.7 **Time of Essence**

Time shall in all respects be of the essence hereof, provided, however that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Developer and UW, or by their respective counsel who are hereby expressly appointed in that regard.

8.8 **No-Merger**

Subject to anything expressly to the contrary herein, all provisions of this Agreement shall survive and shall not merge upon the closing of any transaction herein contemplated and shall continue in full force and effect thereafter.

8.9 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

8.10 **Relationship of the Parties**

Nothing herein shall be construed so as to make UW a partner of the Developer for any purpose.

8.11 **Counterparts**

This Agreement may be executed and delivered by counterparts with the same effect as if the parties hereto have signed and delivered the same document. All counterparts shall be construed together and shall constitute one and the same agreement. Any delivery of an executed copy of this Agreement by way of telecopy, facsimile or email transmission shall constitute delivery hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents.

UNIVERSITY OF WATERLOO

by _____

Name:

Title:

Name:

Title:

I/We have authority to bind the University.

[DEVELOPER]

by _____

Name:

Title:

Name:

Title:

I/We have authority to bind the Corporation.

[INDEMNIFIER]

by _____

Name:

Title:

Name:

Title:

I/We have authority to bind the Corporation.

SCHEDULE A

CONCEPT DESIGN

See Attached. **[NTD: To be provided by Developer.]**

SCHEDULE B

DEVELOPMENT GUIDELINES

See Attached.

SCHEDULE C

DEVELOPMENT SCHEDULE

See Attached. [NTD: To be provided by Developer.]

SCHEDULE D

GUIDANCE STATEMENT FOR DEVELOPMENT OF UW LANDS

See Attached.

SCHEDULE E

FORM OF LAND LEASE

See Attached.

SCHEDULE F

SITE PLAN

See Attached. **[NTD: To be provided by Developer.]**

SCHEDULE G

PRELIMINARY PROJECT BUDGET

See Attached. [NTD: To be provided by Developer.]

SCHEDULE H

SKETCH OF THE PROJECT LANDS

See Attached.

SCHEDULE I

SKETCH OF THE TECHNOLOGY PARK LANDS

See Attached.