

**SCHEDULE E**

**FORM OF LAND LEASE**

**UNIVERSITY OF WATERLOO**

**- and -**

**[LESSEE]**

**- and -**

**[INDEMNIFIER]**

---

**LAND LEASE**

---

■, 200■

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**FORM OF LAND LEASE**

**THIS INDENTURE OF LEASE** made as of the \_\_\_\_\_ day of ■, 200■.

**B E T W E E N:**

**UNIVERSITY OF WATERLOO,**

(herein called the "Lessor"),

OF THE FIRST PART,

- and -

■,

(herein called the "Lessee"),

OF THE SECOND PART,

- and -

■,

(herein called the "Indemnifier"),

OF THE THIRD PART.

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

AND WHEREAS the Lessor is the freehold owner of the Project Lands and has agreed to lease the Project Lands to the Lessee for the Term;

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

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby covenant and agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.1**            **Definitions**

In this Lease, unless there is something in the subject matter or context inconsistent therewith:

**"Additional Rent"** means any amount payable by the Lessee under or pursuant to this Lease in addition to Annual Basic Rent and Annual Participation Rent;

**"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 Section 6.2(h);

**"Annual Basic Rent"** has the meaning ascribed thereto in Section 3.1;

**"Annual Participation Rent"** means, for each Lease Year of the Initial Term commencing after the fifth anniversary of the Commencement Date, and if the Lessee's renewal rights are exercised in accordance with Section 2.2, for each Lease Year of the Renewal Period, 3% of the Gross Revenues for the Lease Year in question;

**"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;

**"Assessor"** has the meaning ascribed thereto in subsection 13.2(a);

**"Authority"** means any court or tribunal or governmental, regulatory or administrative body, board, agency, department or authority of any country, province, municipality or other political subdivision thereof having or purporting to have jurisdiction in the relevant circumstances;

**"Building"** means ■ **[specific details to be inserted]**;

**"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;

"**Collateral**" means cash, a certified or official bank cheque of a Canadian chartered bank, a letter of credit of a Canadian chartered bank, a surety bond of an insurer licensed under the *Insurance Act* (Ontario) or other security satisfactory to the party to whom the same is required to be delivered;

"**Collateral Agreements**" means the additional agreements and leases entered into or to be entered into by the Lessor and/or the Lessee pursuant to this Lease or pursuant to the Project Planning and Design Arrangements to implement the construction and development of the Project including, without limitation, any development, site plan, servicing, landscaping, tunnel, sidewalk improvement, heritage or other agreements entered into with the Lessor or an Authority relating to the construction, development or operation of the Project and not prohibited by or in conflict with the terms hereof and any amendments and/or supplements to such agreements which have been approved by the Lessor;

"**Commencement Date**" means ■ [this will be a specific date which will be the first day of the month next following the Preconstruction Deadline];

"**Concept Design**" means the concept design for the Project, in the form annexed as Schedule 6, as the same may be amended or modified from time to time in accordance with the terms hereof and any other agreements between the Lessor and Lessee respecting same [N.B. The design may be more advanced at the point of lease commencement];

"**Construction Contracts**" means the General Construction Contract and all other contracts and agreements which provide for services or materials or both for the development and construction of the Project [N.B. Depending on the approach to construction, the type of construction contracts may vary];

"**Contaminant**" means any radioactive or asbestos materials, urea formaldehyde, hydrocarbons, pollutants, deleterious, poisonous, noxious, dangerous, hazardous, corrosive or toxic substances or goods, special waste or waste of any kind, or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws and "substance" includes any sound, vibration, heat, radiation or other form of energy;

"**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;

"**CPI**" means the Consumer Price Index, All Items, Toronto, 1992=100, published by Statistics Canada or its successor, adjusted for any change in base year, or, if Statistics Canada or its successor no longer publishes such index or is no longer operated by the Government of Canada, such other price index as the Lessor may substitute, acting reasonably; in the case of any such substitution, the Lessor shall be entitled to make all necessary conversions for purposes of comparison;

"**Development Agreement**" means the development agreement dated ■ between the Lessor, as owner, and the Lessee, as developer, and the Indemnifier, as indemnifier, as the same may be amended or modified from time to time;



**"Development Guidelines"** means the development and design guidelines for the Technology Park prepared for UW by Urban Strategies Inc. dated March, 2002 as the same may be amended from time to time;

**"Development Schedule"** means the schedule for the construction and development of the Project as established by the Lessee and approved by the Lessor, which is attached as Schedule 7 hereto, as may be amended or modified from time to time in accordance with this Lease and any other agreements between the Lessor and the Lessee respecting the same;

**"Eightieth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(p);

**"Eighty-fifth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(q);

**"Environmental Event"** has the meaning ascribed thereto in Section 14.7(a);

**"Environmental Laws"** means applicable laws, statutes, ordinance, by-laws and regulations, and orders, directives and decisions rendered by, and policies, instructions, guidelines and similar guidance of, any Authority and the common law relating to the protection of the environment, occupational health and safety or the generation, manufacture, processing, distribution, use, treatment, storage, disposal, discharge, packaging, transport, handling, contaminant, clean-up or other remediation or corrective action of or relating to any Contaminant, in each case, as in effect from time to time throughout the Term;

**"Event of Default"** has the meaning ascribed thereto in Section 12.1;

**"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 reorganization, 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 property in question 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 property was permitted to be used on the date as of which such value is to be determined, if offered for sale in the open market on the relevant date;

**"Fifteenth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(c);

**"Fifth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(a);

**"Fiftieth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(j)(ii);

**"Fifty-fifth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(k);

**"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;

**"Fortieth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(h);

**"Forty-fifth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(i);

**"General Contractor"** means ■ or such other general contractor approved by the Lessor;

**"General Construction Contract"** means the general construction contract between the Lessee and the General Contractor with respect to the Project, as the same may be amended or replaced

from time to time in accordance with the terms of this Lease and any other agreement between the Lessor and the Lessee respecting same;

**"Gross Revenues"** means, for any period or with respect to any event, the entire amount of all revenue derived by the Lessee from the Project determined on an accrual basis in accordance with generally accepted accounting principles and, without limiting the generality of the foregoing, including all rentals of space, revenues from parking facilities on or in the Project, all proceeds from coin operated machines and all other receipts or receivables whatsoever of all business activities and events conducted at, in, upon or from the Project for such period, whether for cash, credit, gift, barter or otherwise (without reserve or deduction for inability or failure to pay), by the Lessee (whether directly or indirectly through any Person that is a Related Person to the Lessee) in or from the Project or in respect of such event, as the case may be. In the event that the receipts or receivables were, or are to be, paid by a Related Person to the Lessee and the amount received or receivable is an amount less than the amount which would have been received or receivable if the payor was not a Related Person, for purposes of calculating Gross Receipts the Lessee shall be deemed to have received an amount equal to the amount which would have been received or receivable from a non-Related Person.

**"Impositions"** means all:

- (a) taxes, assessments or levies (including, without limitation, all park levies and all assessments for public or local improvements or benefits);
- (b) rates, charges, excises, levies, imposts, licence fees, permit fees, inspection fees and other authorization fees and other charges in respect of water, sewer, electric or other utilities; and
- (c) other rates and charges, excises, levies, licence fees, permit fees, inspection fees and other authorization fees and other charges;

in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of whatever nature and kind, which are from time to time levied, assessed, charged or imposed by any Taxing Authority or any government, municipal or other like body having jurisdiction upon or against the Project Lands or any part thereof, the use or occupation thereof, or upon the owner or occupant in respect thereof or upon the rents or other revenues thereof and which is or may become a lien on any part of the Project or give rise to any rights or remedies of the Taxing Authority against the Project Lands or any interest therein, but excluding any amounts in respect of the income, revenues or place of business of, or otherwise personal to, the Lessor, strictly in its capacity as a land owner, now existing or hereafter enacted including without limitation, franchise, excise, estate, inheritance, succession, capital levy, income or revenue tax, excess profit tax, or any other tax, assessment, charge or levy upon the Rent in the hands of the Lessor to the extent that any such amounts are not levied in lieu or substitution of any of the foregoing;

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

**"Initial Term"** means the period commencing on the Commencement Date and ending on that date which is the earlier of: (i) the Maturity Date; and (ii) such earlier date upon which this

Lease may have been terminated pursuant to or in accordance with the terms of this Lease or by operation of law;

**"Insurance Requirements"** means:

- (a) all terms of any insurance policy covering or applicable to the Project or any part thereof required to be maintained pursuant to this Lease;
- (b) all requirements of the issuer of any such policy under any such policy; and
- (c) all mandatory orders, rules, regulations and other such requirements of any Canadian or provincial insurance regulatory body applicable to or affecting any insurance policy covering or applicable to the Project or any part thereof or any use or condition of the Project or any part thereof;

**"Insurance Trust Agreement"** means an agreement substantially in the form annexed hereto as Schedule 4 entered into between an Insurance Trustee, the Lessor and the Lessee (and which may be entered into with any Leasehold Mortgagee) with such changes as the parties mutually agree (including, to accommodate such Leasehold Mortgagee) as the same may be amended from time to time with the approval of the Lessor;

**"Insurance Trustee"** means (i) the Leasehold Mortgagee, provided that its Leasehold Mortgage is first ranking against the Lessee's interest in the Project and it is not a Related Person to the Lessee; or (ii) if (i) is not applicable or such Leasehold Mortgagee is not prepared to be the Insurance Trustee, the Lessee's principal bank, unless such Leasehold Mortgagee does not approve of the bank as Insurance Trustee, in which case, the Insurance Trustee shall be a duly licensed trust company carrying on business in the Province of Ontario approved by the Lessor, who in any such case has entered into the Insurance Trust Agreement;

**"Lease"** means this indenture of lease made as of the date set out on page one hereof as amended or modified from time to time in writing by the parties hereto;

**"Lease Year"** means, with the exception of the first and last Lease Years during the Term, a period during the Term comprising 12 consecutive calendar months commencing on the 1st day of January in each year and ending on the 31<sup>st</sup> day of December in each year; the first Lease Year shall commence on the Commencement Date and shall end on the 31<sup>st</sup> day of December of that same year; the last Lease Year shall, subject to prior termination, commence on last January 1 of the Term and shall end on the last day of the Term;

**"Leasehold Mortgage"** means any *bona fide* mortgage, charge or other security interest granted by the Lessee of or affecting this Lease or the Project issued in compliance with the terms hereof, including in particular Section 11.4, and not affecting any other interest or property other than the Project and interests of the Lessee arising therefrom and includes any *bona fide* deed of trust and mortgage securing bonds, debentures or notes by any such mortgage, charge or other security, all as amended or supplemented from time to time in compliance with the terms hereof;

**"Leasehold Mortgagee"** means any mortgagee, chargee or lender under or secured by a Leasehold Mortgage and approved by the Lessor, acting reasonably, and includes any trustee for

bondholders under a deed of trust and mortgage securing bonds, debentures or notes, provided that such mortgagee, chargee or lender, is in compliance with the provisions of this Lease;

**"Leasehold Mortgagee Acknowledgement Agreement"** means an agreement in the form annexed hereto as Schedule 5 with such changes as the parties mutually agree;

**"Lessee"** means ■ and its permitted successors and permitted assigns;

**"Lessee's Auditor"** means ■ or such other firm of independent, nationally recognized chartered accountants as has been approved by the Lessor;

**"Leasing Policy"** means the leasing policy from time to time developed by the Lessee and approved by the Lessor in connection with the leasing of space to tenants, occupants or licensees on, in or at the Project;

**"Lessor"** means the University of Waterloo and its successors and assigns, in its capacity as owner of the Project Lands and as lessor hereunder;

**"Lessor's Representatives"** has the meaning ascribed thereto in Section 4.2

**"Maturity Date"** means the day immediately prior to the 49<sup>th</sup> anniversary of the Commencement Date;

**"Modification Notice"** has the meaning ascribed thereto in Section 4.2

**"Ninetieth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(r);

**"Ninety-fifth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(s);

**"North Campus Common Facilities"** has the meaning ascribed thereto in Section 2.5;

**"North Campus Lands"** means the lands shown on the sketch annexed hereto as Schedule 3;

**"Notice"** means any notice or other communication which may or is required to be given pursuant to this Lease, which Notice shall be given in accordance with the provisions of Section 15.1;

**"Notice of Election"** has the meaning ascribed thereto in Section 2.2;

**"Occupant"** means a tenant, licensee, concessionaire or other occupant occupying space at the Project pursuant to a Space Lease;

**"Operating Costs"** means all costs, expenses, fees, rentals, disbursements and outlays of every kind, paid, payable or incurred by or on behalf of the Lessee in connection with the operation, maintenance, repair, administration and management of the Project determined in accordance with generally accepted accounting principles;

**"Operating Standards"** has the meaning ascribed thereto in Section 8.2;

**"Parking Facilities"** means parking facilities located on the Project Lands (as per the specifications set out in the Project Planning and Design Arrangements) for use by the occupants of the Building;

**"Permitted Users"** has the meaning ascribed thereto in Section 6.2(h)(iv);

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

**"Prime Rate"** means the floating annual rate of interest established from time to time by the Canadian Imperial Bank of Commerce as the reference rate it will use to determine rates of interest in Canada on Canadian dollar loans to commercial customers in Canada and designated as its prime rate;

**"Project"** means, collectively, the Project Lands, the Building and the Parking Facilities [**Note to Draft: Add any other Project specific features.**];

**"Project Architect"** means ■ or such other firm of independent architects as has been approved by the Lessor;

**"Project Budget"** means the budget for the development of the Project as the same may be amended by the Lessee from time to time;

**"Project Lands"** means that portion of the Technology Park Lands comprising approximately ■ acres located at ■, Waterloo and more particularly described on Schedule 2 annexed hereto;

**"Project Planning and Design Arrangements"** means the arrangements with respect to the development of the Project agreed to prior to the date of execution hereof which are consistent with the Development Guidelines, Project Plans, the Site Plan and the Concept Design which form part of the Project Plans all as summarized on Schedule 8 annexed hereto, as they may be amended from time to time in accordance with the terms hereof and any other agreement between the Lessor and the Lessee relating to same;

**"Project Plans"** means the construction plans and specifications prepared by the Project Architect relating to the construction and development of the Project, as summarized on Schedule 8 annexed hereto, as amended from time to time with the prior written approval of the Lessor;

**"Related Person"** means "related persons" as defined in subsection 251(2) of the *Income Tax Act* (Canada) as amended as of the date of execution hereof;

**"Release"** includes to release, spill, leak, spray, inoculate, abandon, deposit, seep, throw, place, exhaust, pump, pour, emit, empty, discharge, inject, escape, leach, migrate, dispose of or dump;

**"Renewal Period"** means the period of 49 years commencing on the first day following the Initial Term and ending on the 49<sup>th</sup> anniversary of the Maturity Date;

**"Rent"** means Annual Basic Rent, Annual Participation Rent and Additional Rent;

**"Rent Calculation Example"** has the meaning ascribed thereto in subsection 3.1(b);

**"Replacement Cost"** means the cost of repairing, replacing or reinstating any item of property and any cost of upgrading any item of property required by any by-law, regulation, ordinance or law with new materials of like kind and quality on the same or a similar site plus the cost of demolition including demolition of undamaged structures without deduction for physical, accounting, or any other depreciation;

**"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;

**"Seventieth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(n);

**"Seventy-fifth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(o);

**"Site Plan"** means the site plan (which forms part of the Project Plans) dated ■ and prepared by ■, as amended from time to time, with the approval of the Lessor and attached hereto as Schedule 1;

**"Sixtieth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(l);

**"Sixty-fifth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(m);

**"Space Lease"** means a sublease, licence, concession agreement or other occupancy agreement, from the Lessee, as landlord, to a tenant, licensee, concessionaire or other occupant for use of premises in the Project and its permitted successors and assigns, subtenants and sublicensees;

**"Substantial Completion"** means that all work required to achieve "substantial performance" of the Project has been completed, giving to the term "substantial performance" the meaning ascribed thereto in the *Construction Lien Act* (Ontario) as same may be amended, modified, or replaced from time to time;

**"Substantial Completion Date"** means the date upon which Substantial Completion has occurred, as evidenced by a certificate issued by the Project Architect pursuant to the *Construction Lien Act* (Ontario) as same may be amended, modified, or replaced from time to time;

**"Taxing Authority"** means any duly constituted public authority whether federal, provincial, municipal, school or otherwise, legally empowered to impose, or which has by agreement the right to receive payments in lieu of Impositions;

**"Technology Park"** means, in the aggregate, the Technology Park Lands and the Technology Park complex to be developed on the Technology Park Lands;

**"Technology Park Lands"** means that portion of the North Campus Lands constituting approximately 120 acres upon which the Technology Park is being developed as shown cross-hatched in Schedule 3 annexed hereto as the same may be modified from time to time;

**"Technology Park Lands Permitted Uses"** means those uses as may be legally permitted from time to time on the Technology Park Lands which, as of the date of execution hereof, means, use primarily for the construction and leasing of building space wherein research based high technology companies will occupy office premises, conduct research and development activities and use advanced technology for certain light manufacturing related to such research and development activities, as well as for certain ancillary activities, such as retail shops which would service the space tenants in the Technology Park;

**"TechTown Lease"** means the land lease made as of August 1, 2006 between the Lessor, 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);

**"Tenth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(b);

**"Term"** means the Initial Term and, if the Lessee exercises its rights in accordance with Section 2.2, the Renewal Period;

**"Thirtieth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(f);

**"Thirty-fifth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(g);

**"Total Completion"** means full and total completion of the Project in compliance with the Project Plans, the Project Planning and Design Arrangements and the applicable provisions, if any, of the Collateral Agreements, including without limitation, expiry of all construction lien periods arising under the General Construction Contract and the Construction Contracts without there being any outstanding lien claims registered against title to the Project Lands as the same has been certified by the Project Architect;

**"Transfer"** means an assignment, sale, conveyance, disposition, sublease, pledge, hypothecation, mortgage, charge, security interest or other encumbrance of this Lease or the Project or any part thereof, or any other arrangement under which the interest of the Lessee in and to this Lease or the Project becomes security for any indebtedness or other obligation; any transaction or occurrence whereby the rights of the Lessee under this Lease or to the Project, or to any part thereof, are transferred or otherwise disposed of; any transaction or occurrence by which any right of use or occupancy of all or any part of the Project is conferred on any person other than the Lessee; any transaction or occurrence (including, without limitation, expropriation and transfer by operation of law) which changes or may change the identity of the person having



lawful use or occupancy of all or any part of the Project; a parting with or sharing of possession of all or part of the Project; and a transfer or issue by sale, assignment, request, inheritance, transmission on death, mortgage, charge, security interest, consolidation, subscription, operation of law or other disposition, or by liquidation, merger or amalgamation, of all or any of the shares of or interest in the Lessee, or any agreement or arrangement, or any other act, as a result of which the Lessee becomes controlled, directly or indirectly in any manner whatever (within the meaning of the expression of "controlled" or "controlled, directly or indirectly, in any manner whatever" set forth in section 256 of the *Income Tax Act* (Canada), read without reference to subsections (3), (6), (7) thereof, and any amendments thereto or successor legislation for the time being in force and from time to time in force) by a different person or persons from the person or persons that controlled the Lessee, directly or indirectly in any manner whatever, immediately before any such transaction or occurrence;

**"Twentieth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(d);

**"Twenty-fifth Anniversary Date"** has the meaning ascribed thereto in subsection 3.1(e);

**"UW Lands"** means the lands shown in the sketch annexed in Schedule 9;

**"UW Security"** means the mortgage, charge and security interest of, on and in the Lessee's interest in the Project, in all personal property of the Lessee relating to the Project and all rights of the Lessee under all Collateral Agreements and Construction Contracts given to the Lessor on even date herewith for the Lessee's obligations under this Lease through to Total Completion, a copy of which is annexed hereto as Schedule 10; and

**"Yield"** means, at any point in time, 1% plus the then current 30 day average yield on Government of Canada bonds having a term to maturity of 10 years.

## **1.2 Currency**

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

## **1.3 Index and Headings**

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

## **1.4 Applicable Law**

This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## **1.5 Schedules**

The following Schedules are attached hereto and are incorporated in and are deemed to be an integral part of this Lease:

Schedule 1:	Site Plan
Schedule 2:	Legal Description of Project Lands
Schedule 3:	Sketch of North Campus
Schedule 4:	Form of Insurance Trust Agreement
Schedule 5:	Form of Leasehold Mortgage Acknowledgement
Schedule 6:	Concept Design
Schedule 7:	Development Schedule
Schedule 8:	Summary of Project Planning and Design Arrangements
Schedule 9:	Sketch of UW Lands
Schedule 10:	Form of UW Security
Schedule 11:	Lessor's Representatives
Schedule 12:	Rent Calculation Example
Schedule 13:	Form of Non-Disturbance and Attornment Agreement
Schedule 14:	Sign By-Law

## **ARTICLE 2**

### **LEASE**

#### **2.1 Demise**

The Lessor hereby demises and leases the Project Lands to the Lessee for and during the Initial Term, subject as herein provided, for the purposes of construction and development of the Project in accordance with the Project Plans and the operation of the Project in accordance with the terms hereof.

#### **2.2 Renewal Right**

Provided that the Lessee is not then in default hereunder, the Lessee may elect to renew the Initial Term of this Lease for the Renewal Period by providing the Lessor with notice of such election (the "Notice of Election") pursuant to Section 15.1 not sooner than the 40<sup>th</sup> anniversary of the Commencement Date and not later than the 45<sup>th</sup> anniversary of the Commencement Date, in which event this Lease shall continue throughout the Renewal Period provided that the Annual Basic Rent during the Renewal Period shall be as set out in Subsections 3.1(k) through 3.13.1(t), inclusive, and that there shall be no further right of renewal or extension. If Lessee fails to give the appropriate notice within the time limits set out herein for renewing the Initial Term, then this Section 2.2 shall be null and void and of no further force or effect. Lessor's acceptance of any future Rent from Lessee for the Renewal Period shall in no way be deemed a waiver of Lessee's requirement to give the Notice of Election for renewing the term of this Lease in accordance with the terms hereof.

#### **2.3 End of Term; Surrender of Project**

At the end of the Term, whether by forfeiture, termination, effluxion of time or otherwise, the Lessee shall surrender the Project to the Lessor in the condition in which it is required to be kept by the Lessee under the provisions of this Lease, except as herein otherwise expressly provided. At the end of the Term the parties will prorate, adjust, apportion and allow

between themselves all items of Rent to the intent and purpose that the Lessee shall bear the burden thereof until it shall deliver up possession of the Project Lands.

#### **2.4 Overholding**

If at the end of the Term the Lessor permits the Lessee to remain in possession of the Project Lands and accepts Rent in respect thereof, a tenancy from year to year or otherwise shall not be created by implication of law. In such event the Lessee shall be deemed to be a monthly tenant at the same rate of Basic Annual Rent as paid during the last year of the Term provided that the Lessee shall continue to pay Additional Rent and Annual Participation Rent when and as required by this Lease or by law.

#### **2.5 Use of North Campus Common Facilities Lands**

Subject to the terms of this Lease, the Lessor grants to the Lessee, its agent, invitees, servants, employees, licensees and customers, the free, uninterrupted, non-exclusive benefit and right, by way of licence, in common with the Lessor, other tenants or occupants of the North Campus Lands their respective agents, invitees, servants, employees, licensees and customers, and all others entitled thereto, to use for their intended purpose, and subject to such rules and regulations as UW may establish from time to time, all the entrances, exits, driveways, laneways, roads, ramps, passageways, walkways, sidewalks, landscaped areas, utilities connections and storm water management facilities (the "North Campus Common Facilities") now or hereafter constructed, created or developed on the North Campus Lands, all as may be altered, relocated, expanded, reduced or reconstructed from time to time.

### **ARTICLE 3 RENT**

#### **3.1 Annual Basic Rent for Project Lands**

The Lessee shall pay throughout the Term, annual basic rent ("Annual Basic Rent") in the following amounts per annum in advance, payable in equal monthly instalments, commencing the first day of each and every month throughout the Term:

- (a) from the Commencement Date to the day immediately prior to the fifth anniversary of the Commencement Date (such anniversary day being the "Fifth Anniversary Date"), Annual Basic Rent equal to the product obtained by multiplying:
  - (i) the Yield for the 30 day period immediately prior to the Commencement Date, by
  - (ii) the product obtained by multiplying A and B; where A is equal to the Fair Market Value of the Project Lands, on a per acre basis, as of the Commencement Date; and where B is equal to ■ **[Note to Draft: Insert the aggregate number of acres comprising the Project Lands.];**
- (b) from the Fifth Anniversary Date to the day which is immediately prior to the tenth anniversary of the Commencement Date (such anniversary day being the "Tenth Anniversary Date"), Annual Basic Rent equal to the Annual Basic Rent payable in

accordance with Subsection 3.1(a) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(a), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Fifth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Fifth Anniversary Date and as its denominator the CPI for the month immediately prior to the Commencement Date as demonstrated in the example shown at Schedule 12 attached hereto (the "Rent Calculation Example");

- (c) from the Tenth Anniversary Date to the day which is immediately prior to the fifteenth anniversary of the Commencement Date (such anniversary day being the "Fifteenth Anniversary Date"), Annual Basic Rent equal to the Annual Basic Rent payable in accordance with Subsection 3.1(b) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(b), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Tenth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Tenth Anniversary Date and as its denominator the CPI for the month immediately prior to the Fifth Anniversary Date as demonstrated in the Rent Calculation Example;
- (d) from the Fifteenth Anniversary Date to the day which is immediately prior to the twentieth anniversary of the Commencement Date (such anniversary day being the "Twentieth Anniversary Date"), Annual Basic Rent equal to the Annual Basic Rent payable in accordance with Subsection 3.1(c) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(c), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Fifteenth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Fifteenth Anniversary Date and as its denominator the CPI for the month immediately prior to the Tenth Anniversary Date as demonstrated in the Rent Calculation Example;
- (e) from the Twentieth Anniversary Date to the day which is immediately prior to the twenty-fifth anniversary of the Commencement Date (such anniversary day being the "Twenty-fifth Anniversary Date"), Annual Basic Rent equal to the product obtained by multiplying:
  - (i) the Yield for the 30 day period immediately prior to the Twentieth Anniversary Date, by
  - (ii) the Fair Market Value of the Project Lands as of the Twentieth Anniversary Date;
- (f) from the Twenty-fifth Anniversary Date to the day which is immediately prior to the thirtieth anniversary of the Commencement Date (such anniversary day being the "Thirtieth Anniversary Date"), Annual Basic Rent equal to the Annual Basic Rent payable in accordance with Subsection 3.1(e) above, adjusted to reflect

increases in the CPI over the period described in Subsection 3.1(e), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Twenty-fifth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Twenty-fifth Anniversary Date and as its denominator the CPI for the month immediately prior to the Twentieth Anniversary Date as demonstrated in the Rent Calculation Example;

- (g) from the Thirtieth Anniversary Date to the date which is immediately prior to the thirty-fifth anniversary of the Commencement Date (such anniversary day being the "Thirty-fifth Anniversary Date"), Annual Basic Rent equal to the Annual Basic Rent payable in accordance with Subsection 3.1(f) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(f), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Thirtieth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Thirtieth Anniversary Date and as its denominator the CPI for the month immediately prior to the Twenty-fifth Anniversary Date as demonstrated in the Rent Calculation Example;
- (h) from the Thirty-fifth Anniversary Date to the day which is immediately prior to the fortieth anniversary of the Commencement Date (such anniversary day being the "Fortieth Anniversary Date"), Annual Basic Rent equal to the Annual Basic Rent payable in accordance with Subsection 3.1(g) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(g), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Thirty-fifth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Thirty-fifth Anniversary Date and as its denominator the CPI for the month immediately prior to the Thirtieth Anniversary Date as demonstrated in the Rent Calculation Example;
- (i) from the Fortieth Anniversary Date to the day which is immediately prior to the forty-fifth anniversary of the Commencement Date (such anniversary day being the "Forty-fifth Anniversary Date"), Annual Basic Rent equal to the product obtained by multiplying:
  - (i) the Yield for the 30 day period immediately prior to the Fortieth Anniversary Date, by
  - (ii) the Fair Market Value of the Project Lands as of the Fortieth Anniversary Date;
- (j) from the Forty-fifth Anniversary Date to the day which is:
  - (i) the Maturity Date, or

- (ii) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, the fiftieth anniversary of the Commencement Date (such anniversary day being the "Fiftieth Anniversary Date"),

Annual Basic Rent equal to the Annual Basic Rent payable in accordance with Subsection 3.1(i) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(i), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Forty-fifth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Forty-fifth Anniversary Date and as its denominator the CPI for the month immediately prior to the Fortieth Anniversary Date as demonstrated in the Rent Calculation Example;

- (k) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Fiftieth Anniversary Date to the day which is immediately prior to the fifty-fifth anniversary of the Commencement Date (such anniversary day being the "Fifty-fifth Anniversary Date"), Annual Basic Rent equal to the Annual Basic Rent payable in accordance with Subsection 3.1(j) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(j), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Fiftieth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Fiftieth Anniversary Date and as its denominator the CPI for the month immediately prior to the Forty-fifth Anniversary Date as demonstrated in the Rent Calculation Example;
- (l) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Fifty-fifth Anniversary Date to the day which is immediately prior to the sixtieth anniversary of the Commencement Date (such anniversary day being the "Sixtieth Anniversary Date"), Annual Basic Rent equal to the Annual Basic Rent payable in accordance with Subsection 3.1(k) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(k), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Fifty-fifth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Fifty-fifth Anniversary Date and as its denominator the CPI for the month immediately prior to the Fiftieth Anniversary Date as demonstrated in the Rent Calculation Example;
- (m) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Sixtieth Anniversary Date to the date which is immediately prior to the sixty-fifth anniversary of the Commencement Date (such anniversary day being the "Sixty-fifth Anniversary Date"), Annual Basic Rent equal to the product obtained by multiplying:
  - (i) the Yield for the 30 day period immediately prior to the Sixtieth Anniversary Date, by

- (ii) the Fair Market Value of the Project Lands as of the Sixtieth Anniversary Date;
- (n) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Sixty-fifth Anniversary Date to the date which is immediately prior to the seventieth anniversary of the Commencement Date (such anniversary day being the "Seventieth Anniversary Date"), Annual Basic Rent equal to the annual Basic Rent payable in accordance with Subsection 3.1(m) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(m), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Sixty-fifth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Sixty-fifth Anniversary Date and as its denominator the CPI for the month immediately prior to the Sixtieth Anniversary Date as demonstrated in the Rent Calculation Example;
- (o) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Seventieth Anniversary Date to the day which is immediately prior to the seventy-fifth anniversary of the Commencement Date (such anniversary day being the "Seventy-fifth Anniversary Date"), Annual Basic Rent equal to the annual Basic Rent payable in accordance with Subsection 3.1(n) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(n), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Seventieth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Seventieth Anniversary Date and as its denominator the CPI for the month immediately prior to the Sixty-fifth Anniversary Date as demonstrated in the Rent Calculation Example;
- (p) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Seventy-fifth Anniversary Date to the day which is immediately prior to the eightieth anniversary of the Commencement Date (such anniversary day being the "Eightieth Anniversary Date"), Annual Basic Rent equal to the annual Basic Rent payable in accordance with Subsection 3.1(o) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(o), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Seventy-fifth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Seventy-fifth Anniversary Date and as its denominator the CPI for the month immediately prior to the Seventieth Anniversary Date as demonstrated in the Rent Calculation Example;
- (q) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Eightieth Anniversary Date to the day which is immediately prior to the eighty-fifth anniversary of the Commencement Date (such anniversary day being the "Eighty-fifth Anniversary Date"), Annual Basic Rent equal to the annual Basic Rent equal to the product obtained by multiplying:

- (i) the Yield for the 30 day period immediately prior to the Eightieth Anniversary Date, by
  - (ii) the Fair Market Value of the Project Lands as of the Eightieth Anniversary Date;
- (r) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Eighty-fifth Anniversary Date to the day which is immediately prior to the ninetieth anniversary of the Commencement Date (such anniversary day being the "Ninetieth Anniversary Date"), Annual Basic Rent equal to the annual Basic Rent payable in accordance with Subsection 3.1(q) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(q), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Eighty-fifth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Eighty-fifth Anniversary Date and as its denominator the CPI for the month immediately prior to the Eightieth Anniversary Date as demonstrated in the Rent Calculation Example;
- (s) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Ninetieth Anniversary Date to the ninety-fifth anniversary of the Commencement Date (such anniversary day being the "Ninety-fifth Anniversary Date"), Annual Basic Rent equal to the annual Basic Rent payable in accordance with Subsection 3.1(r) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(r), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Ninetieth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Ninetieth Anniversary Date and as its denominator the CPI for the month immediately prior to the Eighty-fifth Anniversary Date as demonstrated in the Rent Calculation Example; and
- (t) in the event the Lessee has exercised its renewal right in accordance with Section 2.2, from the Ninety-fifth Anniversary Date to the last day of the Renewal Period, Annual Basic Rent equal to the Annual Basic Rent payable in accordance with Subsection 3.1(s) above, adjusted to reflect increases in the CPI over the period described in Subsection 3.1(s), which for clarity shall be calculated by *multiplying* the Annual Basic Rent payable for the Lease Year immediately prior to the Ninety-fifth Anniversary Date *by* a fraction which has as its numerator the CPI for the month immediately prior to the Ninety-fifth Anniversary Date and as its denominator the CPI for the month immediately prior to the Ninetieth Anniversary Date as demonstrated in the Rent Calculation Example.

### **3.2 Annual Participation Rent**

From the Fifth Anniversary Date to the: (i) Maturity Date, or (ii) in the event the Lessee has exercised its renewal rights in accordance with Section 2.2, the last day of the



Renewal Period, the Lessee shall pay to the Lessor, for each Lease Year, the Annual Participation Rent. For the first Lease Year in which the Fifth Anniversary Date occurs, the Annual Participation Rent shall be payable concurrently with the delivery of the statement of the Lessee's Auditor referred to in Section 3.4 below and in any event by no later than the 60<sup>th</sup> day following the end of such Lease Year. For each Lease Year thereafter, the Annual Participation Rent shall, subject to adjustment as hereinafter provided, be payable in equal quarterly instalments on the last day of each quarter (being March 31, June 30, September 30 and December 31) equal to one quarter of the Annual Participation Rent for the previous Lease Year except that for the first quarter, the payment shall be an estimate by the Lessee, to be adjusted concurrently with the instalment payable on the last day of the second quarter in such Lease Year, such adjustment to be based on the statement of the Lessee's Auditor referred to in Section 3.4 below, to be delivered for the previous Lease Year. Payment of any additional Annual Participation Rent, determined by the statement referred to in Section 3.4 to be payable for the Lease Year in question, shall accompany delivery of such statement and any overpayment of Annual Participation Rent, as determined by such statement, for the Lease Year in question shall, subject to Section 3.6, be reimbursed within 15 days of receipt by the Lessor of such statement.

### **3.3 Quarterly Statements**

For the period commencing from the Fifth Anniversary Date to the: (i) Maturity Date, or (ii) in the event the Lessee has exercised its renewal rights in accordance with Section 2.2, the last day of the Renewal Period, quarterly on or before the 20<sup>th</sup> day of each of April, July, October and January during each Lease Year, the Lessee shall submit to the Lessor a statement in writing, in form and content acceptable to the Lessor, acting reasonably, setting forth the Gross Revenues for the preceding three months.

### **3.4 Annual Certified Statement**

Within 90 days after the last day of each Lease Year commencing with the Lease Year in which the Fifth Anniversary Date occurs, the Lessee shall deliver to the Lessor a statement in writing signed and verified by the Lessee and certified by the Lessee's Auditor setting forth with reasonable detail and particulars the Gross Revenues for the Lease Year in question and the Annual Participation Rent payable for the Lease Year in question.

### **3.5 Records and Audits**

The Lessee shall keep or cause to be kept at its offices at the Project or within the City of Waterloo full, true and accurate records of all business and operations from which Gross Revenue may be accurately determined and to which the Lessor and its officers, agents and auditors shall have access at any time during regular business hours for the purpose of examination or audit, without expense to the Lessee, and the Lessee shall furnish to the Lessor such statements, information and other supporting documentation (including copies thereof) relating to Gross Revenue as the Lessor may reasonably require. The Lessee shall keep at its offices within the City of Waterloo for at least seven years after the expiration of each Lease Year all records relating to receipt of revenue forming part of Gross Revenue for such Lease

Year. The Lessor agrees not to make public any information so obtained except to the extent that disclosure is required by law.

### **3.6 Audit by Lessor**

The Lessor, by accepting a statement from the Lessee, whether audited or not, of Gross Revenue or any payment based on it, shall not be deemed to have waived any of its rights under this Lease and shall be entitled at any time and from time to time up to a point which is not later than the fifth anniversary of the end of any particular Lease Year, to have the records of the Lessee related to its Gross Revenue or related to the calculation of the Annual Participation Rent in each case for the particular Lease Year in question specially audited by a firm of independent chartered accountants designated by the Lessor. If the amount of the Gross Revenue of the Lessee in any period covered by the special audit is found by it to be greater by at least 2% of the amount shown by the statement or statements delivered by the Lessee covering the period, the expenses of the special audit shall be borne by the Lessee but otherwise such expense shall be borne by the Lessor. Except in the case of demonstrable errors, the report of the chartered accountants designated by the Lessor shall be final and binding upon both the Lessor and the Lessee and forthwith after receipt thereof by the Lessor, the Lessor shall repay to the Lessee any overpayment which may have been made by the Lessee and the Lessee shall on demand pay to the Lessor the deficiency if any which may become apparent by reason of such audit. The rights of the Lessor under this Section are in addition to all other remedies it may have hereunder or otherwise at law.

### **3.7 Net Lease**

It is the intention of the parties that the Rent payable hereunder shall be absolutely net to the Lessor and that, except as otherwise herein expressly provided, there shall be no abatement or deferral of Rent and under no circumstances will Rent be refunded, and the Lessee shall at its expense and to the complete exoneration of the Lessor pay or cause to be paid all costs, outlays and expenses of every nature and kind whatsoever relating to or affecting the Building and the Project Lands and in connection with any business carried on therein or thereon. Save as herein otherwise specifically provided, the Lessee hereby waives and renounces any and all existing and future claims and set-offs against any Rent due hereunder and all rights of abatement of or deduction from Rent and agrees to pay Rent regardless of any claim or set-off which may be asserted by the Lessee or on its behalf.

### **3.8 Interest**

All Rent in arrears shall bear interest at a rate of 4% per annum in excess of the Prime Rate, calculated daily and compounded monthly, without demand, from the date such Rent was due, or with respect to Additional Rent from the date it should have been paid to the Lessor, until actual payment or repayment to the Lessor.

## **ARTICLE 4 DEVELOPMENT OF THE BUILDING**

### **4.1 Basic Development Obligations**

The Lessee hereby accepts the Project Lands "as is" and, except as aforesaid, hereby covenants and agrees to commence forthwith, and to continuously and diligently proceed at its own cost and expense with the requisite construction of the Project, all in accordance with the Project Plans, the Project Planning and Design Arrangements and the Development Schedule through to Total Completion and in connection therewith shall supervise and direct all aspects of the Project, including without limitation as to the generality of the foregoing:

- (a) direct all construction activities;
- (b) direct and co-ordinate the performance of the Project Architect, the general contractor and subcontractors and the Lessee's other consultants pursuant to the terms of this Lease;
- (c) to the extent not arranged by the Developer, arrange for the preparation of all Project Plans and all work drawings and specifications required for the Project;
- (d) correct or remedy or cause to be corrected or remedied, any violations of Applicable Law relating to the Project;
- (e) prepare and arrange for the preparation of all construction contracts, to the extent not prepared and arranged by the Developer pursuant to the terms of the Development Agreement, and arrange for the preparation and execution of all other related documentation required in accordance with the obligations of the Lessee hereunder;;
- (f) insure that such personnel, subcontractors, consultants and work forces are retained or engaged as are necessary in order to ensure Total Completion;
- (g) obtain all necessary governmental approvals, consents, permits and licenses required for the work in accordance with the Project Plans and Applicable Laws to the extent not obtained by the Developer in accordance with the terms of the Development Agreement;
- (h) prepare, negotiate and execute all necessary agreements, leases, easements, licenses and other permits and arrangements as are required and have received the approval of the Lessor;
- (i) cause all construction activities to be performed in a good and workmanlike manner, all in compliance with the Project Plans and Applicable Law;
- (j) cause Total Completion to occur by no later than the date scheduled therefor in the Development Schedule, subject only to Force Majeure;
- (k) select and retain the professional services of surveyors, special consultants, testing laboratories and any other necessary consultants, and coordinate their services and monitor and evaluate their reports and provide copies of such reports and evaluations to the Lessor to the extent not selected, retained, coordinated,

monitored and/or evaluated by the Developer pursuant to the terms of the Development Agreement;

- (l) when the Project has reached Substantial Completion, prepare or cause to be prepared by the Project Architect, a list of incomplete or unsatisfactory items and a schedule for completion thereof and assist the Project Architect in conducting inspections of the work;
- (m) assist the Project Architect in determining whether the Construction Contracts have been completed in accordance with the Project Plans and Applicable Law and certify as to such completion in accordance with the forms prescribed by Applicable Law;
- (n) cause the certificates of Substantial Completion to be issued by the Project Architect when Substantial Completion has been achieved in respect of the Project;
- (o) following issuance of the Certificate of Substantial Completion in respect of the Project, evaluate the completion of the work of the General Contractor and the sub-contractors and make recommendations to the Project Architect when work is ready for final inspections and perform such additional supervisory functions as are necessary to ensure Total Completion;
- (p) cause the Certificate of Total Completion to be issued when Total Completion has been achieved in respect of the Project;
- (q) ensure that the Lessor receives accurate "as-built" plans and drawings for the Project within 90 days after Total Completion of the Project;
- (r) at all times during the term of any guarantees or warranties associated with any part of the Project, advise the Lessor, prior to the expiry of any such guarantees or warranties, of any evidence of faulty materials or workmanship used in connection with the Project; and
- (s) ensure that all insurance required pursuant to the terms of this Lease, Applicable Law, the Construction Contracts or as may otherwise be required by the Lessor or any Leasehold Mortgagee or Lessor Mortgagee, is obtained and maintained in force, in each case in connection with the construction and development of the Project and provide certified copies of all policies of insurance to the Lessor upon request.

#### **4.2 Lessor's Approval**

The Lessee and the Lessor shall maintain a continuing liaison with one another at all times during construction and development and in that regard, the Lessee shall give the Lessor written notice (a "Modification Notice") of any material amendments, modifications or supplements to the Project Plans (to the extent that they pertain to the exterior of the Project) or

to the Concept Design, Site Plan and the Development Schedule; or any work of a material nature to be performed other than substantially in accordance with the foregoing.

Within 10 Business Days of receipt of a Modification Notice, the Lessor may deliver a notice of objection to any material change or modification set out in the Modification Notice and failing any such objection within the time limit therefor, the approval of the Lessor shall be deemed to have been granted in respect of the Modification Notice in question. The Project Plans shall be amended by any change order resulting from a Modification Notice for which actual or deemed approval of the Lessor has been given in accordance with this Article 4. If the Lessor shall have delivered a Notice of objection to the matter contemplated in the Modification Notice, such matter shall not be implemented. If there is a dispute as to whether any change is material and therefore must be approved by the Lessor, the matter shall be submitted to an independent duly qualified architect selected by the Lessee from a list of three such architects chosen by the Lessor, whose determination shall be final.

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

- (a) the overall quality and character of the Project;
- (b) the integration of the Project with the Technology Park as a whole;
- (c) the impact of the Project on parking and other vehicular and pedestrian traffic matters;
- (d) the suitability of the Project for its Permitted Use;
- (e) potential violations of any project agreement or of any arrangements in existence pertaining to the Technology Park or the balance of the UW Lands; and
- (f) the requirements of any other Authorities having jurisdiction over the UW Lands.

The Lessor shall appoint two representatives (the "Lessor's Representatives") on an ongoing basis who will have full authority to deal with all of the approvals arising from time to time between the Lessor and the Lessee. The Lessee may rely on any written approval from either of such representatives as being binding on the Lessor. The two Lessor's Representatives so appointed at the time of execution and delivery are identified on Schedule 11. The Lessor may change its appointees at any time by written notice to the Lessee.

#### **4.3 Emergencies**

Notwithstanding Section 4.3, if, in an emergency, any work or action is urgently required at times when the approval of the Lessor as required herein cannot be immediately obtained, the Lessee is hereby authorized and instructed to proceed with such steps as in its discretion are deemed urgently necessary for the protection and preservation of the Project or to protect any party hereto from exposure to a penalty, liability or expense and immediately thereafter the Lessee shall notify the Lessor of all such steps so taken.

#### **4.4 Co-ordination of Construction and Site Activities**

In order to ensure that, on the one hand, construction of the Project is carried out in a manner that minimizes to the greatest extent possible interference with the ongoing operations at the balance of the University of Waterloo (including the balance of the UW Lands) and that on the other hand, construction of the Project is carried out as efficiently as possible in the circumstances:

- (a) the Lessee shall use best efforts to organize and coordinate construction activities so as to minimize disruption to the balance of the Technology Park and the UW Lands; and
- (b) the Lessor shall use best efforts to organize and coordinate the Technology Park Infrastructure Work in a manner which ensures convenient access to the Project Lands and minimizes disruption to construction of the Project.

#### **4.5 Accounts and Records**

With respect to all operations conducted by it hereunder, the Lessee shall:

- (a) keep and maintain at the site or at its offices within the City of Waterloo, as may be appropriate, in accordance with generally accepted accounting principles, true, complete and accurate books, records, accounts and documents with respect to the development and construction of the Project and with respect to the transactions entered into with respect thereto;
- (b) permit the Lessor and its representatives and consultants during normal business hours to inspect the books, records, accounts and documents referred to in Subsection 4.5(a) above and to make extracts or copies therefrom and thereof; and
- (c) upon request of the Lessor, provide such evidence as to the payment of development costs as the Lessor shall reasonably require.

#### **4.6 Lessor's Access to Site**

The Lessor, its representatives, and consultants shall have access to the Project 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 construction and confirming that such construction is being proceeded with substantially in accordance with the Project Plans.

#### **4.7 Access to Material**

The Lessor and its representatives and consultants, 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 Lessor.

#### **4.8**            **Reports by Lessee**

The Lessee shall provide to the Lessor:

- (a) not less than quarterly, but in any event concurrently with any progress reports delivered to any Leasehold Mortgagee, reports, current to the end of the previous quarter, as to construction progress, with reference to the Project Plans, the Project Budget and the Development Schedule and containing such information and detail as requested by the Lessor, acting reasonably; and
- (b) whenever the construction progress report referred to in Subsection 4.8(a) indicates that construction is falling behind the Development Schedule, a supplement accompanying such construction progress report as to the actions that will be taken by the Lessee prior to the next such report in order to attempt to ensure that it will be brought back on schedule.

#### **4.9**            **Non-Liability**

Neither the Lessor, nor any employee, representatives or consultant of the Lessor shall, by reason of the review of any of the Project Plans or by reason of any inspection of the 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 Lessor relating thereto, shall relieve any other Person from liability for any damages arising from the Project Plans or the construction of the Project.

#### **4.10**           **Title to Project**

The Lessee shall, by reason of this Lease, have a leasehold interest in the Project as it is constructed and thereafter until the expiry or earlier termination of the Term, at which time the Project shall become the absolute property of the Lessor free from any leasehold interest of the Lessee and without compensation to the Lessee, free from all encumbrances (including without limitation all Leasehold Mortgages). The Lessor's absolute right of property in the Project, which will arise at the expiry or earlier termination of the Term shall take priority over any other interest in the Project which may now or hereafter be created by the Lessee and all dealings by the Lessee with the Project which in any way affect title thereto shall be subject to this right of the Lessor. The Lessee shall not assign, encumber or otherwise deal with the Building separately from any permitted dealing with the Project Lands under this Lease, to the intent that no Person shall receive from the Lessee any interest in the Project Lands who does not at the same time hold a like interest in the balance of the Project located on the Project Lands and *vice versa*.

#### **4.11**           **Permits and Authorizations**

The Lessor agrees that, within five Business Days after receipt of written request from the Lessee, and where necessary, it shall 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 Lessee 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 or the

construction, alteration or replacement of improvements on the Project Lands pursuant to the terms hereof and enter into any development, site plan or other agreement necessary or desirable to give effect thereto. The Lessee agrees, as a precondition to the obligation of the Lessor to join in or consent to any such applications or to enter into any such development, site plan, or other agreement, to provide the Lessor with an agreement, satisfactory to the Lessor, whereby the Lessee agrees to indemnify and hold harmless the Lessor from any and all liability, expense or cost incurred as a result of or in connection with the Lessor entering into, joining with the Lessee in or consenting to any such application, development, site plan or other agreement.

#### **4.12            Discharge Liens**

Throughout the Term the Lessee shall, at its own cost and expense, cause any and all construction liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged to or for the Lessee or any Person on its behalf, which may be registered against or otherwise affect the Project, to be paid, satisfied, released, cancelled and vacated forthwith after registration of any such lien; provided, however, that in the event of a *bona fide* dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed and such costs as the court may direct and registering all such documents as may be necessary to discharge and cancel such lien or, if reasonably required by the Lessor, delivering to the Lessor, Collateral in an amount sufficient to discharge such lien in full together with any interest thereon. Upon discharge of such lien, such Collateral shall be returned to the Lessee.

Nothing in this Section shall prejudice the rights of the Lessee with respect to the giving of Leasehold Mortgages nor require the Lessee prior to the last year of the Term to discharge any security interest retained or acquired by a third party against or in respect of any goods, chattels or trade fixtures. The Lessee shall not be liable to discharge or pay for liens arising from work, materials or services performed by or for the account of the Lessor, except where the Lessor's actions or omissions which gave rise to such liens were pursuant to the Lessor's right to cure a breach or default by the Lessee hereunder.

Nothing contained in this Lease shall constitute any consent or request by the Lessor, expressed or implied, for the performance of any labour or services or the furnishing of any materials or other property in respect of the Project Lands or any part thereof, or as giving the Lessee any right, power or authority to contract for or permit the performance of any labour or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Lessor in respect thereof. Notice is hereby given that the Lessor shall not be liable for any labour or services performed or any materials or other property furnished in respect of the Project Lands or any part thereof and that no construction or other lien for any such labour, services, materials or other property shall attach to or affect the interest of the Lessor.

#### **4.13            Standards**

All development or redevelopment of the Project, including all demolition, shall be carried out by the Lessee 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.

#### **4.14 Redevelopment**

The Lessee shall not be entitled to redevelop the Project as constituted at Total Completion without approval by the Lessor, which approval may be arbitrarily withheld in its absolute discretion unless the Lessee's redevelopment contemplates a replacement project substantially the same as the Project but reflecting advances of the time. The approval by the Lessor will be required to the same extent and with respect to the same matters as was required in connection with the construction of the Project. Notwithstanding the preceding sentence, the Lessor may consider any other criteria which the Lessor may wish to apply in determining whether to give its approval to any redevelopment, such as whether the replacement project would likely provide to the Lessor an annual return and other benefits at least as great as the Lessor is obtaining under this Lease. It is a condition precedent to the approval by the Lessor being given that the Lessor and the Lessee shall have agreed to such amendments (if any) to this Lease, as shall be requisite, in all of the circumstances, to give effect to this Section.

### **ARTICLE 5** **IMPOSITIONS**

#### **5.1 Payment by Lessee**

Except as otherwise provided in this Section, the Lessee shall pay or cause to be paid all Impositions. Impositions and every instalment thereof shall be paid promptly when due and before any penalty or interest is incurred in respect thereof (except that the Lessee may pay any Impositions by instalments, when permitted to do so by law, notwithstanding that interest charges as prescribed by law become applicable). The Lessee shall pay the amount of the Imposition based on the assessed value for the Project as determined by a Taxing Authority. The Lessee shall also pay any penalty and interest imposed in connection with any payment or non-payment of any Impositions. At the request of the Lessor, the Lessee shall from time to time deliver to the Lessor copies of all receipted invoices for all such Impositions.

After prior Notice to the Lessor, the Lessee may defer any such payment when and so long as the Lessee, at its sole cost and expense, is contesting, by appropriate legal proceedings conducted in good faith and with due diligence and continuity the amount, validity or application, in whole or in part, of any Impositions or lien therefor, but only when and so long as:

- (a) there shall be no imminent threat of collection of any monies on account of such Impositions from the Lessor, the Project Lands or any Rent payable hereunder;
- (b) the Project Lands would not be in any danger of being sold, forfeited or lost;
- (c) neither the Lessor nor the Lessee would be in any imminent danger of any civil action or in any danger of criminal liability by reason of such proceedings and the

Project Lands would not be imminently subject to the enforcement of any lien as a result of any failure to pay any such Imposition; and

- (d) where required by the Lessor, acting reasonably, the Lessee shall have deposited with the Lessor or a third party approved by the Lessor, Collateral in an amount approved by the Lessor as being sufficient to pay such Impositions, together with any penalty and/or interest which might be imposed, in the event that such proceedings by the Lessee are not successful provided that upon completion of such proceedings by the Lessee, or payment of such Impositions together with any penalty or interest exigible, any unutilized portion of such Collateral shall be promptly released to the Lessee.

The Lessee shall, promptly after the final determination of such proceedings, fully pay and discharge the amounts payable in connection therewith and perform all acts ordered as a result of such determination. The Lessee shall indemnify and save harmless the Lessor from all liability for fines, penalties, forfeitures and like charges imposed upon the Lessor by reason of any such contests or by reason of non-compliance by the Lessee during the period thereof. The Lessor shall not be required to join in any proceedings referred to in this Section 5.1. The Lessor shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and the Lessee will indemnify and save the Lessor harmless from any such costs and penalties or interest thereon.

## **5.2 Lessor May Pay**

Subject to Section 5.1, if and so often as the Lessee shall neglect or omit to pay Impositions, the Lessor may, but shall not be obliged to, pay the same. If the Lessor so pays Impositions, it may thereupon charge the same to the Lessee together with interest on the amount thereof at the rate equal to the greater of the Interest Rate or the rate of penalty and/or interest charged by the Taxing Authority from time to time upon arrears of Impositions at the time such Impositions become due and payable. The Lessee will pay the same to the Lessor forthwith upon demand given by Notice from the Lessor stating the amount thereof paid by it and the date of payment and the Lessee agrees that any and all of such amounts so paid by the Lessor shall be recoverable as Additional Rent.

## **5.3 Forward Notices**

The Lessor, as soon as possible and in any event within 10 Business Days following receipt of any notice of assessment or any other communication regarding the Impositions, relating to the Project Lands, or sooner where an appeal period would expire within such 10 Business Days shall forward a copy thereof to the Lessee.

# **ARTICLE 6** **USE, SIGNAGE AND PARKING**

## **6.1 Permitted Uses**

The Lessee shall only be permitted to use the Project for Technology Park Lands Permitted Uses provided that such use shall be subject to the prohibitions, exceptions and

restrictions contained in this Lease and provided that such use shall be in compliance with Applicable Law.

**6.2 Prohibited Uses**

The Lessee (and any Occupant) shall not be permitted to use the Project (or any portion thereof) for:

- (a) uses which are not Technology Park Lands Permitted Uses;
- (b) any light manufacturing uses which in the aggregate exceed 40% of the leased area in the Project occupied by an Occupant carrying on such uses;
- (c) educational uses which compete with the University of Waterloo;
- (d) uses which involve the sale of goods or services which compete with the goods or services sold on the UW Lands;
- (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;
- (g) such other exclusive uses as may be undertaken or permitted by the Lessor on other parts of the UW Lands; and
- (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 Occupant which are:
  - (i) in compliance with the Development Guidelines for the Technology Park;
  - (ii) ancillary to the primary operations of the Lessee or any Occupant, 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 Occupant, that portion of the Project Lands occupied by such Occupant 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 Occupant, those employees or occupants of such Occupant working at that portion of the Project Lands occupied by such Occupant 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 Occupant, as the case may be, to deliver or provide any Amenity Services for the benefit of the Lessee or the Occupant, as the case may be, and its employees or permitted occupants provided that the independent contractor shall not become an Occupant pursuant to a Space Lease.

### **6.3 Name of Project**

The Lessee may determine the name of the Project provided that:

- (a) the prior approval of the Lessor has been obtained;
- (b) the name of the Project does not contravene Applicable Law; and
- (c) the use of the name of the Project does not contravene any arrangements which the Lessor has entered into with other non-Related Persons, which are in place prior to such name being chosen.

### **6.4 Signage**

The following provisions shall apply to signage in respect of the Project:

- (a) the Lessee shall have full control over all signage, advertising and display facilities located within the Building and not visible from outside the Building, provided that such signage, advertising and display facilities comply with Applicable Law;
- (b) the Lessee shall be permitted to locate external signage and any internal signage visible from the exterior of the Building provided that: (i) the approval of the Lessor shall have been obtained prior to the installation of such signage; and (ii) such signage complies with Applicable Laws, including, without limitation, the then-current municipal sign by-law (a copy of the current municipal sign by-law is attached hereto as Schedule 14). The parties acknowledge that the municipal sign by-law is subject to change from time-to-time. Notwithstanding that the Lessee is obliged to comply with Applicable Laws, including, without limitation, the then-current municipal sign by-law, the parties acknowledge and agree that

nothing herein restricts the Lessee (on its own behalf) from pursuing any and all legal remedies and actions available to the Lessee to amend, vary or challenge said Applicable Laws, including, without limitation, the then-current municipal sign by-law, as would normally be available to any member of the public provided that the Lessee continues to abide by all Applicable Laws during such process.

## **6.5 Lessee's Parking Rights**

The Lessee shall be permitted to establish and operate a parking structure and to impose parking charges for parking within the Project Lands subject to the Lessor's approval of such parking structure and charges and subject to the revenues therefrom being included as part of Gross Revenue for which the Lessor is entitled to Annual Participation Rent. Parking shall be limited to that which is necessary to serve the Project users and shall not include a public parking operation generally catering to the public as a whole.

## **6.6 Subdivision Agreement Compliance**

In compliance with the preconditions to registration of the plan of subdivision for the Technology Park Lands, the Lessor hereby advises that for those projects located within 300 metres from the easterly limits of the rail corridor as identified on the plan of subdivision, due to the proximity of existing land uses which generate noise and vibration, the property in question may occasionally experience detectable noise and vibration which, if unabated, may affect the operation of sensitive research equipment.

# **ARTICLE 7** **INSURANCE**

## **7.1 Lessee's Covenants Respecting Insurance**

The Lessee covenants and agrees with the Lessor that:

- (a) **To Insure:** during the Term the Lessee shall:
  - (i) **Property Insurance:** insure or cause to be insured the Project and keep the same or cause the same to be kept insured in an amount not less than the full Replacement Cost from time to time, of the Project as is completed (including the Replacement Cost of foundations and architectural fees relating to such foundations and site preparation costs) against loss or damage by fire, explosion, impact by aircraft or vehicles, lightning, riot, vandalism or malicious acts, smoke, leakage from fire protection equipment, windstorm or hail, flood and other perils now or hereafter from time to time embraced by or defined in an insurance policy with "all perils" coverage;
  - (ii) **Earthquake or Collapse:** insure or cause to be insured the Project and keep the same or cause the same to be kept insured in an amount not less than the full Replacement Cost thereof (including the Replacement Cost of

foundations and architectural fees relating to such foundations and site preparation costs) against loss or damage by collapse or earthquake;

- (iii) **Boiler and Machinery:** in the event that and so long as boilers, machinery, pressure vessels, air-conditioning equipment and miscellaneous equipment are installed and maintained in or upon the Project, insure and maintain or cause to be insured and maintained boiler, machinery, pressure vessel, air-conditioning equipment and miscellaneous equipment insurance which shall include, without limitation, loss or damage of whatsoever kind or nature by reason of explosion or collapse by vacuum or cracking, burning, or bulging of any steam or hot water boilers, pipes and accessories with combined limits representing 100% of the replacement cost of the insured objects or such other amount as the Lessor shall from time to time reasonably require, having regard to the nature of the boilers, machinery, pressure vessels, air-conditioning equipment and miscellaneous equipment utilized by the Lessee;
- (iv) **Rental Loss:** insure and maintain or cause to be insured and maintained insurance against any abatement or loss of income, in the gross profits form, resulting from at least those risks covered by insurance provided for in Paragraphs 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) (under which the period of indemnity shall be not less than 36 months), such insurance to ensure that, in the event of any such casualty, the Lessee will receive sufficient income and/or other receipts to permit it to pay Rent under this Lease in a manner and amount as if no such casualty had occurred;
- (v) **Public Liability:** insure and maintain or cause to be insured and maintained comprehensive public liability insurance on an occurrence basis against claims for personal injury, death or property damage suffered by others arising out of all operations upon the Project, indemnifying and protecting the Lessor and the Lessee, insuring to an amount initially of not less than \$5,000,000.00 per occurrence (with or without a retained limit) or such lesser or greater amount as the Lessor may reasonably require from time to time to protect the Lessor and the Lessee against such loss or damage and, in any event to the same extent as may from time to time be usual and prudent with companies operating or owning similar properties in equivalent locations subject to such coverage for such amounts being reasonably available in the market for companies operating or owning such similar properties without regard to their individual loss experience and, including without limitation, provisions for cross-liability and severability of interests. Policy limits shall be reviewed by the Lessor and Lessee in accordance with the foregoing requirements periodically at the request of either the Lessor or Lessee, provided such review is not more frequent than once every two Lease Years and failing agreement as to the insurance limits, such matter may be submitted to arbitration pursuant to Article 13; and

- (vi) **Other Insurance:** insure and maintain or cause to be insured and maintained:
- (A) during construction (including demolition) or any re-construction of the Project and substantial replacement or substantial repair of any part thereof, builders' all risk insurance with respect to the Project and any on-site or off-site work, materials and equipment related thereto protecting the Lessor, the Lessee and all contractors and sub-contractors, in an amount not less than the full Replacement Cost of the Project in the case of on-site, and with customary limits in the case of off-site together with provisions for delayed opening, which policy shall make provision for partial occupancy;
  - (B) during construction or any re-construction of the Project and substantial replacement or substantial repair of any part thereof and for such period thereafter as shall be customary for properties of similar scope and size as the Project (having regard to other insurance in force), wrap-up liability insurance with respect to the Project and any off-site work, materials and equipment related thereto protecting the Lessor, the Lessee and all contractors and sub-contractors, in an amount not less than \$5,000,000.00 per occurrence; and
  - (C) such other insurance with respect to the Project, in such amounts, with respect to such risks and such exclusions as may be customarily effected and maintained by prudent owners or operators of properties in Canada of similar scope and size as the Project, or as the Lessor may reasonably request be effected and maintained including, without limitation, as may be required pursuant to any of the Collateral Agreements;
- (b) **Deductible Amount:** the Lessee may at its option effect the insurance required to be maintained pursuant to the foregoing Paragraphs 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) under a policy or policies in the amounts required less a reasonable deductible amount, the loss with respect to which would be required to be borne by the Lessee, provided that such deductible amount does not exceed 1% of the full amount insured under any such policy or policies;
- (c) **Co-Insurance:** if any policies for such insurance shall contain any co-insurance clause, it shall be a "Stated Amount" co-insurance clause and the Lessee shall maintain at all times a sufficient amount of such insurance to meet the requirements of any such co-insurance clause so as to prevent the Lessee from becoming a co-insurer under the terms of such policy or policies and to permit full recovery up to the amount insured in the event of loss;

- (d) **Approvals:** all such insurance shall be on terms from time to time approved by the Lessor (provided that, whenever practical, such approval shall be obtained prior to such terms becoming effective but where not practical, the Lessee shall consult with the Lessor as to the general concepts of and the risks intended to be covered by such insurance prior to such terms becoming effective) and shall be placed with insurers selected by the Lessee and approved by the Lessor and approved by any Leasehold Mortgagee. Each policy of insurance shall be signed by the insurer or insurers responsible for the risks insured against. All policies shall be primary, non-contributing with, and not in excess of any other insurance obtained by the Lessee for its other operations. In addition, if the Lessor acting reasonably is of the opinion that it would be significantly to the Lessor's advantage that separate policies be obtained in respect of any or all of such insurance, then, at the request of the Lessor, the Lessee will ensure that any or all of such coverage shall not be included with other insurance obtained by the Lessee for its other operations;
- (e) **Non-Cancellation:** each of the policies for such insurance will contain an agreement by the insurer to the effect that it will not cancel or materially alter such policy or permit it to lapse, including any act, neglect or omission, except after 30 days' prior written notice by registered mail to the Lessor, and that as against the Lessor the insurer will not exercise any right to treat such policy as void or voidable as a result of any statement or failure of the Lessee or any other person in any application for such policy or to deny recovery as a result of any breach of any policy terms;
- (f) **Premiums:** the Lessee shall duly and punctually pay all premiums and other sums of money payable for maintaining any such insurance as aforesaid and in any event will not permit the payments under such policy or policies to be in arrears;
- (g) **Proceeds:** the Lessee shall cause any and all policies of insurance provided for in Subsection 7.1(a) to be written in the joint names of the Lessor, the Lessee and any Leasehold Mortgagee as may require to be so named, with the proceeds of all policies of insurance provided for in Paragraphs 7.1(a)(i) and 7.1(a)(ii) and on any direct damage indemnity under any policies of insurance provided for in Paragraphs 7.1(a)(iii) and 7.1(a)(vi) to be made payable to an Insurance Trustee to be dealt with in accordance with Subsections 7.1(j) and 7.1(l);
- (h) **Evidence:** the Lessee will produce to the Lessor at the beginning of each policy year evidence of payment of all premiums and other sums of money payable for maintaining such insurance, and shall deposit promptly with the Lessor every policy of and renewal certificate for such insurance or a certified copy thereof. In addition, the Lessee shall endeavour to cause each insurer under the policies of insurance required to be provided hereunder to give to the Lessor, at the end of each policy year, details of such insurer's loss experience with respect to the Project showing outstanding claims and the disposition of the claims that have accumulated during the terms of the policies being renewed or replaced;



- (i) **Lessor's Right to Insure:** the Lessee shall advise the Lessor of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Lessee fails to effect and to keep such insurance in force, and if the Lessee does not rectify such situation within 48 hours after the Lessor gives Notice to the Lessee requesting it to do so, the Lessor shall have the right, without assuming any obligation in connection therewith, to effect such insurance at the cost of the Lessee and all outlays by the Lessor shall be immediately payable by the Lessee to the Lessor as Rent, without prejudice to any other rights and recourses of the Lessor hereunder. No such insurance taken out by the Lessor shall relieve the Lessee of its obligations to insure hereunder and the Lessor shall not be liable for any loss or damage suffered by the Lessee in connection therewith;
- (j) **Repair and Replacement:** the proceeds of all policies of insurance provided for in Paragraphs 7.1(a)(i) and 7.1(a)(ii) and of any direct damage indemnity under any policies of insurance provided for in Paragraphs 7.1(a)(iii) and 7.1(a)(vi) shall be applied to the repair, replacement, rebuilding and/or restoration of the property damaged or destroyed. Any repairs, replacements, rebuilding or restoration shall be carried out by the Lessee in accordance with the provisions of Article 8 and Article 9;
- (k) **Waiver and Release:** the policies of insurance covering real and personal property maintained pursuant to Subsection 7.1(a) shall, to the extent available, provide for the waiver or release of all rights of subrogation against the Lessor. The Lessee hereby releases the Lessor and its successors and assigns from any and all liability caused by any of the perils against which the Lessee shall have insured or against which under the terms of this Lease the Lessee is obligated to insure under the policies of insurance covering real and personal property maintained pursuant to Subsection 7.1(a), and whether or not such loss or claim may have arisen out of the negligence of the Lessor and the Lessee hereby covenants to indemnify and save harmless the Lessor accordingly against and from all manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to such loss or claim;
- (l) **Insurance Trustee:** the proceeds of all policies of insurance provided for in Paragraphs 7.1(a)(i) and 7.1(a)(ii) and of any direct damage indemnity under any policies of insurance provided for in Paragraphs 7.1(a)(iii) and 7.1(a)(vi) payable in the event of loss or damage shall be made payable to the Lessee, on behalf of the named insureds, or if the Lessor or Leasehold Mortgagee so elects, to the Insurance Trustee. The Lessor and the Lessee shall from time to time do, sign, execute and endorse all transfers, assignments, cheques, loss claims, receipts, writings and things necessary or desirable for the purposes aforesaid, and for such purposes irrevocably to appoint such Insurance Trustee their attorney to do, sign, execute and endorse all such transfers, assignments, cheques, loss claims, receipts, writings and things in the name of the parties as appropriate and on their behalf as the Insurance Trustee may deem necessary or desirable; and

- (m) **Payment to Lessor:** subject to the provisions of the Insurance Trust Agreement, the Lessor shall be entitled to all proceeds, if any, of insurance held by the Insurance Trustee at the expiry of the Term or payable to the Insurance Trustee after the Term ends (provided the Lessee shall not thereby be released from any obligations for a shortfall in insurance proceeds by reason of its failure to properly or adequately insure in accordance with the terms of this Article 7).

## **7.2 Worker's Compensation**

At all times during the Term, the Lessee, at its expense, shall procure and carry or cause to be procured or carried and paid for full worker's compensation coverage in respect of all workmen, employees, servants and others engaged by or for the Lessee, in or upon any work, non-payment of which would create a lien on the Project.

# **ARTICLE 8 ONGOING OPERATIONS**

## **8.1 Operation, Maintenance and Repair**

Except to the extent provided to the contrary herein, this Lease shall be completely net and carefree to the Lessor and the Lessor shall not be obligated to furnish any services or facilities or to pay Operating Costs or to make repairs or alterations in or to replacements of any of the Project. The Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Project, including the payment of all Operating Costs. During the Term, the Lessee, at its own cost and expense, shall operate, repair and maintain the Project in good order and condition or shall cause the Project to be operated, repaired and maintained in good order and condition in the same manner and to the same standards and extent as would a prudent owner of a similar building and in accordance with the UW Master Plan and Guidance Statement, the Development Agreement and to maximize revenues. All Operating Costs shall be paid promptly when due and payable and all repairs and maintenance, when commenced, shall be carried out diligently. Such obligation to repair and maintain shall not be construed as limiting the right of the Lessee, pursuant to this Article 8, to make replacements, alterations or substitutions to the Project in lieu of repairing it. The Lessee will permit the Lessor, or its agents, at all reasonable times during the Term, to enter and view the state of repair of the Project.

## **8.2 Operating Standards**

The Lessee shall operate and manage the Project and in furtherance of its obligation to do so, the Lessee shall:

- (a) in order to keep the Lessor advised regarding all significant decisions undertaken by the Lessee in the operation of the Project, maintain a continuing liaison with the Lessor at all times and for such purpose appoint not less than one authorized representative who shall have the duty of maintaining such liaison with a similarly appointed representative of the Lessor;

- (b) do or cause to be done all such things which are necessary so as to ensure compliance by the Lessor and the Lessee and the tenants, subtenants and licensees with all of the terms and conditions of all Applicable Law, Insurance Requirements and all leases with tenants of premises in the Project;
- (c) consider and advise the Lessor from time to time as to rules and regulations or any additional rules and regulations required to be made for the better or more efficient operation of the Project and cause the same to be honoured;
- (d) keep the Building heated and cooled to reasonable temperatures, according to the season, and cause the heating, ventilating and air-conditioning equipment to be operated, maintained and kept in repair in conformity with the Lessee's obligations hereunder;
- (e) arrange for and supervise adequate security for physical protection and, when necessary, arrange for the control of vehicular and pedestrian access and egress, all as approved by the Lessor; and
- (f) perform and, where desirable, contract for all things necessary for the proper and efficient management, operation and maintenance of the Project and performance of every other reasonable act whatsoever in or about the Project to carry out the intent of this Lease;

(the foregoing herein referred to as the "Operating Standards).

In its operation of the Project the Lessee shall be prudent, responsible and responsive to suggestions of the Lessor. If the Lessor is of the opinion that the Lessee is not adhering to the Operating Standards in any respect, the Lessor may give notice thereof to the Lessee and a reasonable opportunity to adhere to the Operating Standards. If the Lessee disputes the Lessor's allegations that the Lessee has failed to adhere to the Operating Standards, either the Lessee or the Lessor may submit the alleged failure to arbitration in accordance with Article 13. If such arbitration shall determine that the Lessee has not adhered to the Operating Standards in such respect, the Lessee shall comply with the decision of the arbitrators, failing which the Lessor, in addition to any of its other rights and remedies hereunder, may take the necessary steps to remedy such failure at the cost of the Lessee and to recover such cost as Rent. If the Lessee continues to fail to adhere to the Operating Standards in respect of the alleged failure and the Lessee does not dispute the Lessor's allegations that the Lessee has failed to adhere to the Operating Standards, in addition to any of its other rights and remedies hereunder, the Lessor may take the necessary steps to remedy such failure at the cost of the Lessee and to recover such cost as Rent.

### **8.3 Alterations**

The Lessee may make or permit to be made such replacements, alterations or substitutions to any portion of the Project in lieu of repairing the same provided that the approval of the Lessor shall be first obtained in respect of the Project Plans (to the extent that they pertain to the exterior of the Project) and to the Concept Design, Site Plan and Development Schedule and provided that such replacements, alterations or substitutions shall not materially change the

scale or character of the Project or impair or weaken the structure, structural integrity or mechanical or electrical systems of the Project or necessitate the closing of the Project for a period in excess of ninety days or affect the integration of the Project with the balance of the Technology Park Lands. All alterations or other work undertaken by or for the Lessee shall be done in compliance with the terms of this Lease and once begun shall be carried out diligently to completion and be performed in all respects in accordance with Applicable Law and Insurance Requirements. Replacements, alterations and substitutions under this section shall be deemed not to be redevelopment for the purposes of Section 4.14.

#### **8.4 Collateral Agreements**

The Lessee shall perform and observe all the covenants and obligations on its part to be performed and observed under the Collateral Agreements and the Lessee shall not do any act or omit or suffer anything by reason whereof a breach or default would result under such Collateral Agreements. Where the Lessee is bound, by reason of this Section to perform or observe a covenant or obligation under the Collateral Agreements which is in conflict with another covenant or obligation of the Lessee under this Lease, the due and proper performance or observance of the first mentioned covenant or obligation shall not thereby result in a breach of the other covenant or obligation of the Lessee under this Lease provided that where such other covenant or obligation is not in conflict with but, rather, imposes a more onerous standard than that contained in the Collateral Agreements, such other covenant or obligation shall be performed by the Lessee, failing which the Lessee shall be in breach or default thereunder.

#### **8.5 Applicable Law and Insurance Requirements**

The Lessee at its expense shall promptly comply with all Applicable Law and Insurance Requirements. No later than 10 Business Days after receipt thereof, the Lessee shall deliver to the Lessor a true copy of any notice of default, notice of violation, writ, summons or other communication served upon or received by the Lessee indicating non-compliance by the Lessee with Applicable Law or Insurance Requirements. Non-compliance by the Lessee with any Applicable Law and/or Insurance Requirements shall not constitute a breach by the Lessee of any covenant in this Section 8.5 if and for so long as, during any period of non-compliance, the Lessee or a sublessee is actively contesting (other than with the Lessor) the validity or interpretation of such Applicable Law or Insurance Requirements in accordance with Section 8.6 and, if reasonably required by the Lessor, the Lessee shall have deposited Collateral with the Lessor sufficient to satisfy in full any such amount.

#### **8.6 Contestation**

The Lessee shall have the right, after prior written notice to the Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of one or more of the Lessee and/or the Lessor, without cost or expense to the Lessor, the validity or application of any Applicable Law or Insurance Requirements subject to the following:

- (a) if and so long as by the terms of any Applicable Law or Insurance Requirements compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of any lien, charge or liability of any kind or

any closing or demolition order against the Project or any part thereof and without subjecting the Lessor to any liability, civil or criminal, and without placing the Lessor's estate in the Project in jeopardy, for failure so to comply therewith, the Lessee may delay compliance therewith until the final determination of such proceeding;

- (b) if any lien, charge or civil liability, foreclosing or demolition order would or might be incurred by reason of any such delay or if the Lessor's estate in the Project might be placed in jeopardy by reason of such delay, the Lessee nevertheless, with the prior written consent of the Lessor, may contest as aforesaid and delay as aforesaid, provided that such delay does not subject the Lessor to criminal liability, and the Lessee prosecutes the contest with due diligence;
- (c) the Lessee shall indemnify and save harmless the Lessor from all liability for fines, penalties, forfeitures and like charges imposed upon the Lessor by reason of any such contests or of non-compliance by the Lessee during the period thereof;
- (d) the Lessor shall not be required to join in any proceedings referred to in this Section 8.6 unless the provisions of any law, rule or regulation at the time in effect requires that such proceedings be brought by or in the name of the Lessor or any owner of the Project Lands, in which event the Lessor shall join in such proceedings or permit the same to be brought in its name; and
- (e) the Lessor shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and the Lessee will indemnify and save the Lessor harmless from any such costs and expenses.

## **ARTICLE 9**

### **DAMAGE OR DESTRUCTION**

#### **9.1 No Termination**

Save as provided in Section 9.2, the partial destruction or damage or complete destruction by fire or other casualty of the Project shall not terminate this Lease or entitle the Lessee to surrender possession of the Project Lands or to demand any abatement or reduction of Rent under this Lease, any law or statute now or in the future to the contrary notwithstanding.

#### **9.2 Repair and Replacement by Lessee**

In the event of damage to or destruction of the Project or any part thereof, subject to Section 8.3, the Lessee shall either replace the portion of the Project destroyed with a new structure or repair or reconstruct such portion of the Project. Any such replacement, repair or reconstruction of the Project or any part thereof, shall be commenced diligently after such damage or destruction and in any event within 30 days thereafter or such longer period, not to exceed 90 days after such damage or destruction, as is reasonably necessary having regard to the circumstances at such time and shall be made or done in compliance with the provisions of Section 8.3 and shall be substantially to the scale and character of the structures damaged but

after allowing the changes necessitated by then current technology and construction practices and if approved by the Lessor, which approval may be unreasonably and arbitrarily withheld, those changes which would make the Project suitable for alternate uses. Replacement, repair or reconstruction under this Section shall be deemed not to be redevelopment for the purposes of Section 4.14.

**9.3            Repair or Replacement by Lessor**

If the Lessee does not commence the replacement, repair or reconstruction of the Project as required by Section 9.2, or having commenced the same does not carry out the same diligently to completion, the Lessor may do so and for any such purposes the Lessor shall have a right of entry upon the Project. If the Lessor exercises its rights under this Section the Lessee will cause the Insurance Trustee to release the proceeds of insurance to the Lessor for such purpose and in accordance with the Insurance Trust Agreement and the Lessee will pay to the Lessor forthwith on demand from time to time the difference, if any, between any such insurance proceeds paid to the Lessor and its total costs and expenses of completing such replacement, repair or reconstruction.

**ARTICLE 10**  
**INDEMNITIES**

**10.1           By Lessee**

The Lessee shall indemnify and save harmless the Lessor from any and all Claims whatsoever arising during the Term out of:

- (a) any breach, violation or non-performance of any covenant, condition or agreement set forth in this Lease to be fulfilled, kept, observed or performed by the Lessee pursuant to this Lease;
- (b) any injury to person or persons, including death resulting at any time therefrom, occasioned by the use and/or occupation of the Project; and
- (c) any damage to or loss of property occasioned by the use and/or occupation of the Project,

except to the extent that such Claims are due to the negligence or wrongful acts or omissions of the Lessor or Persons for whom it is in law responsible.

**10.2           By Lessor**

The Lessor shall indemnify and save harmless the Lessee from any and all Claims whatsoever arising during the Term out of any breach, violation or non-performance of any covenant, condition or agreement set forth in this Lease to be fulfilled, kept, observed or performed by the Lessor pursuant to this Lease except to the extent that such Claims are due to the negligence or wrongful acts or omissions of the Lessee or Persons for whom it is in law responsible.

### **10.3 Guarantee and Indemnity By Indemnifier**

In consideration of the Lessor entering into this Lease with the Lessee, the Indemnifier hereby covenants and agrees with the Lessor as follows:

- (a) the Indemnifier shall use their best efforts to cause the Lessee at all times to fully and faithfully perform its obligations pursuant to this Lease;
- (b) the Indemnifier hereby irrevocably and unconditionally guarantees payment and performance by the Lessee of all of the Lessee's obligations pursuant to this Lease and covenants and agrees that if any of the Lessee's obligations pursuant to this Lease 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 Lessee and not merely as surety or guarantor, for the payment and performance of all of the Lessee's obligations pursuant to this Lease. Such liability shall be absolute and unconditional (save as to any applicable conditions to the Lessee's obligations contained in this Lease) and shall not be released, discharged, limited, lessened or otherwise affected by any of the following:
  - (i) any amendment to this Lease made between the Lessor and the Lessee (the Indemnifier acknowledging that the Lessor and the Lessee may amend the provisions of this Lease other than this Section 10.3 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 the Lessor to the Lessee;
  - (iii) the making by the Lessee or acceptance by the Lessor of any proposals or compromises with respect to the Lessee's obligations; and
  - (iv) any dealings between the Lessor and the Lessee or any act or omission by the Lessor or the Lessee in relation to this Lease that would otherwise release or exonerate the Indemnifier from or constitute a defence to the Indemnifier's obligations under this Lease, 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 the Lessor from and against any Claims that may be made against or suffered or incurred by the Lessor, directly or indirectly arising in whole or in part from, in connection with or in respect of any default by the Lessee in the performance of any of its obligations pursuant to this Lease;
- (e) the Lessor shall not be bound to exercise or exhaust its rights, remedies or recourse against the Lessee or any other Person before being entitled to demand payment from the Indemnifier under this Section 10.3; and

- (f) notwithstanding the foregoing or any other provision in this Lease to the contrary, the Indemnifier may be replaced with a different Person, upon the prior approval of the Lessor (which approval shall not be unreasonably withheld), provided that such Person is satisfactory to the Lessor (acting reasonably), and provided further that, despite any provision of this Lease or any statutory provision or other law to the contrary, the Lessor may withhold its approval in its absolute and unfettered discretion and shall not be required to act reasonably in consenting to the foregoing replacement if: (i) the Lessee is then in default under any of the terms, covenants and conditions herein on its part to be observed and performed, for which a Notice has been given to the Lessee; or (ii) if the foregoing replacement is to take place at any time prior to the Substantial Completion Date. It shall not be considered unreasonable for the Lessor to refuse to give its consent if, after considering (in addition to any statutory or common law tests in respect of the withholding of consent) all or any of the following criteria, if, in the Lessor's opinion, the proposed replacement Indemnifier does not have a good reputation or a history of successful business operation, if the proposed transferee does not have a good credit rating and a substantial net worth, and if the Lessor has not received such information, material, books or records from the proposed replacement Indemnifier sufficient to enable the Lessor, acting reasonably, to make a determination with due dispatch concerning any of the matters set out above.

#### **10.4 Duration**

The obligations to indemnify contained in Sections 10.1, 10.2 and 10.3 shall survive any termination of this Lease, anything in this Lease to the contrary notwithstanding. Nothing in Sections 10.1, 10.2, 10.3 and 10.4 shall create or extend any right for the benefit of any third party.

### **ARTICLE 11** **TRANSFERS**

#### **11.1 Assignment**

The following provisions shall govern the rights and restrictions in respect of a Transfer by the Lessee:

- (a) other than in respect of a Transfer pursuant to Section 11.2, 11.3 and 11.4, the Lessee shall not undertake or permit a Transfer without in each instance obtaining the approval of the Lessor, which shall not be unreasonably withheld, provided that, despite any provision of this Lease or any statutory provision or other law to the contrary, the Lessor may withhold its approval in its absolute and unfettered discretion and shall not be required to act reasonably in consenting to a Transfer if: (i) the Lessee is then in default under any of the terms, covenants and conditions herein on its part to be observed and performed, for which a Notice has been given to the Lessee; or (ii) if the Transfer is to take place at any time prior to the Substantial Completion Date. It shall not be considered unreasonable for the



Lessor to refuse to give its consent if, after considering (in addition to any statutory or common law tests in respect of the withholding of consent) all or any of the following criteria, if, in the Lessor's opinion, the proposed transferee does not have a good reputation or a history of successful business operation, if the proposed transferee does not have a good credit rating and a substantial net worth, including so as to be able to finance the transferee's acquisition of its interest and its operations in the Project without a material risk of defaulting under this Lease, and if the Lessor has not received such information, material, books or records from the Lessee or the proposed transferee sufficient to enable the Lessor, acting reasonably, to make a determination with due dispatch concerning any of the matters set out above;

- (b) in no event shall any Transfer to which the Lessor may have consented constitute a release or otherwise relieve the Lessee or the Indemnifier from any of its obligations under this Lease for the Term. No consent to a Transfer shall be valid unless within 10 Business Days after the completion thereof, the Lessee shall deliver to the Lessor a duplicate original of the applicable Transfer documentation duly executed by the Lessee, an instrument in form satisfactory to the Lessor but in accordance with the provisions of this Lease, duly executed by the transferee, wherein such transferee shall assume the Lessee's obligations pursuant to this Lease, payment of all reasonable legal fees and other expenses incurred by the Lessor in connection with the Transfer and any and all necessary approvals, notices and/or further agreements required pursuant to any of the Collateral Agreements shall have been obtained, given and/or executed, as the case may be, in respect of the Transfer.

## **11.2 Transfer by Lessee to an Affiliate**

Notwithstanding the provisions of Section 11.1, the Lessee may, at any time, effect a Transfer to an Affiliate of the Lessee, provided that the following pre-conditions shall first have been satisfied:

- (a) any and all necessary approvals, notices and/or further agreements required pursuant to any of the Collateral Agreements shall have been obtained, given and/or executed, as the case may be, in respect of the Transfer;
- (b) the transferee shall have expressly covenanted and agreed in writing with the Lessor that the transferee will perform and observe all of the covenants and obligations of the Lessee hereunder and under the Collateral Agreements and that the transferee will remain an Affiliate of the Lessee so long as the transferee has any interest in this Lease or the Project; and
- (c) the Lessee shall have expressly covenanted and agreed in writing with the Lessor that the Lessee will be jointly and severally liable with the transferee to perform and observe all of the covenants and obligations being assumed by the transferee pursuant to Subsection 11.2(b) and that the transferee will remain an Affiliate of the Lessee so long as the transferee has any interest in this Lease or the Project.

### **11.3            Space Leases**

The Lessee shall not enter into Space Leases without the consent of the Lessor, provided that the Lessor's approval shall not be unreasonably withheld if:

- (a) the use by the Occupant complies with the requirements of Article 6.
- (b) the proposed Occupant meets the criteria specified in the Leasing Policy;
- (c) each such Space Lease shall contain the undertaking by the Occupant thereunder (expressed to be in favour of the Lessor as well as the Lessee) that such Occupant, at the request of the Lessor, will, in the event of termination of this Lease, attorn to the Lessor as its tenant, licensee, concessionaire or occupant;
- (d) no Space Lease shall have a term extending beyond the Term;
- (e) such Space Lease is substantially in the form of the standard form of space lease, approved by the Lessor;
- (f) any and all approvals, notices and/or further agreements required pursuant to any of the Collateral Agreements shall have been obtained, given and/or executed, as the case may be, in respect of the Space Lease.

Nothing in this Section shall be construed as an approval or consent of the Lessor to any Space Lease for the purposes of Subsection 39(2) of the *Commercial Tenancies Act* (Ontario). The Lessor shall be provided, on request, with copies of the executed Space Leases. The Lessee shall ensure that all Space Leases are on a fully net basis and shall not enter into any sublease, licence, concession agreement or other occupancy agreement to use any premises in the Project, other than a Space Lease entered into pursuant to and in compliance with this Section. All Occupants occupying premises pursuant to a Space Lease shall enter into a non-disturbance and attornment agreement with the Lessor in the form attached hereto as Schedule 13 or such other form acceptable to the Lessor.

### **11.4            Leasehold Mortgage**

The Lessee shall not mortgage or charge or grant a security interest of any nature whatsoever in this Lease or the Project (or any part thereof), or permit this Lease or the Project to be subject to a mortgage, charge or security interest of any nature whatsoever, other than a Leasehold Mortgage and the UW Security. No Leasehold Mortgage shall be permitted or valid unless and until:

- (a) the Leasehold Mortgage is security only for obligations which pertain to:
  - (i) the construction and development of the Project; or
  - (ii) obligations intended to replace the type of obligations referred to in Section 11.4(a)(i) above provided such obligations pertain to the initial

construction costs of the Project and permitted redevelopment costs associated with the Project Lands and/or the Building; or

(iii) reasonable financing associated with either the normal operation of the Project by the Lessee or a Transfer by the Lessee of the Project, provided that in each such instance:

- (A) such Transfer, if applicable, is approved by the Lessor;
- (B) the proposed Leasehold Mortgage is in accordance with prudent industry standards and practices acceptable to the Lessor, acting reasonably;
- (C) the proposed Leasehold Mortgage only represents security for a financing necessary for the normal operation (or in the case of a Transfer, the acquisition) of the Project and does not constitute security for any other obligations of the Lessee (or any Affiliate of the Lessee) unrelated to the Project and such Leasehold Mortgage shall not contain any cross-default provisions associated with any other financing of the Lessee (or any Affiliate of the Lessee) which is not a Leasehold Mortgage;
- (D) the aggregate principle amount of:
  - a) the proposed Leasehold Mortgage in question; and
  - b) the outstanding principal amount of all prior or pari passu ranking Leasehold Mortgage(s) which are not being discharged contemporaneously with the completion of the Leasehold Mortgage,

does not exceed an amount that is 75% of the then current value of the leasehold estate held by the Lessee in the Project;

- (b) the Leasehold Mortgagee is approved by the Lessor;
- (c) the Leasehold Mortgagee shall have entered into the Leasehold Mortgagee Acknowledgement Agreement with the Lessor;
- (d) any and all necessary approvals, notices and/or further agreements required pursuant to any of the Collateral Agreements and the provisions of this Section 11.4 of this Lease shall have been obtained, given and/or executed, as the case may be, in respect of the Leasehold Mortgage.

If the Lessor desires to register any agreement entered into by a Leasehold Mortgagee in its favour and any such agreement is not registrable in its entirety, the Lessor may require the Leasehold Mortgagee to execute two agreements, one of which shall be capable of being

registered against the Project Lands, and which, when taken together are to the same effect as the agreement which was not registrable.

### **11.5 Subordination and Attornment**

This Lease and the rights of the Lessee hereunder shall be subject and subordinate to all Lessor Mortgages (as defined below) and to all renewals, modifications, consolidations, replacements and extensions thereof. Whenever requested by the Lessor or a Lessor Mortgagee (as defined below), the Lessee shall, within five Business Days after such request, enter into an agreement (a "non-disturbance agreement") with the Lessor Mortgagee whereby the Lessee postpones or subordinates this Lease to the interest of such Mortgagee and agrees that whenever requested by such Lessor Mortgagee it shall attorn to and become the Lessee of such Lessor Mortgagee, or any purchaser of the Project upon realization, in the event of the exercise by the Lessor Mortgagee of any of its mortgage remedies, for the then unexpired residue of the Term upon all the terms and conditions of this Lease, provided that the Lessee's occupancy of the Project shall not be disturbed except pursuant to this Lease, provided that in no event shall the Lessor Mortgagee or any such purchaser have any liability in respect of any obligations or covenants of the Lessor relating to the period prior to the time the Lessor Mortgagee or such purchaser becomes an owner or mortgagee in possession. For purposes of this Section, "Lessor Mortgage" means any mortgage, charge or other security interest granted by the Lessor or affecting this Lease or the Project and including any deed of trust and mortgage securing bonds, debentures or notes by any such mortgage, charge or other security, all as amended or supplemented from time to time. "Lessor Mortgagee" means any mortgagee, chargee, lender under or secured by a Lessor Mortgage and includes any trustee for bondholders under a deed of trust and mortgage securing bonds, debentures or notes.

## **ARTICLE 12 DEFAULT AND REMEDIES**

### **12.1 Events of Default; Termination**

In any of the following events (each an "Event of Default"):

- (a) if Rent or any part thereof shall not be paid on any day when such payment is due, the Lessor may, at any time thereafter, give Notice of such failure to the Lessee and if the failure is not remedied by the Lessee within 5 Business Days after the giving of such Notice; or
- (b) if the Lessee shall fail or neglect to perform or comply with any of the terms, covenants or conditions contained in this Lease (other than the covenants to pay Rent) on the part of the Lessee to be performed or observed, the Lessor may, at any time thereafter, give Notice of such failure or neglect to the Lessee and the Lessee:
  - (i) if the matter complained of in such Notice is capable of being remedied by the payment of money, has not corrected the matter complained of within a period of 5 Business Days after the giving of such Notice; or

- (ii) if the matter complained of in such Notice is not capable of being remedied by the payment of money has not corrected the matter complained of within a period of 20 Business Days after the giving of such Notice, or if a period of more than such 20 Business Days is reasonably required to remedy, with reasonable diligence, the matters complained of in such Notice, has not forthwith commenced to remedy the same and diligently prosecute the remedying of the same to completion;
- (c) if an Event of Insolvency shall have occurred with respect to the Lessee or, subject to Section 10.3(f), the Indemnifier; or
- (d) a breach of an obligation by the Lessee which has resulted in cancellation of insurance coverage where the Lessee has not prior to or concurrent with such cancellation replaced such coverage with comparable coverage or breach of an obligation where there has been a notice of cancellation of insurance coverage which has not been cured and where the Lessee has not, within the period of time set out in such notice (or within 10 Business Days where no period is set out therein) replaced such coverage with comparable coverage or which is otherwise a breach of the obligations respecting insurance; or
- (e) abandonment of the Project by the Lessee; or
- (f) if the Substantial Completion Date shall not have been attained by the third anniversary of the Commencement Date,

then the Lessor, at its option, may terminate this Lease by Notice to the Lessee, in which event such termination shall be effective immediately upon the delivery of such Notice and may enter upon the Project with or without process of law and take possession thereof.

## **12.2 Right to Cure Defaults**

Without limiting any other remedies the Lessor may have arising out of this Lease or at law in respect of any default in the performance of the Lessee's obligations under this Lease, the Lessor shall have the right, in the case of any default and without any re-entry or termination of this Lease, to enter upon the Project and cure or attempt to cure such default (but this shall not obligate the Lessor to cure or attempt to cure any such default or, after having commenced to cure or attempt to cure such default, prevent the Lessor from ceasing to do so) and the Lessee shall promptly reimburse to the Lessor any expense incurred by the Lessor in so doing and the same shall be recoverable as Rent.

## **12.3 Other Sums Recoverable as Rent**

All amounts which may from time to time become due from the Lessee to the Lessor under any provision of this Lease (including without limitation amounts due to reimburse the Lessor for the expense of remedying any default by the Lessee or exercising its rights hereunder if an Event of Default shall have occurred) shall, if unpaid, be recoverable (together with interest thereon as provided in Section 3.7) as Rent, and the Lessor shall have all remedies in respect of their non-payment as in the case of a non-payment of Rent.

**12.4            Relet Premises**

In addition to any other remedy available to the Lessor, if an Event of Default shall have occurred and be continuing, the Lessor shall have the right to enter the Project as agent of the Lessee and to relet the Project for whatever length, and on such terms as the Lessor in its discretion may determine and to receive the rent therefore and as agent of the Lessee to take possession of any property of the Lessee on the Project, to store such property at the expense and risk of the Lessee or to sell or otherwise dispose of such property in such manner as the Lessor sees fit without notice to the Lessee; to make alterations to the Project to facilitate their reletting; and to apply the proceeds of any such sale or reletting, first, to the payment of any expenses incurred by the Lessor with respect to any such reletting or sale, second, to the payment of any indebtedness of the Lessee to the Lessor other than Rent and, third, to the payment of Rent in arrears, with the residue to be held by the Lessor and applied to payment of future Rent as it becomes due and payable; provided that the Lessee shall remain liable for any deficiency to the Lessor.

**12.5            Remedies of Lessor Generally**

If an Event of Default shall have occurred and be continuing, the Lessor, whether or not the Term shall have been terminated pursuant to the provisions hereof, may after Notice to the Lessee enter upon and repossess the Project or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove the Lessee and all other persons and any and all property therefrom. The Lessor shall not be under any liability to the Lessee for or by reason of any such entry, repossession or removal. The Lessor shall in addition to the right of re-entry have all other rights and remedies, including damages and injunction, and also including all rights and remedies available under the UW Security, at law or in equity arising upon any default by the Lessee under this Lease or the UW Security. Such remedies are not exclusive or alternative, but the Lessor may from time to time have recourse to all or any of such remedies.

**12.6            Examination and Inspection**

The Lessor may enter upon the Project at all reasonable times during usual business hours for the purpose of inspecting the Project for the purpose of ascertaining whether all of the obligations of the Lessee under this Lease with respect to the Project are being performed. The Lessor shall not have any duty to make any such inspection nor shall the Lessor incur any liability or obligation to the Lessee for not making any such inspection.

**ARTICLE 13**  
**DETERMINATIONS**

**13.1            Arbitration**

If any arbitration is expressly permitted or expressly required under this Lease, arbitration proceedings shall be commenced by the party desiring arbitration (herein called the "Initiating Party") and the following principles shall apply to such arbitration:

- (a) upon Notice from the Initiating Party to the other party (herein called the "Responding Party"), the parties shall meet and attempt to appoint a single

arbitrator. If the parties are unable to agree on a single arbitrator then, upon Notice given by either party and within five Business Days of such Notice, each party shall name an arbitrator and the two arbitrators so named shall promptly thereafter choose a third. If either party shall fail to name an arbitrator within five Business Days from such Notice, then the second arbitrator shall be appointed by a judge of the Superior Court pursuant to the *Arbitrations Act* (Ontario) (as amended or replaced from time to time) upon application of the other party. If the two arbitrators shall fail within five Business Days from their appointment to agree upon and appoint the third arbitrator then, upon application of either party, such third arbitrator shall be appointed by a judge of the Superior Court pursuant to the *Arbitrations Act* (Ontario) (as amended or replaced from time to time). The provisions of the *Arbitrations Act* (Ontario) (as amended or replaced from time to time) shall apply to any such court application pursuant to this Subsection 13.1(a);

- (b) the arbitrator or arbitrators selected to act hereunder shall be qualified by education and training to pass upon the particular question in dispute. In the absence of objection by Notice by either party to the other given by no later than 10 Business Days after Notice of the appointment of each arbitrator has been given, such arbitrator shall be deemed for all purposes to be so qualified;
- (c) the single arbitrator or the arbitrators so chosen shall proceed immediately to hear and determine the question or questions in dispute. The decision and reasons therefor of the single arbitrator, or if more than one arbitrator, then of the arbitrators, or a majority of them, shall be made within 20 Business Days after the appointment of the single arbitrator, if that is the case, or the appointment of the third arbitrator, subject to any reasonable delay due to unforeseen circumstances. Notwithstanding the foregoing, in the event that the single arbitrator fails to make a decision within 20 Business Days after his appointment or if the arbitrators, or a majority of them, fail to make a decision within 20 Business Days after the appointment of the third arbitrator, then either party may elect to have a new single arbitrator or arbitrators chosen in like manner as if none had previously been selected;
- (d) the decision and reasons therefor of the single arbitrator, or the decision and reasons therefor of the arbitrators, or a majority of them, shall be drawn up in writing and signed by the single arbitrator or by the arbitrators, or a majority of them, and shall be final and binding upon the parties hereto as to any question or questions so submitted to arbitration and the parties shall be bound by such decision and perform the terms and conditions thereof;
- (e) the compensation and expenses of the single arbitrator or the arbitrators (unless otherwise determined by the arbitrators at the request of either of the parties hereto) shall be shared in equally by the parties hereto; and
- (f) neither party hereto shall be deemed to be in default of any matter being arbitrated until five Business Days after the decision of the arbitrator or arbitrators is delivered to both parties hereto.

## **13.2 Fair Market Value**

(a) When the Fair Market Value of the Project Lands is to be established in order to determine Annual Basic Rent pursuant to Section 3.1 hereof, the Lessor and the Lessee shall agree upon an assessor, with qualifications as specified in Subsection 13.2(b) (the "Assessor"), on or prior to the date which is 365 days prior to the date on which the period specified in Section 3.1, as the case may be, is said to commence. If the Lessor and the Lessee are unable to agree upon the Assessor within such period, either one of them may apply, on 10 Business 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 Lessor on the one hand and the Lessee on the other hand.

(b) 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.

(c) In connection with Section 3.1, the Assessor shall make a determination of the Fair Market Value of the Project Lands as if the Project Lands were: (i) unencumbered; (ii) vacant; (iii) unserviced (but taking into account that all services necessary for the proper functioning of the Project are available to the lot line); and (iv) zoned for its actual or intended use, which determination shall be completed on or prior to the date which is 180 days prior to the date on which the relevant period specified in Section 3.1, is said to commence and calculated as of the date specified in such subsection. 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 and as serviced to the lot line and to the extent applicable or reasonable, any other factors as the Assessor may deem relevant.

(d) 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 and which may relate to the business of the Lessee carried on at the Project. The determination of Fair Market Value shall be final, binding and conclusive upon the Lessor and Lessee.

## **ARTICLE 14 ENVIRONMENTAL MATTERS**

### **14.1 Lessee's Representations and Warranties**

The Lessee represents and warrants to the Lessor and acknowledges that the Lessor is relying on such representations and warranties in entering into this Lease, that as of the date of this Lease except as disclosed to the Lessor in writing, the Lessee is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order, or any other order or proceeding under any Environmental Laws.



#### **14.2 Compliance with Environmental Laws**

(a) Notwithstanding any other covenants, agreements or obligations of the Lessee contained in this Lease, the Lessee shall observe and comply with and ensure that any Occupant observes and complies with all Environmental Laws.

(b) The Lessee shall promptly provide and shall ensure that any Occupant promptly provides to the Lessor a copy of any assessment, audit, report or test results relating to the environmental condition of the Project (or any part thereof) conducted by or for the Lessee or any Occupant at any time before, during, or after the Term.

(c) The Lessee shall, at the Lessor's reasonable request from time to time, provide the Lessor with a certificate of a senior officer of the Lessee and any Occupant certifying that the Lessee or the Occupant, as the case may be, is in compliance with all Environmental Laws and that no adverse Environmental occurrences have taken place at the Project (or any part thereof), other than as disclosed in writing to the Lessor.

#### **14.3 Confidentiality of Environmental Reports**

The Lessee shall maintain and shall ensure that any Occupant shall maintain all assessments, audits, reports, and test results relating to the Environmental condition of the Project (or any part thereof) in strict confidence and shall not disclose their terms or existence to any third party unless expressly permitted or required by this Lease. Notwithstanding the foregoing, such disclosure may be made if required by law or if made to the Lessee's or Occupant's professional advisors, lenders, sub-tenants or assignees on a need-to-know basis provided the Lessee ensures that such Persons shall not disclose the same to any other party except as permitted herein, or with the prior written consent of the Lessor.

#### **14.4 Records**

The Lessee shall maintain and shall ensure that any Occupant shall maintain at the Project (or any part thereof) during the Term and, for a period of ten (10) years following the expiration or early termination of the Term at such location as may be approved by the Lessor, documents and records, including permits, licences, orders, approvals, certificates, sound recordings, authorizations, registrations and other such records, including any documents and record stored by means of a device, relating to the operations conducted at and the environmental condition of the Project (or any part thereof) which may be either reviewed or copied or both reviewed and copied by the Lessor at any time on 24 hours' prior written notice, except in the case of an emergency during the Term, when no prior notice shall be required.

#### **14.5 Access by Lessor**

Without limiting the Lessor's other rights hereunder and without relieving the Lessee of any of its obligations under this Lease, the Lessee shall and shall ensure that any Occupant shall, at such reasonable times as the Lessor requires, permit the Lessor and its designated representatives to enter and inspect the Project (or any part thereof) and the operations conducted at the Project (or any part thereof), to conduct environmental tests and environmental assessments and in that regard, to remove samples from the Project (or any part

thereof), to examine and make copies of any documents or records relating to the Project (or any part thereof), to interview the employees of the Lessee and any Occupant and to take such steps as the Lessor deems necessary for the safety and preservation of the Project (or any part thereof).

#### **14.6 Regulatory Inquiries**

The Lessee shall promptly provide and shall ensure that any Occupant shall promptly provide to the Lessor on request such written authorizations as the Lessor may require from time to time to make inquiries of any Authority regarding the Lessee's and any Occupant's compliance with Environmental Laws.

#### **14.7 Environmental Events**

(a) The Lessee shall promptly notify and shall ensure that any Occupant shall promptly notify the Lessor in writing of any of the following events (an "Environmental Event") of which the Lessee or Occupant may become aware:

- (i) any Release of a Contaminant or any other occurrence or condition at the Project (or any part thereof) or any adjacent property that could contaminate the Project (or any part thereof) or any adjacent property contrary to any Environmental Law or subject the Lessee, any Occupant, the Lessor or the Project (or any part thereof) to any fines, penalties, orders, investigations or proceedings under Environmental Laws;
- (ii) any change, order, investigation or notice of violation or non-compliance under any Environmental Laws issued against the Lessee or any Occupant relating to operations at the Project (or any part thereof); and
- (iii) any notice, claim, action or other proceeding by any third party against the Lessee or any Occupant or in respect of the Project (or any part thereof) concerning the Release or alleged Release of Contaminants at or from the Project (or any part thereof) or the environmental condition of the Project (or any part thereof) or the compliance with Environmental Laws of the business of the Lessee or any Occupant.

(b) The Lessee shall notify and shall ensure that any Occupant shall notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Project (or any part thereof) in accordance with Environmental Laws, and failure by the Lessee or any Occupant to do so shall authorize, but not obligate, the Lessor to so notify the appropriate authorities.

(c) If the Lessee or any Occupant shall, either alone or with others, cause during the Term the happening of any Environmental Event, the Lessee shall, at its own expense:

- (i) as soon as practicable, give or cause to be given to the Lessor notice to that effect and thereafter give or cause to be given to the Lessor from time to time written notice of the extent and nature of the Lessee's compliance with the following provisions of Section 14.7;

- (ii) as soon as practicable, perform or cause to be performed any work to rectify the contravention or non-compliance, which will result in conformity and compliance with all Environmental Laws;
- (iii) if requested by the Lessor, obtain or cause to be obtained a certificate from an independent consultant designated or approved by the Lessor verifying the complete and proper compliance with the requirements of Environmental Laws or, if such is not the case, reporting as to the extent and nature of any failure to comply with Environmental Laws;
- (iv) as soon as practicable, cease or cause the cessation of any activity which constitutes an Environmental Event and which causes or permits any substance to be Released onto or into the Project (or any part thereof) or any adjacent land, air or water or results in any substance being released into the Environment; and
- (v) if requested by the Lessor, obtain or cause to be obtained a certificate from an independent consultant designated or approved by the Lessor verifying that any activity referred to in Section 14.7(c)(iv) above has ceased.

**14.8 Removal of Contaminants**

- (a) The Lessee shall:
  - (i) on the expiry or earlier termination of this Lease;
  - (ii) at any time if required by any Authority pursuant to Environmental Laws;  
or
  - (iii) if requested by the Lessor where in the Lessor's reasonable opinion the Project (or any part thereof) are contaminated at a level which exceeds a level permitted under Environmental Laws notwithstanding no governmental authority has required any remedial action be taken;

promptly, at its own cost and in accordance with Environmental Laws, remediate or cause to be remediated by removal to a level acceptable under Environmental Laws any contamination of the Project (or any part thereof) or any adjacent property resulting from Contaminants in either case brought onto, used at, or Released from the Project (or any part thereof) by the Lessee or any Occupant or any person for whom the Lessee or Occupant is in law responsible.

(b) For greater certainty, the foregoing obligations of the Lessee shall include the treatment of water, including surface and groundwater, and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation under Environmental Laws. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence.

(c) The Lessee shall provide or cause to be provided to the Lessor full information with respect to any remedial work performed pursuant to this Article 14 and shall comply with the Lessor's reasonable requirements with respect to such work.

(d) The Lessee agrees that if the Lessor reasonably determines that the Lessor, its property, its reputation or the Project (or any part thereof) is placed in any jeopardy by the requirement for any such remedial work, the Lessor may, but shall be under no obligation to, undertake such work or any part thereof at the cost of the Lessee.

#### **14.9 Exit Environmental Audit**

(a) The Lessee shall cause an environmental audit of the Project to be performed as close as reasonably practicable but no earlier than thirty (30) days prior to the expiration of the Term or within thirty (30) days from the early termination of the Term, as the case may be, by an independent consultant acceptable to the Lessor acting reasonably to:

- (i) determine the existence and extent of any Contaminants on the Project (or any part thereof) or on any adjoining land present as a result of the operation of the Lessee or any Occupant or the use and occupancy of the Project (or any part thereof) by the Lessee or any Occupant either alone or by their respective agents, servants, employees, contractors or other Persons for whom the Lessee or any Occupant is, in law, responsible; and
- (ii) establish the estimated cost including the usual contingencies, if any, to restore and return the Project (or any part thereof) and any other impacted land to a condition which is to be determined by the specific use thereof and which is in compliance with Environmental Laws;

and shall provide the Lessor with a copy of such Environmental audit immediately after its completion.

(b) Should an environmental audit described in Section 14.9(a) reveal the presence of Contaminants in, on or under the Project (or any part thereof) or adjoining land as described in Section 14.9(a)(i) which exceed levels permitted under Environmental Laws then:

- (i) the Lessee shall diligently remove or cause to be removed such Contaminants in the same manner as provided in Section 14.8; and
- (ii) at the request of the Lessor, the Lessee shall forthwith post or cause to be posted, in the name of the Lessor, a bond, letter of credit or other financial assurance as security for the due performance of the Lessee's obligations pursuant to this Section 14.9, which security shall be in a form and with a financial institution acceptable to the Lessor, acting reasonably.

(c) Where any remediation contemplated in Section 14.8 and 14.9 cannot be completed prior to the end of the Term or within a reasonable period of time from the early termination of the Term, as the case may be, and the Lessor is unable to lease the Project (or any part thereof) due to the presence of Contaminants or related remediation operations, then,

without limiting any other remedies or recourse of the Lessor, the Lessee shall pay to the Lessor until the required remediation has been completed pursuant to the provisions of this Lease an amount equal to the Rent which would be payable to the Lessor pursuant to Section 2.4 as if the Lessee were an overholding Lessee with the written permission of the Lessor.

**14.10 Ownership of Contaminants**

Notwithstanding any rule of law to the contrary, any Contaminants or improvements or goods containing Contaminants brought onto, used at or Released from the Project (or any part thereof) by the Lessee, any Occupant, or any Person for whom either of them is in law responsible, shall be and remain the sole and exclusive property of such party and shall not become the property of the Lessor, notwithstanding the degree of their affixation to the Project and notwithstanding the expiry or earlier termination of this Lease. This clause supersedes any other provision of this Lease to the contrary.

**14.11 Survival of Lessee's Obligations**

The obligations of the Lessee under this Article 14 including the Lessee's obligation to remove and remediate Contaminants, and its covenant of confidentiality shall survive the expiry or early termination of this Lease. If, after the expiry or early termination of this Lease, the performance of those obligations by the Lessee requires access to the Project (or any part thereof), the Lessee shall have such access and entry at such times and upon such terms and conditions as the Lessor may, from time to time, specify. The obligations of the Lessee under this Article 14 are in addition to, and shall not limit, the obligations of the Lessee contained in other provisions of this Lease.

**ARTICLE 15  
GENERAL**

**15.1 Confidentiality**

The Lessor and the Lessee and their respective agents and advisors shall keep the terms of this Lease in strict confidence, except as may be required by Applicable Law or as otherwise mutually agreed. The Lessor and the Lessee agree that prior to making any press releases concerning this Lease, 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, delayed, conditioned or denied (except in the case of financial information, in which case either party will be deemed to be reasonable in withholding their approval). All information received by either party pursuant to this Lease 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).

## **15.2**            **Notices**

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

- (a)     to the Lessor, addressed to it at:

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

Attention: University Secretary  
Fax No.: (519) 888-6337

- (b)     to the Lessee, addressed to it at:

■

Attention: ■  
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 telecopy shall be deemed to be the date of delivery thereof, or if mailed as aforesaid, the date of delivery by postal authority.

## **15.3**            **Force Majeure**

If, by reason of Force Majeure, the Lessee or the Lessor, as the case may be, is in good faith and without default or neglect on its part, prevented or delayed in carrying out its obligations hereunder which under the terms of this Lease it is or may be required to do by a specified date, or within a specific period of time, the date or the period of time within which the obligation or the work was to have been completed shall be extended by a period of time equal to that of such delay or prevention, and the Lessee or the Lessor, as the case may be, shall be deemed not to be in default if it performs and completes the obligation or the work in the manner required by the terms of this Lease within such extended period of time, or within such further extended period of time as may be agreed upon from time to time between the Lessor and the Lessee. Where a time limit herein is stated to be subject to extension as a result of Force Majeure, any dispute as to whether or not a party is entitled to extension of such time limit as a result of Force Majeure, including whether or not an element of Force Majeure exists or the length of time during which such element of Force Majeure did exist, shall be resolved by arbitration in accordance with Article 13.

#### **15.4            Approvals**

Wherever the provisions of this Lease require an approval or consent of or to any action, person, firm, corporation, document or plan by a party, this Lease shall (unless the text hereof expressly states that such approval or consent may be unreasonably or arbitrarily withheld, or unless the text hereof expressly states that the time periods are to be otherwise, in which latter event this Section shall apply but the time periods shall be adjusted accordingly) be deemed to provide that:

- (a) such request for approval or consent shall:
  - (i) clearly set forth the matter in respect of which such approval or consent is being sought;
  - (ii) form the sole subject matter of the correspondence containing such request for approval or consent;
  - (iii) clearly state that such approval or consent is being sought; and
  - (iv) expressly state that failure to respond within the applicable time period will result in such approval or consent being conclusively deemed to have been given;
- (b) such approval or consent shall not be unreasonably withheld or delayed;
- (c) the party whose approval or consent is required shall, within 10 Business Days after the giving of a Notice requesting an approval or consent, advise the other party by Notice either that it consents or approves, or that it withholds its consent or approval and in which case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval; and
- (d) any dispute as to whether or not such consent or approval has been unreasonably withheld or delayed shall be resolved by arbitration in accordance with Article 13.

#### **15.5            Quiet Possession**

The Lessor hereby covenants that, subject to the terms hereof, if the Lessee pays the Rent hereby reserved and performs the covenants herein on its part contained, during the Term, the Lessee shall and may peaceably enjoy and possess the Project Lands without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming from or under the Lessor.

#### **15.6            Status Certificates**

At any time and from time to time so long as this Lease shall remain in effect, upon not less than 10 Business Days prior written request by the other party or by a Leasehold Mortgagee to execute, the Lessor and the Lessee will acknowledge and deliver to the other party or a Leasehold Mortgagee a statement in writing certifying that this Lease is unmodified and in

full force and effect (or if there have been modifications that the same is in full force and effect as modified, stating the modifications) and the dates to which the Rent has been paid, if any, that no Event of Default has occurred hereunder or, if so, the nature thereof, and as to such other matters as may be reasonably requested from time to time by either party or the Leasehold Mortgagee. If no response is received to such request within such expressed response period, the party from whom the response was requested shall be deemed to have provided a written certificate to the requesting party to the effect that this Lease is unmodified and in full force and effect and that no Event of Default has occurred which is continuing, except, in each case, to the extent that the requesting party has actual notice to the contrary.

#### **15.7 Further Assurances**

The Lessor and the Lessee and each of them shall and will at all times and from time to time hereafter and upon every reasonable written request so to do, make, do, execute, deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be required for more effectually implementing and carrying out the true intent and meaning of this Lease.

#### **15.8 Remedies Cumulative**

The remedies of a party under this Lease are cumulative and the exercise by such party of any right or remedy for the default or breach of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which such party may be lawfully entitled for such default or breach. Any waiver by such party of the strict observance, performance or compliance by another party hereto of or with any term, covenant, condition or agreement herein contained, or any indulgence granted by a party hereto to another party hereto shall not be deemed to be a waiver of any subsequent default or breach by such other party, not entitle such other party to any similar indulgence.

#### **15.9 Agreements, etc. to Run with Lands**

All of the agreements, rights, privileges, obligations and duties contained in this Lease shall be construed as covenants running, in the case of the Lessor, with the balance of the Technology Park Lands as the servient tenement, and the Project Lands, as the dominant tenement, and in the case of the Lessee, with its interest in this Lease, the Project and the Project Lands, as the servient tenement, and the balance of the Technology Park Lands as the dominant tenement, and as extending to, enuring to the benefit of, and being binding upon, the Lessor and the Lessee and their respective successors and permitted assigns, to the same extent as if such successors and assigns were herein named as original parties hereto, all to the end that this Lease shall always bind the owner and holder of any interest in or to the Project and the owner of the balance of the Technology Park Lands.

#### **15.10 Relationship of Parties**

The provisions contained in this Lease shall not be deemed to create any relationship other than that of landlord and tenant as to the Project Lands.



**15.11 Time of the 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 Lessee and Lessor, or by their respective counsel who are hereby expressly appointed in that regard.

**15.12 Amendment**

This Lease may not be modified or amended except by instrument in writing of equal formality herewith signed by the parties hereto or by their successors and permitted assigns.

**15.13 Binding Effect**

This Lease shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns as limited in this Lease.

**15.14 Liability**

In the event that there shall be more than one person comprising the Lessee hereunder the rights and obligations of such Persons shall, in every case, be joint and several.

**15.15 Collateral**

Whenever Collateral is deposited by a party with the other party, the depositing party shall be entitled to substitute Collateral and to receive all interest and other income on such Collateral as and when received, and such Collateral or such portion of such Collateral as shall remain shall be returned to the depositing party when the purpose for its deposit ceases to exist.

**15.16 Waiver**

A party hereto or a party to an agreement entered into pursuant hereto (the "waiving party") may from time to time by instrument in writing and in its sole discretion waive in whole or in part any default, breach, non-performance and/or non-observance by any other party hereto or by any party to an instrument or agreement entered into with the waiving party pursuant hereto (the "obligated party") of any of the covenants or obligations in favour of the waiving party to be observed or performed by the obligated party under this Lease or such other agreement entered into. Any such waiver may be retroactive but in any event shall only apply and extend to the specific matter forming the subject of such waiver, shall only extend to the waiving party and shall not otherwise affect or prejudice the right of the waiving party to require the due and strict observance and/or performance by the obligated party of such covenant or obligation thereafter or any other covenant or obligation in favour of the waiving party to be observed or performed by the obligated party under this Lease or such other agreement entered into (including in the case of a partial or limited waiver, the observance and/or performance of that part of such covenant or obligation not waived thereby). Any such waiver shall be without prejudice to any right of a party not party to the waiver to require the due and strict observance

and/or performance of a covenant in its favour that is the subject to such waiver in favour of the waiving party.

**15.17**            **Counterparts**

This Lease 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 Lease by way of telecopy, facsimile or email transmission shall constitute delivery hereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the parties hereto have executed this Indenture of Lease under their respective corporate seals.

UNIVERSITY OF WATERLOO

by

\_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Name:

Title:

I/We have authority to bind the University.

**[LESSEE]**

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 1**

**SITE PLAN**

See attached. [NTD: To be provided by Lessee.]

**SCHEDULE 2**

**LEGAL DESCRIPTION OF PROJECT LANDS**



**SCHEDULE 3**

**SKETCH OF NORTH CAMPUS**

See attached.

**SCHEDULE 4**

**FORM OF INSURANCE TRUST AGREEMENT**

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

BETWEEN:

■

(hereinafter called the "Insurance Trustee")

- and -

**UNIVERSITY OF WATERLOO**

(hereinafter called the "Lessor")

- and -

■

(hereinafter called the "Lessee")

- and -

■

(hereinafter called the "Leasehold Mortgagee").

WITNESSES THAT:

WHEREAS under the Land Lease the Lessor has leased to the Lessee the Project Lands;

AND WHEREAS the Lessee has charged its interest in the Land Lease and the Project Lands to the Leasehold Mortgagee;

AND WHEREAS the Lessor acknowledges that the Leasehold Mortgagee is a Leasehold Mortgagee as defined in the Land Lease;

AND WHEREAS the Lessee is obliged by the terms of the Land Lease to maintain certain insurance;

NOW THEREFORE in consideration of the premises and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties agree in favour of each other as follows:

**1. Definitions**

In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the definitions contained in the Land Lease shall be deemed to be contained in this Agreement as if set forth herein in full.

**2. Additional Definitions**

The definitions in this Section 2, for the purposes of this Agreement, shall have the following meanings unless there is something in the subject matter or context inconsistent therewith:

"**Land Lease**" means the lease of the Project Lands therein described dated as of the ■ day of ■, ■ between the Lessor, as landlord, and the Lessee, as tenant, notice of which was registered on title as Instrument No. ■;

"**Insurance Trustee**" includes a new Insurance Trustee appointed pursuant to Section 12.

**3. Appointment of Insurance Trustee**

The Lessor and the Lessee hereby appoint the Insurance Trustee as trustee under this Agreement, and the Insurance Trustee hereby accepts the trusts declared herein and agrees to perform the same upon the terms and conditions herein set forth. The Insurance Trustee shall have no duties or responsibilities except as expressly provided in this Agreement and shall not be obligated to recognize nor have any liability or responsibility arising under any other agreement to which the Insurance Trustee is not a party notwithstanding that reference thereto may be made in this Agreement.

**4. Payment of Certain Proceeds to Insurance Trustee**

The Lessor and the Lessee shall cause proceeds of any insurance policies provided for in Section 7.1(a)(i) and (ii) of the Land Lease and of any direct damage indemnity under any insurance policies provided for in Section 7.1(a)(iii) and (vi) of the Land Lease payable in the event of loss or damage to be made payable to the Insurance Trustee. The Lessor, the Lessee and the Leasehold Mortgagee shall from time to time do, sign, execute and endorse all transfers, assignments, cheques, loss claims, receipts, writings and things necessary or desirable for the purposes aforesaid and for such purpose irrevocably do appoint the Insurance Trustee their attorney to do, sign, execute and endorse the same in the name of the Lessor, the Lessee and the Leasehold Mortgagee as appropriate and on their behalf and as the Insurance Trustee may deem necessary or desirable.



**5. Application of Insurance Proceeds**

The Insurance Trustee shall, in the event that it receives insurance monies under the provisions of this Agreement, pay over to the Lessee from such monies amounts in reimbursement of costs and expenses incurred by the Lessee in the replacement, repair or reconstruction, of the loss or damage in respect of which such monies were paid to the Insurance Trustee, after deducting therefrom any amounts paid pursuant to Section 6 in respect of such replacement, repair, or reconstruction but only to the extent of such monies. The Insurance Trustee shall release the total proceeds of all such insurance, subject to statutory holdback requirements, to the Lessee for the sole purpose of making expenditures for the required replacement, repair, or reconstruction of the Project (or to reimburse the Lessee for such expenditures already made), but only after having received the following:

- (a) evidence satisfactory to the Insurance Trustee (which may be by way of a certificate, signed on behalf of the Lessee by an officer of the Lessee) describing the purpose for which the monies are required and stating the amount expended thereon together with such evidence as the Insurance Trustee may require in support of such statement;
- (b) an opinion of any solicitor acceptable to the Insurance Trustee that the property replaced, repaired, or reconstructed is subject to the security constituted by any Leasehold Mortgage free of encumbrances, except for encumbrances permitted under such Leasehold Mortgage;
- (c) evidence satisfactory to the Insurance Trustee (which may be by way of a certificate signed on behalf of the Lessee by an officer of the Lessee stating that to the best of the knowledge and belief of the signor after due enquiry that neither a default under the Land Lease nor an Event of Default has occurred and is continuing) that payment has been made of all costs and expenses incidental to, or arrangements satisfactory to the Insurance Trustee have been made for, financing or otherwise to provide payment of, the total cost of such replacement, repair, or reconstruction and, if any policy or policies of insurance the proceeds of which shall have been received by the Insurance Trustee shall be deductible insurance, evidence satisfactory to the Insurance Trustee that the full deductible amount has been paid in payment of costs and expenses incidental to such replacement, repair, or reconstruction; and
- (d) while and for so long as there remain monies owing to the Leasehold Mortgagee under a Leasehold Mortgage, a certificate signed on behalf of the Leasehold Mortgagee by an officer of the Leasehold Mortgagee stating either that the conditions precedent contained in such Leasehold Mortgage, if applicable, have been fulfilled in the same manner as they would have had to have been fulfilled had the disbursement been an advance of monies under such Leasehold Mortgage or, that the said conditions precedent have been waived.

If the Lessor shall be entitled to receive proceeds of insurance pursuant to Section 9.3 of the Land Lease, references in this Section and in Section 6 to the Lessee shall be deemed to be

references to the Lessor; provided that the Lessor need not provide the evidence referred to in Subsection 5(c) that neither a default under the Land Lease nor an Event of Default has occurred and is continuing nor shall the provisions of Subsection 5(d) be applicable. The Insurance Trustee may, if it has not received notice to the contrary, accept as conclusive evidence of the entitlement of the Lessor to such proceeds, a certificate signed on behalf of the Lessor by an officer of the Lessor to the effect that the Lessor is entitled to the proceeds of insurance pursuant to Section 9.3 of the Land Lease.

**6. Payment in Instalments**

The Insurance Trustee will, if requested by the Lessee, pay such proceeds of insurance in instalments (subject to statutory holdback requirements), against proper certificates of a member in good standing of the Ontario Association of Architects (or any successor thereto) during the period of, and for costs already incurred by the Lessee in the replacement, repair, or reconstruction of the loss or damage in respect of which such monies were paid to the Insurance Trustee; provided the insurance Trustee receives the opinion of counsel required by Subsection 5(b) as to the property at the time replaced, repaired, or reconstructed and the evidence required by Subsection 5(c) and, if applicable, the certificate referred to in Subsection 5(d).

**7. Payment of Balance**

The balance of such proceeds in excess of the amount expended by the Lessee in such replacement, repair, or reconstruction and paid to the Lessee pursuant to Section 5 and 6 shall be paid over by the Insurance Trustee to the Lessee.

**8. Investment**

Pending payment of insurance monies to the Lessee as provided in Sections 5, 6 and 7 such monies shall, on the written order of the Lessee:

- (a) be deposited by the Insurance Trustee with any chartered bank and in each case against demand deposit certificates or with its own deposit department; or
- (b) be invested in the bonds, debentures or other evidences of indebtedness of or guaranteed by the Government of Canada or any province thereof; provided that no such investments shall have a maturity greater than one year from the date of such investment therein.

The Insurance Trustee shall, at any time and from time to time, on the written request of the Lessee demand payment of the monies evidenced by any such certificates or sell such investments. Any interest or other distributions from time to time received by the Insurance Trustee upon or in respect of such monies and investments or any amount realized on the sale of investments in excess of the purchase price thereof plus costs of sale shall be dealt with in the same manner as such proceeds.

**9. Term**

This Agreement shall remain in effect during the Term of the Land Lease and for so long thereafter as there are insurance monies held by the Insurance Trustee.

**10. Administration of the Trusts**

The Insurance Trustee may in relation to this Agreement act on the opinion or advice of or information obtained from any counsel, auditor, architect, engineer or other expert whether obtained from any counsel, auditor, architect, engineer or other expert whether obtained by the Insurance Trustee or otherwise and may employ or retain such assistance as may be necessary for the proper discharge of its duties under this Agreement and may pay proper and reasonable compensation for all such legal and other advice or assistance. Except where some other mode of proof is required or permitted by this Agreement, the Insurance Trustee shall, if it is acting in good faith, be at liberty to accept and rely on a certificate signed on behalf of a party hereto by an officer of such party:

- (a) as to any statements of facts, as conclusive evidence of the truth of such statements;
- (b) as to any expenditure made or expense incurred, as sufficient evidence that such expenditure has been so made or that such expense has been so incurred; and
- (c) as to compliance with any other applicable provision of this Agreement.

**11. Liability and Indemnification of Insurance Trustee**

No duty with respect to effecting or maintaining insurance or notifying anyone of the failure to insure shall rest upon the Insurance Trustee in its capacity as trustee hereunder, and the Insurance Trustee shall not be responsible for any loss by reason of want or insufficiency of insurance, or by reason of the failure of any of the companies or other insurers in which the insurance is carried to pay the full amount of any loss against which they may have insured the Lessee. The Lessee shall be responsible for the payment of the fees of the Insurance Trustee and shall reimburse the Insurance Trustee for all expenses incurred by it in connection with its duties under this Agreement (including without limitation the reasonable fees and expenses of its counsel or other experts, advisors or other agents) and shall indemnify it and save it harmless against any and all liabilities, costs and expenses including legal fees, for anything done or omitted to be done by it in the performance of this Agreement, except as a result of its negligence or bad faith.

**12. Appointment of New Insurance Trustee**

The Insurance Trustee may resign its trust, or be removed by the Lessor and the Lessee jointly, in either case on 90 days written notice to the Lessor and the Lessee, or to the Insurance Trustee, as the case may be. Forthwith upon such resignation or removal the Lessor and the Lessee shall jointly appoint a new trustee hereunder; failing such joint appointment, either the Lessor or the Lessee may apply to a judge of the Superior Court of Justice who shall

have power to make such appointment. Upon the appointment of a new Insurance Trustee it shall be vested with the same powers and duties as its predecessor.

**13. Successors and Assigns of Beneficiaries**

The benefits under this Agreement accruing to each of the Lessor and the Lessee shall extend to all their respective successors and assigns, including mortgagees of their respective interests, all of whom, according to their interests, shall also be bound by all the provisions and obligations of this Agreement (it being the responsibility of each party to require its successors and assigns to expressly acknowledge and agree to be bound by this Agreement). Upon the acquisition by any such successor or assign of such an interest, such successor or assign shall be joined, as a party benefitting and bound by this Agreement, by the appropriate further agreement supplementary to this Agreement (but no such agreement shall impose any positive obligation upon a mortgagee until such time as such mortgagee has foreclosed or entered into possession). The parties acknowledge that the Leasehold Mortgagee has satisfied this condition by joining in this Agreement.

**14. Notices**

All notices, demands, requests and payments which may be or are required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given if served personally upon the party or any executive officer of the party for whom it is intended, or mailed, prepaid and registered, and in the case of the Lessor and the Lessee, addressed to them at their respective addresses, as set out in Section 15.2 of the Land Lease, in the case of the Leasehold Mortgagee, addressed to it at ■, Attention: ■ and in the case of the Insurance Trustee, addressed to it at ■, Attention: ■ or such other address in Canada as the parties may from time to time advise by notice in writing, and all the provisions of Section 15.2 of the Land Lease as to the time when any notice is deemed to have been given and post office work stoppages shall apply.

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

**[INSERT NAME OF INSURANCE TRUSTEE]**

by \_\_\_\_\_

Name:

Title:

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

Title:

I/We have authority to bind the ■.

**UNIVERSITY OF WATERLOO**

by

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

Title:

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

Title:

I/We have authority to bind the University.

**[LESSEE]**

by

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

Title:

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

Title:

I/We have authority to bind the Corporation.

**[INSERT NAME OF LEASEHOLD  
MORTGAGEE]**

by

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

Title:

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

Title:

I/We have authority to bind the **[Bank]**.

**SCHEDULE 5**

**FORM OF LEASEHOLD MORTGAGEE ACKNOWLEDGEMENT AGREEMENT**

**THIS AGREEMENT** made as of the ■ day of ■, 200■.

**A M O N G:**

**UNIVERSITY OF WATERLOO**

(hereinafter called the "Lessor")

- and -

■

(hereinafter called the "Lessee")

- and -

■

(hereinafter called the "Leasehold Mortgagee").

**WITNESSES THAT:**

**WHEREAS** the Lessor owns the lands described in Schedule "A" annexed hereto (hereinafter called the "Project Lands");

**AND WHEREAS** the Lessor holds the UW Security in the Project Lands;

**AND WHEREAS** the Lessee has a leasehold estate in the Project Lands (hereinafter called the "Leasehold Estate") pursuant to a lease dated as of ■, 200■, between the Lessor and the Lessee, notice of which was registered on title to the Project Lands on ■, 200■ as Instrument No. ■ (hereinafter, as the same may be amended or modified from time to time, called the "Land Lease") to use the Project Lands for such purposes as provided in the Technology Park Permitted Uses;

**AND WHEREAS** the Lessee, in addition to being the lessee of the Project Lands pursuant to the Land Lease, is the Developer for the development of the Project Lands as provided in the Development Agreement;

**[AND WHEREAS the Lessee has entered into a commitment letter with the Leasehold Mortgagee, dated ■, 200■ (the "Commitment Letter") in the amount of up to ■(\$■.00) to assist the Lessee in the construction and development of the Building and Parking Facilities;]**

**AND WHEREAS** by a Mortgage (hereinafter called the "Leasehold Mortgage") made between the Lessee, as mortgagor, and the Leasehold Mortgagee, as mortgagee, dated ■,

200■ and registered on title to the Project Lands on ■, 200■ as Instrument No. ■, the Lessee charged in favour of the Leasehold Mortgagee all of the Lessee's right, title and interest in and to the Land Lease and the Leasehold Estate, as security for the Lessee's obligations referred to in the Leasehold Mortgage;

**AND WHEREAS** the Lessee has granted to the Leasehold Mortgagee such additional security in the Leasehold Estate as is outlined in the [**Commitment Letter**] (the Leasehold Mortgage, the [**Commitment Letter**] and such additional security are collectively referred to herein as the "Lender Security");

**AND WHEREAS** all capitalized terms which are not defined herein have the respective meanings ascribed thereto in the Land Lease;

**AND WHEREAS** the parties have agreed to enter into this Agreement to provide for certain rights between, and obligations to, each other in the event of default by the Lessee in the observance and performance by them of their respective obligations under the UW Security, the Lender Security, the Land Lease and other agreements related to the Project Lands;

**NOW THEREFORE** in consideration of the advance of monies to be made by the Leasehold Mortgagee to the Lessee, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree with one another as follows:

**1. Recitals**

The parties hereto acknowledge and agree that the recitals contained in this Agreement are true and complete in all respects.

**2. Acknowledgement of Security**

- (a) Subject to Section 2(c) below, the Lessor hereby acknowledges and agrees that:
  - (i) the Leasehold Mortgagee has delivered to the Lessor a copy of the Leasehold Mortgage, and the Lessor has consented to the granting of the Leasehold Mortgage by the Lessee to the Leasehold Mortgagee, and further consents to the Commitment Letter and the Lender Security;
  - (ii) the Leasehold Mortgage constitutes a Leasehold Mortgage (as defined in the Land Lease).
- (b) The Leasehold Mortgagee hereby consents to the UW Security.
- (c) Notwithstanding the foregoing or any other provision in this Agreement or the Lender Security to the contrary, the Leasehold Mortgagee agrees that:
  - (i) the loan facility secured by the Lender Security will not be increased at any time during the term of such credit facility without the prior written consent of the Lessor which may be withheld in its sole discretion;

- (ii) the Lender Security: (A) shall not constitute security for any other obligations of the Lessee (or any other Person) unrelated to the Project; and (B) shall not contain any cross-default provisions associated with any other financing of the Lessee (or any other Person) which is not a Leasehold Mortgage (as defined in the Land Lease); and
- (iii) the aggregate principle amount of the loan facility secured by the Lender Security does not exceed an amount that is 75% of the then current value of the Leasehold Estate.
- (d) The Leasehold Mortgagee and the Lessor each agree that, there shall be no alterations, amendments or modifications to the Lender Security or the UW Security, and no new security relating to the Project Lands will be taken by it, without prior written approval of the other, which approval shall not be unreasonably withheld so long as the alteration, amendment or modification requested would not adversely impact the Project or the Lender Security or UW Security, as the case may be.

### **3. Priority of UW Security**

The Leasehold Mortgagee and the Lessor each acknowledge and agree that, until Total Completion, the UW Security, together with all rights of the Lessor thereunder, is a prior encumbrance ranking ahead of the Leasehold Mortgage and, subject to the provisions hereof, shall be deemed for all purposes to have priority over the Leasehold Mortgage. Notwithstanding the foregoing, upon the occurrence of an Event of Default under the UW Security or under the Land Lease and delivery of a Notice of such default by the Lessor to the Leasehold Mortgagee, if the Leasehold Mortgagee chooses to remedy such default and provides notice thereof to the Lessor, the Lessor shall execute such postponement documentation and shall register notice thereof as may be reasonably required or necessary to fully and effectively postpone the UW Security to the Lender Security during such period as the Leasehold Mortgagee diligently commences to carry out the obligations of the Lessee under the Land Lease including its right to continue to construct the Project up to the date of Total Completion (if the Project has not then been completed). Upon Total Completion, the Lessor shall forthwith, at its sole cost and expense, discharge the UW Security registered against the Project Lands, and release the Lessee from all obligations thereunder.

### **4. Events of Default under Security**

The Lessor and the Leasehold Mortgagee covenant and agree that so long as both of them have security outstanding in connection with the Project Lands, each of them will give Notice (as defined in Section 13 below) at the same time as either of them delivers such notice to the Lessee, which Notice shall include a copy of any written notice of default or breach under their respective security, and shall specify the nature of the default and the time frame that the Lessee has to cure such default or breach, provided that if such default or breach reasonably requires more time to remedy than the period provided, such period shall be extended provided the curing party promptly commences to remedy such default after the giving of such Notice, and continues thereafter to expeditiously, diligently and continuously proceed to cure. Each of the



Lessor and Leasehold Mortgagee acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement, the Lender Security or the UW Security, it shall not be entitled to enforce any of its rights and remedies under its respective security unless this notice requirement and other obligations imposed by this Agreement have been fulfilled. Following receipt of such Notice, and subject to all other terms and conditions contained herein, the Lessor or the Leasehold Mortgagee, as the case may be, shall be entitled, but not obligated, to make any and all payments and perform, or cause to be performed, all covenants of the Lessee which will be necessary or required to cure any such default or breach, and the other party shall accept such performance with the same force and effect as if performed by the Lessee. In the event either party cures or remedies such default or breach, each of the Lessor and the Leasehold Mortgagee hereby acknowledges that the other has not assumed the obligations of the Lessee merely by curing or remedying such default or breach.

**5. Cross Default of Lender Security and UW Security**

It is agreed and acknowledged by all Parties hereto that, subject to any applicable cure period, any default under the Lender Security shall constitute a default under the UW Security and, similarly, any default under the UW Security shall constitute a default under the Lender Security. In addition, any default by the Lessee under the any of the Collateral Agreements shall, subject to any applicable cure period, at the option of the Lessor and/or the Leasehold Mortgagee, constitute a default under their respective security.

**6. Events of Default under Land Lease**

Notwithstanding the right of the Lessor under Section 12.2 of the Land Lease to cure the default of the Lessee if an Event of Default occurs under the Land Lease which is curable, the Lessor will give Notice (as defined in Section 13 below) of the Event of Default to the Leasehold Mortgagee at the same time as it delivers such notice to the Lessee, which Notice shall include a copy of any written notice of default or breach under the Land Lease, and shall specify the time frame that the Lessee has to cure such default or breach before the Lessor takes any steps to remedy such default as provided in the Land Lease. If such Event of Default continues to exist after the expiration of such period of time, then the Lessor, at its option and subject to Section 7 hereof, may terminate the Land Lease pursuant to the terms of the Land Lease or pursue its other remedies under the Land Lease. Notwithstanding the foregoing, if such Event of Default under the Land Lease reasonably requires more time for the Leasehold Mortgagee to remedy than the period provided, the Lessor agrees not to terminate the Land Lease provided the Leasehold Mortgagee promptly commences to remedy such default after the giving of such Notice, and continues thereafter to expeditiously, diligently and continuously proceed to completion.

**7. New Lease**

If by reason of an Event of Default under the Land Lease, the Leasehold Mortgagee chooses to remedy the Lessee's default and has complied with the provisions of Section 6 hereof, the Leasehold Mortgagee has foreclosed out the rights of the Lessee thereunder or has obtained a release from the Lessee in favour of the Lessor in respect of the Lessor's obligations under the Lease and has ensured that any then existing Space Lease remains in place,

then at the Leasehold Mortgagee's option, it may give notice to the Lessor to terminate the Lease, and the Lessor shall, within 30 days of receipt of such notice, terminate the Lease for default, and shall enter into a new lease with the Leasehold Mortgagee as soon as practicable for the then remainder of the Term. Such new lease shall be effective as of the effective date of termination, at the rent and upon all of the terms, provisions, covenants and agreements contained in the Land Lease as may be reasonably amended by the Lessor and the Leasehold Mortgagee. If there is more than one Leasehold Mortgagee of the Leasehold Estate (excluding the Lessor) that makes a request for a new lease pursuant to this Section 7 or any other agreement entered into pursuant to a Leasehold Mortgagee Acknowledgement Agreement, the Lessor shall enter into a new lease of the Project Lands with whichever of such requesting Leasehold Mortgagees has the most senior encumbrance. The right of the Leasehold Mortgagee to require the Lessor to enter into a new lease upon termination of the Lease shall extend to the exercise of the Leasehold Mortgagee of its remedies with respect to foreclosure and power of sale. In all events, the Leasehold Mortgagee shall have the right under such new lease to Transfer any or all of its interest to any third party following Total Completion with the right of approval of the Lessor not to be unreasonably withheld (notwithstanding Section 11.1(a) of the Land Lease) provided any transferee agrees to be bound by the provisions of the Land Lease.

## **8. Liability of Leasehold Mortgagee under Land Lease**

(a) Notwithstanding the provisions of this Agreement, the Land Lease or of the Leasehold Mortgage, the Lessor agrees with the Leasehold Mortgagee that, unless and until the Leasehold Mortgagee has foreclosed or taken possession or control of the Leasehold Estate, nothing shall render the Leasehold Mortgagee liable to the Lessor under the Land Lease for the fulfilment or non-fulfilment of any of the obligations of the Lessee thereunder.

(b) The Leasehold Mortgagee hereby agrees with the Lessor that if the Leasehold Mortgagee forecloses or takes possession or control of the Leasehold Estate pursuant to the Leasehold Mortgage (save and except with respect to any control or possession taken for purposes of curing any default or breach of the Lessee under the Leasehold Mortgage, the Land Lease, this Agreement or any other related agreement), then, so long as the Leasehold Mortgagee shall be the owner of or in possession or control of the Leasehold Estate, the Leasehold Mortgagee shall observe and perform all the obligations of the Lessee under the Land Lease; provided however that the parties specifically acknowledge and agree that the Leasehold Mortgagee shall have the right, but not the obligation, in its sole discretion, to assume any or all of the obligations of the Lessee as Developer or General Contractor of the Project Lands under the Development Agreement, the Construction Contracts or any other related agreements, but if an assignment of any contracts or agreements is taken by the Leasehold Mortgagee, the Lessee shall release any and all rights it may have in and to such contracts or agreements and Section 3 shall apply in respect of the Lessor's rights under the UW Security.

(c) If the Leasehold Mortgagee exercises any power of sale under the Leasehold Mortgage, it shall do so in compliance with the assignment provision of Article 11.1(a) of the Land Lease as if it were an assignment thereunder, provided however that after Total Completion, the Lessor shall not unreasonably withhold its consent in the transfer of the Leasehold Mortgagee's interest in the exercise of such power of sale remedy.

**9. No Termination, Surrender, etc.**

Other than as provided in the Land Lease and subject to the provisions hereof, the Lessor will not agree with the Lessee to terminate, forfeit or cancel the Land Lease or accept the surrender of the Leasehold Estate prior to the end of the Term without the prior written consent of the Leasehold Mortgagee, which consent may be withheld.

**10. Application of Insurance Proceeds**

If at any time or times proceeds of insurance become payable to the Leasehold Mortgagee or to an Insurance Trustee for, among others, the Leasehold Mortgagee, the Leasehold Mortgagee shall take such action as may be reasonable in the circumstances to cause such proceeds to be applied in accordance with the obligations of the Lessee contained in the Land Lease, notwithstanding the provisions of Subsection 6(2) of the Mortgages Act (Ontario) or any similar provision of any successor or replacement statute.

**11. Acknowledgement re: Indemnities**

The parties acknowledge and agree that subject to the provisions hereof and, notwithstanding the provisions of Section 10.3 to the contrary contained in the Land Lease, the indemnities provided by the Lessor in Section 10.2 of the Land Lease shall extend and be applicable to the Leasehold Mortgagee in all respects, and the indemnities provided by the Lessee in Section 10.1 of the Land Lease shall extend and be applicable to the Leasehold Mortgagee in all respects in the place and stead of the Lessee only in the event the Leasehold Mortgagee takes possession or control of the Leasehold Estate, and the parties acknowledge and agree that such indemnities shall apply only from and after the date of such possession or control, and in no event will the Leasehold Mortgagee be liable for any of the Lessee's obligations or indemnities thereunder prior to the actual date of such possession or control.

**12. Termination**

This Agreement shall terminate upon payment in full of all moneys secured by the Leasehold Mortgage. On Total Completion, all registrations evidencing the UW Security with respect to the Project Lands shall be fully and completely discharged at the cost of the Lessee.

**13. Notice**

Any notice or other communication to be given by any party hereunder to any other party (the "Notice") shall be given in writing, and shall be sufficiently given by either transmitting by telecopier to the fax numbers given below, or by delivering the same by hand to the party to whom the notice is directed, at the address set forth below:

To the Lessor:

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

Attention: University Secretary  
Telephone No.: (519) 888-4012  
Fax No.: (519) 888-6337

To the Lessee;

■

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

To the Leasehold Mortgagee:

■

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

or to such address or other number as may from time to time be designated by Notice, and such notice shall be deemed to have been received on the first business day after transmission if faxed, or received on the day on which it is so delivered.

**14. Further Assurances**

The parties shall with reasonable diligence do all such things as may be required to consummate the transactions contemplated by this Agreement, and execute such further documents or instruments required as may be reasonably necessary or desirable to effect the purpose of this Agreement and its provisions.

**15. Successors and Assigns**

The benefits under this Agreement accruing to each of the parties hereto shall extend to all their permitted respective successors and assigns, all of whom, according to their interests, shall also be bound by all the provisions and obligations of this Agreement (it being the responsibility of each party to require its successors and assigns to expressly acknowledge and agree to be bound by this Agreement). Upon the acquisition by any such successor or assign of such an interest, such successor or assign shall be joined, as a party benefiting and bound by this Agreement, by the appropriate further agreement supplementary to this Agreement.

**16. Execution of Counterparts and Execution by Facsimile**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same document. Counterparts may be executed either in original, telecopied, facsimiled or email transmitted form and the parties to this document adopt any signatures

received by telecopier or facsimile machines or by email transmission as original signatures of the parties.

**17. Registration of Agreement**

The Parties agree that this Agreement, or notice thereof, may be registered against title to the Project Lands by either party at the cost of the Lessee.

**18. Covenants**

Each agreement and obligation of any of the Parties hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

**19. Amendments in Writing**

No supplement, amendment, modification, waiver or termination of this Agreement shall be binding unless executed, in writing, by the Party to be bound thereby.

**20. Time of Essence**

Time shall be of the essence of this Agreement.

**21. Covenants Run With the Land**

All covenants contained herein are intended by the Parties hereto to run with title to the Project Lands and to be binding upon their successors and assigns.

**22. Paramountcy**

The Parties hereto acknowledge and agree that as among themselves, to the extent there is any inconsistency between any provision of this Agreement and any provision contained in the Land Lease, the UW Security, the Commitment Letter, the Leasehold Mortgage, the Lender Security or any prior agreements, understandings, negotiations and discussions, whether oral or written, with respect to this Agreement, the provisions of this Agreement shall prevail.

**IN WITNESS WHEREOF** the parties hereto have hereunto affixed their respective corporate seals under the hands of their respective proper officers duly authorized in that behalf.

**UNIVERSITY OF WATERLOO**

by \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the University.

**[LESSEE]**

by \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

**[INSERT NAME OF LEASEHOLD  
MORTGAGEE]**

by \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the **[Bank]**.

**SCHEDULE 6**  
**CONCEPT DESIGN**

See attached. **[NTD: To be provided by Lessee.]**

**SCHEDULE 7**

**DEVELOPMENT SCHEDULE**

See attached. **[NTD: To be provided by Lessee.]**



## **SCHEDULE 8**

### **SUMMARY OF PROJECT PLANNING AND DESIGN ARRANGEMENTS**

See attached. **[NTD: To be provided by Lessee.]**

**SCHEDULE 9**  
**SKETCH OF UW LANDS**

See attached.

**SCHEDULE 10**

**FORM OF UW SECURITY**

**THIS AGREEMENT** made as of the ■ day of ■, 200■.

**B E T W E E N:**

**[LESSEE]**

(the "Chargor"),

OF THE FIRST PART,

- and -

**UNIVERSITY OF WATERLOO**

(the "Chargee"),

OF THE SECOND PART.

WHEREAS as security for the obligations of the Chargor under the Land Lease, the Chargor has agreed to provide the Chargee with this Agreement which incorporates (i) a mortgage/charge of the leasehold interest in land; (ii) a grant of security interest in personal property; and (iii) an assignment of material agreements;

NOW THEREFORE in consideration of Two Dollars and other good and valuable consideration, the receipt and sufficiency of which is by the Lessee hereby acknowledged, the parties hereto agree as follows:

**1. Interpretation**

In this Agreement and all schedules attached hereto unless there is something in the subject matter or context inconsistent therewith:

**"Authority"** has the meaning given to it in the Land Lease;

**"Business Day"** has the meaning given to it in the Land Lease;

**"Charge"** means this Agreement, to be attached to the prescribed form of Charge/Mortgage of Land (such prescribe form to be executed where required by the Chargor), and all schedules thereto, as the same may be amended, restated, modified or supplemented from time to time;

**"Chargee"** is the chargee named above and its successors and assigns;

**"Chargor"** is the chargor named above and its successors and assigns;

**"Collateral Agreements"** has the meaning given to it in the Land Lease;

**"Construction Contracts"** has the meaning given to it in the Land Lease;

**"Contracts"** means all contracts, agreements, documents, plans or instruments now or hereafter entered into by the Chargor in connection with the development, construction or operation of the Premises including, without limitation, the Collateral Agreements and the Construction Contracts, as the same may be amended, restated, modified or supplemented from time to time;

**"Event of Default"** has the meaning given to it in the Land Lease;

**"Land Lease"** means the land lease made as of ■ between the Chargee, as lessor and the Chargor, as lessee, notice of which is registered against title to the Premises as Instrument No. ■, as the same may be amended, restated, modified or replaced from time to time;

**"Leasehold Mortgage"** has the meaning given to it in the Land Lease;

**"Leasehold Mortgagee"** has the meaning given to it in the Land Lease;

**"Obligations"** means all indebtedness, liabilities and obligations (whether direct, indirect, absolute, contingent or otherwise and whether in respect of principal or interest thereon) of the Chargor to the Chargee existing from time to time under the Land Lease, whether prior or subsequent to the execution of this Charge or arising pursuant hereto, through to Total Completion;

**"Premises"** means the leasehold interest of the Chargor in and to the real property described in the attached Schedule A, including its interest in and to all buildings and fixtures now and hereafter situated thereon;

**"Total Completion"** has the meaning given to it in the Land Lease.

## 2. References

Except as otherwise specifically indicated, all references to Article, Section and Subsection numbers refer to Articles, Sections and Subsections of this Charge, 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 Charge as a whole and not to any particular Article, Section or Subsection hereof.

**3. Number and Gender**

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

**4. Headings**

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

**5. Severability**

To the extent permitted by law, if any provision herein is determined to be void, voidable or unenforceable, in whole or in part, such determination shall not affect or impair or be deemed to affect or impair the validity of any other provision hereof and all the provisions hereof are hereby declared to be separate, severable and distinct.

**6. Provision for Redemption**

Subject to Subsection 8(c) and Section 10 hereof, this Charge shall be void on performance of the Obligations.

**7. Release by Chargor**

The Chargor releases to the Chargee all claims of the Chargor upon the Premises, subject to the provision for redemption and the entitlement of the Chargor to obtain a discharge of this Charge contained herein.

**8. Security for Obligations**

(a) This Charge is continuing security for the due payment and performance of the Obligations; provided that nothing herein contained shall in any way affect or prejudice any right of or security held by the Chargee independently of this Charge in respect of the Obligations.

(b) This Charge shall be continuing security for the Obligations notwithstanding the nature or form thereof or any change in the nature or form thereof or in the accounts, promissory notes, guarantees and/or other obligations now or from time to time hereafter held by the Chargee representing the Obligations or any part thereof or in the names of the parties to such notes, guarantees and/or other obligations or any change in the constitution of the Chargor.

(c) Any and all payments made in respect of the Obligations and the moneys realized from any security held therefor (including this Charge) may be applied on such part or parts of the Obligations as the Chargee may see fit or (save as to moneys realized from this Charge) may be held unappropriated in a collateral account (but always for application to the Obligations); provided that upon request from time to time the Chargee shall provide to the Chargor a written statement as to the application and status of all moneys received by the Chargee. The Chargee may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Chargor and with other

persons and security as the Chargee may see fit without prejudice to the liability of the Chargor or the Chargee's right to hold and realize the security of this Charge. No forbearance by the Chargee to seek any remedy for breach of any covenant, agreement or other provision contained in this Charge shall operate as a waiver of any rights or remedies of the Chargor with respect to such or any subsequent or other breach.

(d) This Charge shall not operate by way of merger of the Obligations or any part thereof or any contract by which the same may now or at any time hereafter be represented or evidenced, and no judgment recovered by the Chargee shall merge or in any way affect the security of this Charge.

(e) The security hereunder shall not extend or apply to the last day of the term of the Land Lease or any lease or agreement therefor but upon the enforcement of the security, the Chargor shall stand possessed of such last day upon trust for the Chargee for the purposes herein set forth and to assign and dispose of the same as the Chargee shall, for such purposes, direct. Upon any sale or sales of such leasehold interest or any part thereof, the Chargee, for the purpose of vesting the residue of any such term or any renewal thereof in any purchaser or purchasers thereof, shall be entitled by deed or writing to appoint such a purchaser or purchasers as new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Chargee and to vest the same accordingly in the new trustee or trustees so appointed free and discharged from any obligation restricting the same.

## **9. Collateral Security**

As further security for the due payment and discharge of the Obligations, the Chargor does hereby:

(a) grant a security interest in favour of the Chargee in the Chargor's interest in any and all personal property owned by the Chargor located, or to be located, in, on or about the Premises and used in the operation thereof (it being the intent that a security interest is hereby created as aforesaid and the Chargee shall have, in addition to such other rights and remedies herein provided or available at law or in equity, all rights and remedies of a secured party under the *Personal Property Security Act* (Ontario), as amended from time to time); and

(b) assigns to the Chargee all of its right, title and interest in and to the following:

- (i) the Contracts and all benefits, powers and advantages of the Chargor to be derived therefrom and all agreements, approvals, consents, covenants, licences, obligations, representations and undertakings and agreements of the parties thereunder, express or implied;
- (ii) all revenues and other monies now due and payable or which hereafter become due and payable to the Chargor under or derived from any Contracts, with full power and authority to demand, sue for, recover, receive and give receipts for all such revenues and other monies; and
- (iii) the benefit of any guarantees or indemnities relating to the Contracts,

and with respect to Subsections 9(b)(i) to 9(b)(iii) inclusive in, to and under all amendments, modifications, extensions, renewals and replacements of any of the foregoing and all rights, remedies, powers, privileges and claims of the Chargor thereunder (whether arising pursuant thereto or available to the Chargor at law or in equity) including without limitation, the right of the Chargor to enforce the foregoing and the obligations of the other parties thereto and to give or withhold any and all consents, requests, directions, approvals, extensions and/or waivers thereunder in accordance with the terms thereof, to have and to hold and to use and apply the foregoing for Chargee's own use absolutely.

**10. Creating and Preserving the Security Interest**

The Chargor shall, from time to time at the request of the Chargee, make and do all such acts and things and execute and deliver all such instruments, agreements, financing statements and documents as the Chargee reasonably requests by notice in writing given to the Chargor in order to create, preserve, perfect, validate or otherwise protect the security interest hereby created by this Charge, to enable the Chargee to exercise and enforce its rights and remedies hereunder and generally to carry out the provisions and purposes of this Charge.

**11. Non-Assignability of Contracts**

The Chargor and the Chargee agree that if any Contract is not assignable to the Chargee pursuant to Section 9(b) (because the same is not assignable without the consent of the other party or parties thereto and such consent has not been obtained as of the date hereof or because the remedies for the enforcement of the Contract would not, as a matter of law, pass to the Chargee as an incidence of the transfers and assignments made pursuant to this Charge), the Chargor's interest in such Contract shall be held in trust for the Chargee by the Chargor and such interest and all benefits derived under such Contract shall be for the account of the Chargee. In order that the full value of the interest in every Contract assigned to the Chargee pursuant to this Charge may be realized for the benefit of the Chargee, the Chargor, shall, at the request and expense and under the direction of the Chargee, in the name of the Chargor, take all such action and do or cause to be done all such things as are desirable in order that the obligations of the Chargor under such Contract may be performed in such manner that the interest in such Contract shall be preserved and shall enure to the benefit of the Chargee and the collection of any monies due and payable and to become due and payable shall be facilitated. Upon the occurrence of an Event of Default, the Chargor shall promptly pay over to the Chargee all monies collected by or paid to the Chargor in respect of the interest in every such Contract, claim or demand.

**12. Subordination**

The Chargee agrees that this Charge shall be subordinate to a Leasehold Mortgagee provided and only so long as, upon the occurrence of an Event of Default and notice of the same from the Chargee to the Leasehold Mortgagee, the Leasehold Mortgagee diligently commences to carry out the obligations of the Chargor under the Land Lease including to continue to construct the Premises to Total Completion.

**13. Discharge**

Upon Total Completion, the Chargee shall deliver to the Chargor a discharge of this Charge (and all other security registered by the Chargee pursuant to this Agreement) upon reasonable prior written request by the Chargor to do so, and all legal and other expenses for the preparation, execution, delivery and registration of such discharge shall be paid by the Chargee at the time of delivery thereof.

**14. Title**

The Chargor represents and covenants that it has the right to execute and deliver this Charge to the Chargee as provided herein; and that upon the occurrence of an Event of Default the Chargee shall have quiet possession of the Premises free from all encumbrances other than any prior encumbrances (on title to the Premises at the time of registration of this Charge) or any encumbrance consented to or approved by the Chargee, but subject to the terms of the Land Lease; and that the Chargor will execute such further assurances as may be requisite.

**15. Building Charge**

Any building or improvement being erected or to be erected on the Premises shall form part of the Premises and of the security for the full amount of the Obligations secured by this Charge, but the foregoing shall not constitute this Charge a building mortgage pursuant to Section 20 of the Mortgages Act.

**16. Fixtures**

All furnaces, machinery, motors, boilers, oil and gas burners, stokers, blowers, water heaters, tanks, electric light fixtures, sprinklers, window blinds, screen doors and windows, storm doors and windows, television antennae, refrigerators, stoves, elevating devices, air-conditioning, ventilating, plumbing, electrical, cooling and heating equipment, and all apparatus appurtenant thereto, now or hereafter placed or installed upon the Premises and owned by the Chargor, shall for all purposes of this Charge be fixtures and form part of the Premises whether or not affixed in law to the Premises.

**17. Release of Premises by Chargee**

The Chargee may at its discretion release from this Charge the Premises or any part thereof at any time and from time to time either with or without any consideration therefor, without being accountable for the value thereof or for any moneys except those actually received by the Chargee, and without thereby releasing any other part of the Premises or any person from this Charge or from any of the covenants herein contained. No sale or other dealing by the Chargor with the Premises or any part thereof shall in any way change the Obligations or in any way alter the rights of the Chargee as against the Chargor for payment or performance of the Obligations or any part thereof.



**18. Non-Appportionment**

Every part or lot into which the Premises are or may hereafter be divided does and shall stand charged with the whole of the Obligations and no person shall have any right to require the Obligations to be apportioned upon or in respect of any such part or lot.

**19. Quiet Possession**

Until the occurrence of an Event of Default, the Chargor shall be entitled to quiet possession of the Premises.

**20. Remedies on Default**

(a) Upon the occurrence of an Event of Default (whether of payment or otherwise) which continues for at least 15 days, the Chargee may on 15 days' written notice enter on and lease the Premises; provided that should such Event Default continue for 30 days, the Chargee may enter on and lease the Premises without notice. It is agreed that any notice under this paragraph shall be sufficiently given for all purposes if given in accordance with Part III of the Mortgages Act, or under such statutory provisions as may hereafter be enacted in substitution or amendment of the said Part III and that notice shall not be required or lesser notice may be given if and to the extent permitted or authorized under or pursuant to the said Part III. It is further agreed that the rights in this paragraph given to the Chargee are without prejudice to and are in addition to any other rights and remedies given in this Charge to the Chargee or which the Chargee may have at law.

(b) The Chargee may lease or sell as aforesaid without entering into possession of the Premises.

(c) Any sale hereunder may be either for cash, or on credit, or part cash and part credit, and the proceeds of any sale shall be applied, firstly, in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Premises or endeavouring to procure payment of the moneys secured hereby, secondly, in payment of moneys owing to the Chargee under the Obligations, and thirdly, to such other parties as are entitled thereto, including the Chargor, in accordance with their entitlement at law. Sales may be made from time to time of portions of the Premises or of the equity of redemption in the whole of the Premises, and the Chargee may make any stipulations as to title or evidence or commencement of title, or otherwise, which the Chargee shall deem proper, and may rescind or vary any contract for sale of any of the Premises and resell without being answerable for any loss occasioned thereby. On any sale hereunder the Chargee shall be accountable only for moneys actually received by the Chargee in cash as and when so received, and for any of the said purposes may make and execute all agreements and assurances as it shall think fit. The purchaser at any sale hereunder shall not be bound to see the legality, propriety or regularity thereof, or that an Event of Default has happened on account of which the sale or lease is made, and no want of an Event of Default or of notice when required hereby shall invalidate any sale or lease hereunder, and the remedy of the Chargor shall be in damages only.

(d) The Chargee may distrain for arrears of payments in respect of the Obligations, interest or any other amount payable hereunder or under the Land Lease.

(e) Upon the occurrence of an Event of Default, the Chargee shall be entitled to enter into possession of the Premises.

(f) For greater certainty and in addition to, and not in substitution for, any other rights and remedies of the Chargee (including rights arising under the Land Lease), the parties hereto agree that, upon the occurrence of an Event of Default, the Chargee may foreclose the right, title and equity of redemption of the Chargor to and in the Premises in the manner provided by law.

## **21. Receiver**

(a) If and whenever an Event of Default occurs, the Chargee may, in its discretion, by writing appoint a receiver (which term shall include a receiver and manager) of the Premises or any part thereof and of the rents and profits thereof and may from time to time remove any receiver and appoint another in his stead, and in making any such appointment or appointments for the Chargee shall be deemed to be acting as the attorney for the Chargor unless the Chargee indicates in writing a contrary intention.

(b) The following provisions shall apply in respect of the appointment of any receiver: such appointment may be made either before or after the Chargee shall have entered into or taken possession of the Premises or any part thereof; such receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretions of the Chargee and shall have the power to borrow on the security of the Premises; the Chargee may from time to time fix the remuneration of such receiver and direct the payment thereof out of the proceeds of the Premises; such receiver shall, so far as concerns the responsibility for its acts or omissions, be deemed the agent of the Chargor and in no event the agent of the Chargee and in making or consenting to such appointment the Chargee shall not incur any liability to the receiver for its remuneration or otherwise howsoever, other than for such damages caused by the gross negligence or wilful misconduct of such receiver; and all moneys from time to time received by such receiver may be paid by it - firstly, in discharge of all rents, taxes, insurance premiums, operating expenses and other outgoings affecting the Premises and the cost of executing necessary or proper repairs; secondly, in keeping in good standing all encumbrances on the Premises having priority over this Charge; thirdly, in payment of his remuneration and disbursements as receiver; fourthly, residue of such moneys shall be applied in payment of the Obligations and any other amounts payable by the Chargor hereunder or under the Land Lease.

## **22. Chargee's Costs**

The Chargee may (but shall not be obliged to) pay all costs, charges and expenses (including agents' charges and solicitors' fees on a solicitor and his own client basis) incurred from time to time in taking, recovering and keeping possession of the Premises including during such taking, recovery and keeping of possession of the Premises the performing of work in respect of the buildings situate thereon in order to preserve same, or in inspecting the same and generally in any other proceedings taken to realize the moneys hereby secured or in protecting the security for such moneys, whether any action or other judicial proceedings to enforce such payment has been taken or not; and any and all amounts so paid shall be added to the Obligations

and shall be payable forthwith by the Chargor to the Chargee with interest at the rate specified in the Land Lease for amounts in arrears, from the date of payment by the Chargee.

**23. Assignment for Security Purposes**

(a) It is expressly acknowledged and agreed that nothing herein contained shall obligate the Chargee to assume or perform any obligation of the Chargor to any third party in respect of or arising out of the Contracts. The Chargee may, however, only after an Event of Default occurs and is continuing, at its option, assume or perform any such obligations as the Chargee considers necessary or desirable to obtain the benefit of the Contracts free of any set-off, deduction or abatement and any money expended by the Chargee in this regard shall form part of and shall be deemed to form part of the Obligations and bear interest at the Prime Rate, as that term is defined in the Land Lease.

(b) The exercise by the Chargee of its rights under this Charge or the assumption after an Event of Default of certain obligations of the Chargor as referred to in Subsection 23(a) above shall not constitute or have the effect of making the Chargee a mortgagee in possession. Care, control and management of the Premises in respect of which the Contracts relate shall remain and shall be deemed to be with the Chargor in the absence of clear and unequivocal action by the Chargee depriving the Chargor of such care, control and management and the assumption thereof by the Chargee.

**24. Implied Covenants**

The parties hereto agree that the covenants implied by paragraphs 1 and 3 of subsection 7(1) of the Land Registration Reform Act, (Ontario) (as varied herein) shall be in addition to, and not in substitution for, the covenants and other provisions set forth in this Charge. In the event of any conflict between any of such implied covenants (as varied herein) and any other covenant or provision of this Charge, such other covenant or provision of this Charge shall prevail.

**25. Notices**

Any notice which may or is required to be given pursuant to this Charge shall be in writing and shall be sufficiently given or made if delivered personally upon the party for whom it is intended, or sent by facsimile and in the case of:

(a) the Chargor, addressed to it at:

■

Attention: ■

Telephone No.: ■

Fax No.: ■

(b) the Chargee, addressed to it at:

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

Attention: University Secretary  
Telephone No.: (519) 888-4012  
Fax No.: (519) 888-6337

or to such other address 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 if delivered personally or by facsimile shall be deemed to be the date of delivery thereof (if such day is a Business Day and if not, the next following Business Day).

**26. Successors and Assigns**

(a) This Charge shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

(b) The rights and restrictions contained in the Land Lease concerning the assignment of the rights and obligations thereunder shall govern the ability of the parties hereto to assign their rights and obligations hereunder, as if the rights and restrictions contained in the Land Lease were set out herein.

**27. Copy of Charge**

The Chargor acknowledges having received a true copy of this Charge.

**28. No Merger**

So long as any of the Obligations remain unpaid or unperformed, the fee title to and the leasehold estate in the Premises shall not merge but shall always be kept separate and distinct notwithstanding the union of such estates in the Charge pursuant to the exercise of any remedy by the Chargee hereunder. The Chargor agrees to execute, upon written request and at the expense of the Chargee, all documents that the Chargee may reasonably require to confirm and further evidence the foregoing.

**29. Further Assurances**

The Chargor hereby covenants and agrees that it shall at all times, at its own cost and expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and singular such further acts, assignments and assurances in law, in each case consistent with the terms of this Charge, as the Chargee may reasonably require for the better accomplishing, effectuating and perfecting of this Charge, including but not limiting the generality of the foregoing, such as may be required in order to perfect the registration of this Charge wherever the Chargee in its discretion considers that the same or notice of the same ought to be registered or filed.

**30. Counterparts**

This Lease 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 Lease by way of telecopy, facsimile or email transmission shall constitute delivery hereof.

IN WITNESS WHEREOF this Agreement has been executed under seal as of the date first above-mentioned.

**UNIVERSITY OF WATERLOO**

by

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

Title:

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

Title:

I/We have authority to bind the University.

**[LESSEE]**

by

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

Title:

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

Title:

I/We have authority to bind the Corporation.

**SCHEDULE 11**

**LESSOR'S REPRESENTATIVES**

Vice-President, Administration and Finance

Dennis Huber

University Secretary

Lois Claxton

## SCHEDULE 12

### RENT CALCULATION EXAMPLE

The formula to adjust Annual Basic Rent every five years (other than on the 20<sup>th</sup>, 40<sup>th</sup>, 60<sup>th</sup> and 80<sup>th</sup> anniversary of the Commencement Date) pursuant to Section 3.1 is as follows:

$$A \quad x \quad \frac{B}{C}$$

Where:

"A" is equal to the Annual Basic Rent for the immediately prior year;

"B" is equal to CPI for the month immediately prior to the anniversary date in question; and

"C" is equal to CPI for the sixtieth month immediately prior to the anniversary date in question.

#### Example

This example will calculate the escalated Annual Basic Rent applicable on the Fifteenth Anniversary Date where:

- Annual Basic Rent payable for the prior 5-year period commencing on the Tenth Anniversary Date was \$100 per annum;
- CPI for the month immediately prior to the Fifteenth Anniversary Date was 160; and
- CPI for the month immediately prior to the Tenth Anniversary Date was 135.

Calculation:

$$A \quad x \quad \frac{B}{C} \quad = \quad 100 \quad x \quad \frac{160}{135} \quad = \quad 100 \quad x \quad 1.185 \quad = \quad 118.50$$

Therefore, Annual Basic Rent payable commencing on the Fifteenth Anniversary Date will be \$118.50 per annum.

**SCHEDULE 13**

**FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**MEMORANDUM OF AGREEMENT** made as of the ■ day of ■, ■.

BETWEEN:

**UNIVERSITY OF WATERLOO,**

(hereinafter referred to as the "UW"),

OF THE FIRST PART,

- and -

■,

(hereinafter referred to as the "Tenant"),

OF THE SECOND PART.

WHEREAS by a land lease (the "Land Lease") made as of the ■ day of ■, 200■, UW, as landlord, leased to [LESSEE], as tenant (the "Sublandlord"), those lands municipally known as ■, Waterloo, Ontario and more particularly described in Schedule "A" hereto (the "Project Lands");

AND WHEREAS by a sublease (the "Space Lease") made as of the ■ day of ■, ■, the Sublandlord as sublandlord leased to the Tenant, as subtenant, those premises within the Project Lands more particularly described as ■ (the "Premises");

AND WHEREAS the Tenant is required to enter into this Agreement with UW;

AND WHEREAS all capitalized terms which are used herein which are not otherwise defined herein shall have the meaning ascribed thereto in the Space Lease, unless there is something in the context or subject matter inconsistent therewith;

NOW THEREFORE this agreement witnesseth that in consideration of the premises and the sum of TWO DOLLARS (\$2.00) now paid by each party to the other, the receipt and sufficiency whereof is hereby acknowledged, the parties hereby agree as follows:

1. UW confirms, covenants and agrees with the Tenant that, so long as the Tenant is observing and performing its covenants under the Space Lease in accordance with its obligations thereunder, UW will accept and acknowledge the attornment of the Tenant and permit the Tenant to continue in quiet possession of the Premises leased by the Space Lease for the then unexpired term of the Space Lease, with all of the rights therein contained, without hindrance, interruption or disturbance from UW or any person claiming under UW and such rights of the Tenant shall not be affected or disturbed by UW.



2. UW shall perform all the obligations of the Sublandlord under the Space Lease while in possession or control of the Premises in the event it exercise its rights under the Land Lease or terminates the Land Lease, provided that UW shall not be or become liable to remedy any default of the Sublandlord arising prior to the time of going into possession.

3. The Tenant, on behalf of itself and its successors or assigns in interest, covenants, agrees and acknowledges that its interest in the Space Lease is subject to the Land Lease, and agrees that, upon the request of UW at any time and from time to time, the Tenant, if UW exercises any of UW's rights and remedies under the Land Lease or upon termination of the Land Lease, shall, upon notice from UW, promptly attorn to UW (or to any purchaser from UW) as landlord under the Space Lease, such attornment to be for the then unexpired residue of the term of the Space Lease and on and subject to all of the terms, covenants and conditions of the Space Lease. Nothing in this Agreement shall require the Tenant to attorn to UW during any period when a person other than UW shall have lawful possession of the Premises.

4. The Tenant, on behalf of itself and its successors or assigns in interest, covenants, agrees and acknowledges that: (i) it will only use the Premises in accordance with the permitted uses identified in Section 6.1 of the Land Lease; and (ii) it will not use Premises in any manner whatsoever prohibited pursuant to Section 6.2 of the Land Lease. A reproduction of Sections 6.1 and 6.2 of the Land Lease, together with those definitions required to comprehend such provisions, is provided at Schedule B hereto.

5. UW and the Tenant each agree that they will require any transferee of their interest in the Project Lands to agree to assume and, so long as it holds such interest, to perform each of the covenants, obligations and agreements of such party under this Agreement.

**6. [The Indemnifier covenants, agrees and acknowledges that: (i) it is jointly and severally liable with the Tenant, as a principal obligor and not as a surety, in respect of all of the Tenant's obligations under the Space Lease and this Agreement; and (ii) at any time that UW is in possession or control of the Premises or if UW terminates the Land Lease, UW may rely upon the Indemnity as if it were the landlord named therein notwithstanding the fact that it is not a named party to such Indemnity.] [N.B. This provision to be inserted when a 3<sup>rd</sup> party is a guarantor or indemnifier of the Tenant's obligations under the Space Lease and if inserted, such Indemnifier must be party to this Agreement.]**

7. UW, the **Tenant [and the Indemnifier]** each agree, upon the request of the other, to execute such further instruments or assurances as may from time to time be required to evidence and confirm the obligations contained in this Agreement.

8. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement.

**UNIVERSITY OF WATERLOO**

by \_\_\_\_\_  
Name:  
Title:

by \_\_\_\_\_  
Name:  
Title:



by \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**

**LEGAL DESCRIPTION**

**[To be attached.]**

## **SCHEDULE B**

### **EXCERPTS FROM LAND LEASE**

#### **Section 6.1 of the Land Lease - Permitted Uses**

The Lessee shall only be permitted to use the Project for Technology Park Lands Permitted Uses provided that such use shall be subject to the prohibitions, exceptions and restrictions contained in this Lease and provided that such use shall be in compliance with Applicable Law.

#### **Section 6.2 of the Land Lease - Prohibited Uses**

The Lessee (and any Occupant) shall not be permitted to use the Project (or any portion thereof) for:

- (a) uses which are not Technology Park Lands Permitted Uses;
- (b) any light manufacturing uses which in the aggregate exceed 40% of the leased area in the Project occupied by an Occupant carrying on such uses;
- (c) educational uses which compete with the University of Waterloo;
- (d) uses which involve the sale of goods or services which compete with the goods or services sold on the UW Lands;
- (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;
- (g) such other exclusive uses as may be undertaken or permitted by the Lessor on other parts of the UW Lands; and
- (h) any Restaurant, daycare centre or fitness centre uses (collectively, the "Amenity Services") other than Amenity Services developed by the Lessee or any Occupant which are:
  - (i) in compliance with the Development Guidelines for the Technology Park;
  - (ii) ancillary to the primary operations of the Lessee or any Occupant, 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 Occupant, that portion of the Project Lands occupied by such Occupant 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 Occupant, those employees or occupants of such Occupant working at that portion of the Project Lands occupied by such Occupant 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 Occupant, as the case may be, to deliver or provide any Amenity Services for the benefit of the Lessee or the Occupant, as the case may be, and its employees or permitted occupants provided that the independent contractor shall not become an Occupant pursuant to a Space Lease.

### **Definitions**

**"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;

**"Lessee"** means the Sublandlord (as defined herein);

**"Lessor"** means UW (as defined herein);

**"Occupant"** means the Tenant (as defined herein)

**"Project"** means the project completed on the Project Lands (as defined herein), together with all improvements and buildings constructed thereon or in connection therewith, and includes the Premises (as defined herein);

**"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;

**"Technology Park Lands Permitted Uses"** means those uses as may be legally permitted from time to time on the Technology Park Lands which, as of the date of execution hereof, means, use primarily for the construction and leasing of building space wherein research based high technology companies will occupy office premises, conduct research and development activities and use advanced technology for certain light manufacturing related to such research and development activities, as well as for certain ancillary activities, such as retail shops which would service the space tenants in the Technology Park; and

**"UW Lands"** means the total lands comprising the University of Waterloo campus (including the north campus).

**SCHEDULE 14**  
**MUNICIPAL SIGN BY-LAW**

See attached.