

**MINUTES OF A REGULAR MEETING OF
THE COUNCIL OF THE CITY OF CORNER BROOK
ZOOM VIDEO CONFERENCE
FRIDAY, 24 DECEMBER, 2021 AT 11:00 AM**

PRESENT:

Mayor	J. Parsons	R. Cumby, City Manager
Deputy Mayor	L. Chaisson	D. Park, Director of Finance & Administration
Councillors:	P. Gill	D. Charters, Director Community Engineering Development and Planning
	V. Granter	T. Flynn, Director of Protective Services
	B. Griffin	D. Burden, Director of Public Works, Water and Waste Water Services
	C. Pender	M. Redmond, City Clerk

Absent with Regrets: Councillor P. Keeping

Call meeting to order: The meeting was called to order at 11:00 a.m.

21-175 Approval of Agenda

On motion by Councillor C. Pender, seconded by Councillor L. Chaisson, it is
It is **RESOLVED** to approve the agenda as circulated **MOTION CARRIED.**

**21-176 Regional Recreational Center - Lease Agreement with Memorial
University of Newfoundland and Labrador**

**Councillor P. Gill was in a Conflict of Interest and abstained from
voting and discussion on this agenda item.**

On motion by Councillor B. Griffin, seconded by Councillor C. Pender, it is
RESOLVED to approve the lease agreement attached hereto between the
City of Corner Brook and Memorial University of Newfoundland and Labrador
to facilitate the construction and operation of the Regional Recreation Center.
MOTION CARRIED.

ADJOURNMENT

The meeting adjourned at 11:25 p.m.



City Clerk

Mayor

GROUND LEASE

BETWEEN

Memorial University of Newfoundland

-and-

City of Corner Brook

Dated •, 2021

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THIS GROUND LEASE is made as of the • day of •, 2021.

BETWEEN: MEMORIAL UNIVERSITY OF NEWFOUNDLAND, a body corporate established under and existing pursuant to the *Memorial University Act* (Newfoundland and Labrador)

(the "Landlord")

AND: CITY OF CORNER BROOK, a body corporate established under and existing under the *City of Corner Brook Act* (Newfoundland and Labrador)

(the "Tenant")

WHEREAS the Landlord owns the Leased Property and has agreed to lease the Leased Property to the Tenant;

AND WHEREAS the Tenant has agreed to develop and construct the Corner Brook Regional Recreation Centre (as defined below).

THEREFORE in consideration of the mutual covenants, undertakings and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1. Definitions

In this Lease, unless the context otherwise requires:

"Additional Rent" means any amount payable by the Tenant pursuant to this Lease in addition to Base Rent.

"Base Rent" means the annual rent payable pursuant to Section 16.

"Buildings" means all buildings erected or under construction on the Leased Property including, without limitation, fixed machinery, accessories and equipment or other facilities affixed thereto (subject to the removal of tenant or trade fixtures affixed by the Tenant or sublessees).

"Corner Brook Regional Recreation Centre" means all Buildings and Improvements made upon the Leased Property for the purpose of developing, constructing and maintaining a regional recreation centre that will include, without limitation, a daycare, fitness, and aquatic centre with a swimming pool, gymnasium, fitness room, and multipurpose room, for the benefit of the Landlord and the general public.

"Environmental Laws" means applicable Laws in respect of the natural environment, public or occupational health or safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of Hazardous Substances.

"Freehold Mortgage" means a mortgage of the Landlord's interest in the Leased Property or any part thereof.

"Hazardous Substance" means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property or plant or animal life or harm or impair the health of any individual and includes any contaminant, waste, substance or material defined by Environmental Law as hazardous, toxic or dangerous or any other substance or material prohibited, regulated or reportable pursuant to any Environmental Law.

"Improvements" on any part of the Leased Property means all fixed improvements (or, where Buildings are also referred to, all fixed improvements additional to Buildings) now or hereafter constructed on the Leased Property and includes any additions or replacements thereof.

"Laws" means all applicable common law and federal, provincial, and municipal statutes, codes, ordinances, decrees, rules, regulations, orders, decisions, and rulings or awards having the force of law and **"Law"** means any of the foregoing.

"Lease" means this ground lease as it may be amended, supplemented or restated by written agreement of the Parties.

"Lease Commencement Date" means •.

"Leased Property" means all lands described in Schedule A – Leased Premises.

"Leasehold Mortgagee" means the holder of any Mortgage of the Tenant's interest in the Leased Property.

"Losses" means, in respect of any matter, all claims, demands, losses (excluding loss of profits), liabilities, damages, causes of action, proceedings, judgments, recoveries, deficiencies, costs and expenses (including, without limitation, interest, penalties and reasonable attorneys' fees and disbursements and amounts paid in settlement) arising directly as a consequence of such matter.

"Mortgage" means any arm's length mortgage or mortgages by the Landlord or the Tenant of their respective interests in the Leased Property or part thereof and includes any deed of trust and mortgage securing bonds and debentures.

"Operating Agreement" has the meaning set out in section 11.

"Parties" means the Landlord and the Tenant, and **"Party"** means any one of them.

"Prime Rate" means the annual rate of interest charged from time to time by the Royal Bank of Canada as its prime rate on loans nominated in Canadian funds;

"Rent" means the Base Rent and the Additional Rent.

"Replacement Cost" means the cost of repairing, replacing or reinstating any items of property on the Leased Property with material of like kind and quality without deduction for physical, accounting or any other depreciation.

"Taxes" means all sales and commodities taxes, withholding taxes, customs duties, income taxes, employer levies, excise taxes, export and import tariffs and fees, municipal taxes and

assessments, and any similar taxes, levies, assessments, tariffs, or fees, and all penalties and interest associated with same.

"Term" means the period of Forty-nine (49) years from the Lease Commencement Date.

"Utility Way" means such easements and rights of way as the Tenant requires for the installation, maintenance and repair, of utility services, and other equipment and facilities related to it and over, on, and under any of part of the Leased Property.

2. Gender and Number

Words importing the singular shall include the plural and vice versa, and words importing gender shall include all genders.

3. Headings

The headings contained in this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect the interpretation of this Lease.

4. Applicable Law

This Lease shall be construed and enforced in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada applicable therein.

5. Invalidity of Provisions

The invalidity or unenforceability of any provision of this Lease or any provision of this Lease shall not affect the validity or enforceability of any other provision of this Lease and any invalid provision shall be deemed to be severable.

6. Covenants Independent

Each covenant contained in this Lease is considered for all purposes to be a separate and independent covenant, and a breach of a covenant by either the Landlord or the Tenant will not discharge or relieve the other Party from its obligation to perform each of its covenants.

7. Entire Agreement

This Lease and any agreements herein contemplated to be entered into among, by or with the Parties, constitutes the entire agreement among the Parties pertaining to the lease of the Leased Property to the Tenant and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties with respect thereto, and there are no warranties, representations or other agreements between the Parties in connection with this Lease except as specifically set forth herein. No supplement, modification or waiver or termination of this Lease shall be binding unless executed in writing by the Parties. No waiver of any of the provisions of this Lease shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless

otherwise expressed or provided. In the event of a conflict or any inconsistency between the provisions of this Lease and the provisions of any agreements contemplated to be entered into among, by or with the Parties, the provisions of this Lease shall govern, and the provisions of such other agreement shall be deemed to be amended hereby, to the extent necessary to eliminate the conflict or inconsistency.

8. Successors and Assigns

The parties hereto agree that all rights, advantages, privileges, immunities, powers and things hereby secured to the Landlord and to the Tenant or to either of them by this Lease shall be equally secured to, binding upon and exercisable by their respective successors and assigns and all persons claiming under or through them and all covenants, liabilities and obligations entered into by or imposed hereunder upon the Landlord and the Tenant, or either of them, shall be equally binding upon their administrators, successors and assigns. The Tenant covenants and agrees that it may not transfer, assign, or sublet the Leased Premises or any part thereof without the consent of the Landlord.

9. Counterparts

This Lease may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute the executed agreement.

ARTICLE 2 - LEASE OF PROPERTY

10. Demise and Term

The Landlord hereby demises and lets to the Tenant and the Tenant hereby takes on lease from the Landlord the Leased Property, to have and to hold during the Term, unless sooner terminated in accordance with this Lease.

11. Operating Agreement

The Parties shall, no later than six months following execution of this Agreement unless an extension is mutually agreed in writing between the parties, enter into an operating agreement in respect of the Corner Brook Regional Recreation Centre addressing the items set out in Schedule B (the "Operating Agreement").

12. Overholding

If upon the expiration of the Term or termination of this Lease, the Tenant holds over the Leased Premises without any express agreement as to a new term, a tenancy from year to year shall not be created by implication of law, but a tenancy from month to month shall be deemed to have been created equal to one twelfth (1/12) of the annual Rent amount which will be due each month. Such tenancy shall be terminable on 180 days' notice, and, in the absence of written agreement to the contrary, shall be subject to all of the covenants, obligations and agreements provided for in this Lease, except as to the duration of the Lease.

13. Title Acquired by the Tenant During the Term

Title to the Corner Brook Regional Recreation Centre and all alterations, additions, changes, substitutions or improvements thereto, shall at all times during the Term, and for such further period as hereinafter mentioned be vested in the Tenant, notwithstanding any rule of law as to immediate vesting of title and ownership of the Corner Brook Regional Recreation Centre in the Landlord as owner of the Leased Premises. The Corner Brook Regional Recreation Centre and fixed improvements shall be deemed, during the Term of this Lease, to be the separate property of the Tenant and not of the Landlord. The Corner Brook Regional Recreation Centre shall remain subject to and governed by all applicable provisions of this Lease.

14. Surrender Upon Expiration of the Term

At the expiration of the Term, the Rent shall be apportioned and adjusted as of the date of the expiration of the Term and the Tenant shall peaceably surrender and yield up to the Landlord the Leased Property and the Corner Brook Regional Recreation Centre (and ownership and title to the Corner Brook Regional Recreation Centre shall thereupon vest in the Landlord free and clear of all encumbrances created by the Tenant except to the extent that the Landlord has agreed to be bound thereby) together with the Tenant's possession thereof (subject to any right of the Tenant and occupants of the Leased Property to remove trade and tenant's fixtures) and all the rights of the Tenant under any subleases and under this Lease shall thereupon be assigned to the Landlord in accordance with Section 15 (but the Tenant shall, notwithstanding such termination, remain liable to the Landlord for any loss or damage suffered by the Landlord during the Term by reason of any default by the Tenant) and the Parties will execute such further assurances as may reasonably be required to give effect to the foregoing.

The Tenant shall surrender the Leased Property and Corner Brook Regional Recreation Centre to Landlord in a good state of repair, working order and condition, subject to usual wear and tear.

15. Assignment of Rights Upon Termination

Upon expiration or termination of the Term, the Tenant shall assign to the Landlord the benefit of all subleases, license agreements and other agreements and rights benefiting the Leased Property or the Tenant's interest therein if and to the extent that the Landlord shall have become obligated pursuant to Article 8 (Dispositions) to recognize and be bound thereby or shall require such benefits to be assigned and shall agree to assume them; and such assignment shall include the full and unencumbered benefit of the Tenant's interest in any land hereafter owned, leased or licensed by the Tenant on behalf of the Landlord. The Tenant hereby constitutes the Landlord its true and lawful attorney fully empowered to execute all documents and take all steps necessary to effectuate the assignments set out in this Section 15.

ARTICLE 3 - RENT

16. Base Rent

The Tenant shall pay to the Landlord One Dollar (\$1) each year ("Base Rent").

17. Net Lease

It is the intention of the Parties that the Rent payable hereunder shall be net to the Landlord and that, except as otherwise herein expressly provided, the Tenant shall at its expense and to the complete exoneration of the Landlord pay or cause to be paid all costs, outlays and expenses of any nature and kind whatsoever relating to or affecting the Leased Property, the Corner Brook Regional Recreation Centre, and any other Buildings or Improvements on the Leased Property or for any other matter or thing affecting the Leased Property (including rent rebates), and in connection with any business carried on therein or thereon; provided, however, that the Tenant shall not be responsible for the payment of any amounts or the performance of any obligations of the Landlord under the Operating Agreement.

18. Taxes and Utility Charges

Except as may be otherwise agreed in the Operating Agreement, the Tenant shall pay or cause to be paid during the Term as Additional Rent, at its own cost and for its own account when due any and all utility charges, Taxes, rates, charges and assessments levied or assessed or required to be paid by any public authority in respect of the Leased Property.

19. Landlord to Provide Notices

Landlord shall forward to the Tenant forthwith upon its receipt all communications which affect the Tenant's interest in the Leased Property including any bills and notices relating to the charges and other amounts set out in Section 18.

20. Tenant to Provide Notices

The Tenant shall forward to the Landlord forthwith upon its receipt all communications which affect the Landlord's interest in the Leased Property.

21. Proof of Payment

The Tenant shall furnish to the Landlord within 15 days after written request therefor such reasonable proof of payment of any or all Taxes, rates, assessments, fees or other charges set out in Section 18 as the Landlord may reasonably require.

22. Landlord May Pay Taxes and Charges

In the event that the Tenant shall fail to pay when due, any Taxes, rates, assessments, fees or other charges referred to in Section 18, the Landlord shall have the right to pay the same at the expense of the Tenant and the Tenant covenants to pay to the Landlord forthwith Additional Rent equal to any amounts so paid by the Landlord.

23. Adjustment of Additional Rent

All sums paid as Additional Rent under this Article 3 shall be subject to adjustment to reflect any partial billing periods encountered at the commencement or termination of this Lease.

ARTICLE 4 - USE OF LEASED PROPERTY

24. Use of the Leased Property

The Tenant agrees and covenants with the Landlord to the following:

- (a) The Tenant shall use the Leased Property and continuously occupy the same for the purpose of constructing, operating, maintaining, and improving the Corner Brook Regional Recreation Centre and for such additional purposes as may from time to time be agreed upon between the Landlord and Tenant in writing.
- (b) The Tenant shall not use or permit the Leased Property or any portion thereof to be used or occupied in any manner, or for any purpose that violates any Applicable Law. The Tenant shall not permit on the Leased Property any nuisance as now or hereinafter defined by law.

25. Environmental Protection

The Tenant agrees and covenants with the Landlord as follows:

- (a) The Landlord and Tenant agree to carry out such environmental tests as mutually agreed upon as necessary in order to reasonably determine the environmental condition and state of the Leased Property at the Lease Commencement Date. The cost of such environmental tests shall be shared equally by the Landlord and Tenant.
- (b) The Tenant shall not permit or suffer any Hazardous Substances to be present at, on or under the Leased Property unless It has received the prior written consent of the Landlord, which consent may not be unreasonably withheld.
- (c) Any Hazardous Substances which the Landlord gives written permission to suffer or permit at the Leased Property shall be maintained by the Tenant during the Term, and removed by the Tenant at the expiry or earlier termination of the Term in strict compliance with all Environmental Laws, at the sole cost and expense of the Tenant and the Tenant shall indemnify the Landlord from and against all Losses resulting from the presence of any Hazardous Substances, on or under the Leased Property.
- (d) The Tenant shall notify the Landlord immediately and in reasonable detail upon discovery of any Hazardous Substances, or receipt of any claim, notice or communication relating to any Hazardous Substances affecting the Leased Property or if the Tenant becomes aware of any violation or potential violation by the Tenant or Landlord of any Environmental Laws or any warranty, covenant or representation in this Section 25 and shall describe therein the action which the Tenant intends to take with respect to such matters.
- (e) Forthwith upon receipt, the Tenant shall send copies to the Landlord of all orders, approvals or licences affecting the Leased Property and all correspondence with

authorities having jurisdiction or any other person with respect to any Hazardous Substances or Environmental Laws relating to the Leased Property or any property in the vicinity of the Leased Property including without limitation results of environmental tests and reports in the Tenant's possession.

- (f) The Tenant covenants at its sole cost and expense to do such work as is necessary to remedy or prevent the discharge, spill or location of any Hazardous Substances on, from or under the Leased Property or the breach by the Tenant of any Environmental Laws or to remove any Hazardous Substances found at, on or under the Leased Property so as to comply with Environmental Laws (such work being hereinafter referred to in this Section 25 as the "Remedial Work") provided that such discharge, spill or location of Hazardous Substance was caused by the Tenant and not by the Landlord.
- (g) Prior to undertaking the Remedial Work, the Tenant shall, at its own expense, prepare all necessary studies, plans and proposals with respect to the Remedial Work and submit the same for approval by the Landlord. The Tenant shall provide all completion bonds and other security required by the Landlord or the authorities having jurisdiction and shall carry out the work required in accordance with such approved plans and in compliance with all Environmental Laws and the Landlord's reasonable requirements. The Tenant shall keep the Landlord fully informed with respect to all aspects of the Remedial Work. The Tenant further agrees that if the Landlord determines, acting reasonably, that the Tenant is not diligently commencing or completing the Remedial Work or that the Buildings and Improvements, the Leased Property, the Landlord or the Landlord's reputation could be placed in jeopardy by the quality or method of performance of such Remedial Work by the Tenant, the Landlord may itself undertake the Remedial Work or a part thereof at the cost and expense of the Tenant, which cost shall be paid by the Tenant within 30 days after receipt of an invoice on account thereof. The Landlord, at its own cost shall be entitled to retain its own consultants to monitor all aspects of the Remedial Work including the determination of what Remedial Work is necessary;
- (h) The Landlord or its agents may at any time and from time to time on 24 hours' prior written notice to the Tenant, enter the Leased Property to inspect the Leased Property and any records reasonably considered to be relevant to confirm compliance by the Tenant with all Environmental Laws and covenants hereunder or to identify the existence, nature and extent of any Hazardous Substances on the Leased Property and the Tenant's use, storage and disposal of any Hazardous Substances. The Tenant agrees to cooperate with the Landlord and its agents in their performance of each such inspection. If the Landlord, acting reasonably determines following any such inspection, that further testing or investigation is required in order to monitor the Tenant's compliance with all Environmental Laws and covenants hereunder, the Landlord may require the Tenant, at the Tenant's expense, to arrange for such testing or investigation or may arrange for such testing or investigation itself, in which case the Landlord's costs of any such testing

or investigation shall be paid by the Tenant to the Landlord within 30 days after receipt of an Invoice on account thereof. The inspection contemplated by this Section 25(h) shall include, without limitation, the right to undertake soil, ground water, environmental or other tests, measurements or surveys in, on or below the Leased Property.

- (i) Upon the expiration or earlier termination of this Lease, the Tenant at its sole cost and expense:
 - (i) will have made a complete disclosure of all material facts and circumstances relating to environmental conditions, which to the knowledge of the Tenant have existed or exist on the Leased Property which in any manner might affect the future use of the Leased Property;
 - (ii) will ensure there are no outstanding, pending or threatened orders, directives or other requirements under any Environmental Law having jurisdiction relating to the Tenants use or occupation of the Leased Property;
 - (iii) will prevent, ameliorate or eliminate all environmental effects arising from its use of the Leased Property and will restore the natural environment in compliance with the most recent Environmental Laws and guidelines.

26. Improvements and Upkeep on the Leased Property

The Tenant covenants and agrees with the Landlord to the following:

- (a) The Tenant will at the earliest reasonably possible time, having regard to all the circumstances, erect and construct on the Leased Property the Corner Brook Regional Recreation Centre, and initiate any Improvements as the Tenant deems necessary, to be used and occupied by the Tenant throughout the Term as in this Lease provided. The Landlord acknowledges and agrees that it has already reviewed and consented to the design-build conceptual drawings for the Corner Brook Recreation Centre. The Tenant agrees to seek approval of the Landlord for any changes that may impact the operations of the Landlord's adjacent property;
- (b) The Tenant shall ensure that all work performed on the Leased Property, including erection, construction, upkeep, maintenance and Improvements of the Corner Brook Regional Recreation Centre, are in accordance with applicable Laws and industry standards;
- (c) The Tenant shall ensure throughout the Term the Leased Property is properly maintained and is kept in a good state of repair;
- (d) To build, construct or install such roadways and sidewalks as are in the opinion of the Tenant reasonably necessary for the general public to conveniently use the Leased Property for the purpose of using the Corner Brook Regional Recreation Centre and to obtain access thereto from the public roadways adjoining the

Leased Property, and to maintain the parking areas reserved for the use of the Tenant and walkway from such parking areas to the entrance of the Corner Brook Regional Recreation Centre;

- (e) Provide for the removal of snow in respect of any sidewalks, roads and parking areas reserved primarily for the use of the Tenant on the Leased Property;
- (f) Provide on the Leased Property suitable parking area for its employees, agents, and visitors, provided that parking arrangements for the Corner Brook Regional Recreation Centre shall do nothing to reduce the total number of parking spaces for use by the Landlord on the Landlord's campus;
- (g) Be responsible for landscaping of the Leased Property and the care and maintenance thereof;
- (h) Make suitable arrangements for the removal of garbage on the Leased Property;
- (i) To install or cause to be installed upon or beneath the Leased Property such transmission lines, conduits, pipes, fittings, transformers and other appurtenances as may be required to convey to or from any building or structure upon the Leased Property, the following utility services:
 - (i) If applicable, pressurized hot water from such point or points in the Landlord's pressurized hot water line or other supplier thereof as the Landlord or such other supplier may designate;
 - (ii) Water from such point or points in waterlines owned or operated by the Tenant;
 - (iii) Electricity from such point or points in the Landlord's electrical power distribution system as the Landlord may designate;
 - (iv) Telecommunication and internet services and any other broadband service from such point or points in transmission lines or means of delivery owned by a service provider or other supplier of the same as the case may designate.
- (j) The Tenant covenants and agrees with the Landlord that the supply of all utility services that may be required for the Corner Brook Regional Recreation Centre and all the cost and expense incurred in respect thereto, including all cost associated with movement of Landlord's existing water lines and creation of new water lines for use of the Landlord and Tenant, shall be the sole cost and responsibility of the Tenant. The Tenant covenants and agrees that neither the Leased Property and other lands owned by the Landlord or either of them shall in any way be assessed or charged with all or any portion of such installation costs and any maintenance costs of such utility services by the suppliers of the same. In the event the Landlord for its own purposes and for the benefit of the property owned by the Landlord (other than the Leased Property) from time to time uses

the lines, pipes, conduits, or other methods of delivery of such utility services to the Leased Property the Landlord shall not (as between the Landlord and the Tenant) be liable for nor in any way obliged to contribute to the original cost of the installation of the same.

- (k) The Landlord shall, if so requested by the Tenant at any time or times during the Term, grant to the Tenant the Utility Way and rights of way as the Tenant may reasonably require for the installation, maintenance and repair, at the Tenant's expense, of utility services and other equipment and facilities related thereto, or any of them, on, over and under any of the Landlord's lands other than the Leased Property, provided, that upon completion of any excavation work required for any such installation, maintenance and repair, the Tenant will, without delay, restore the surface of the ground including paved surfaces, as nearly as possible to its original condition and repair any subsidence that may occur by reason of any such installation, maintenance or repair.
- (l) The Tenant shall have the right from time to time, with prior written consent of the Landlord, to construct, alter, expand, demolish, reconstruct or replace all or any part of the Corner Brook Regional Recreation Centre.

27. Construction of Corner Brook Regional Recreation Centre and Improvements

A project committee (the "Project Committee") shall be provided information and consulted during the construction of the Corner Brook Regional Recreation Centre and Improvements as set out in Schedule C.

In constructing the Corner Brook Regional Recreation Centre and any Improvements on the Leased Property, the Tenant will proceed with all due diligence and will cause all work to be done in a good and workmanlike manner and will do all acts and things required by, and perform the work in accordance with, all applicable building and zoning ordinances and with all applicable Laws, including all bidding, tendering and procurement Laws. The Tenant shall ensure that all contractors, subcontractors, suppliers, or any of their respective representatives performing work on the Leased Premises maintain in good standing adequate insurance and performance security for the work they are performing.

If construction of the Corner Brook Regional Recreation Centre has not commenced by December 31, 2023, or such other date as mutually agreed by the parties (the "Outside Date"), either Party may terminate this Lease on 90 days prior written notice given to the other.

The Tenant also covenants and agrees that prior to erecting or constructing the Corner Brook Regional Recreation Centre upon the Leased Property it will, through the Project Committee, consult with the Landlord respecting:

- (a) The plot plan of the Corner Brook Regional Recreation Centre, its location and elevation on the Leased Property, the proposed landscaping thereof, vehicle and pedestrian approaches, and the location of all utility services and parking lots for motor vehicles;

- (b) the plans and specifications of the proposed Buildings to be used for the Corner Brook Regional Recreation Centre, so that the Landlord may review the interior and exterior appearance of any Buildings within the Corner Brook Regional Recreation Centre and be reasonably satisfied that it is architecturally and aesthetically acceptable to the Landlord;
- (c) contract or contracts with the Tenant or any other party designated by the Tenant for the landscaping of the Leased Property and for the care and maintenance thereof during the Term; and
- (d) any other design, construction, or maintenance aspects of the Corner Brook Regional Recreation Centre that the Landlord desires to be consulted regarding.

28. Replacement

The Tenant may from time to time during the Term, with the prior written consent of the Landlord, demolish or cause to be demolished all or part of any Buildings and Improvements constructed from time to time on the Leased Property and shall upon any such demolition, make or permit to be made replacements or substitutions of such Buildings and Improvements provided that such replacements or substitutions are of a reasonable standard of quality for the use of the Tenant as a Corner Brook Regional Recreation Centre. Provided further, that prior to demolition of Buildings or Improvements constructed from time to time on the Leased Property in preparation for replacement or substitution thereof the Tenant shall have given the Landlord reasonable evidence of its financial ability to complete the proposed replacement or substitution. All replacement or substitutions or other work undertaken by or for the Tenant once begun shall be prosecuted with reasonable diligence to completion.

ARTICLE 5 - REPAIRS AND MAINTENANCE

29. General

Except as may be set out in the Operating Agreement, the Landlord shall not be obliged to furnish any services or facilities to the Leased Property, nor to make repairs or alterations to or replacements of, any Buildings or Improvements constructed thereon, save and except for any damage caused by the Landlord, its officers, employees or agents. The Tenant hereby assumes full responsibility for the condition, operation, repair, general maintenance and management of the Leased Property and the Buildings and Improvements constructed thereon.

30. Tenant Obligated to Repair

During the Term, the Tenant shall, at its own cost and expense, repair and maintain in good order and condition, or shall cause to be repaired and maintained in good order and condition, the Buildings and Improvements located on the Leased Property. Such repair and maintenance shall be in all respects to the standard which would be maintained by a prudent manager of a building similar in size, quality, construction, and age situated on a similar site and shall meet the requirements of municipal or governmental authorities having jurisdiction and the requirements of fire insurance underwriters insuring the Building from time to time to the extent necessary to

maintain such Insurance in good standing. Such obligation to repair and maintain shall not be construed as limiting the right of the Tenant, pursuant to Section 28 to alter, demolish, reconstruct or replace any buildings or improvements in lieu of repairing them.

ARTICLE 6 - INSURANCE

31. Construction Insurance

During construction of the Buildings and Improvements on the Leased Property, the Tenant shall ensure that its building contractor effects, maintains and keeps in force, until completion of such Buildings and Improvements, an all risks builders insurance policy, performance bonds, and labour and materials bonds sufficient to protect the respective Landlord's and the Tenant's interests as well as the interests of any Freehold or Leasehold Mortgagee of the Leased Property (without rights of cross claim or subrogation against the Landlords, the Tenants) from damage to the Buildings and Improvements, fixtures, equipment and building materials on the Leased Property from time to time, during demolition and construction (which may be by policies effective from time to time covering the risks during different phases of demolition and construction) by an "all risks" form, including resultant damage from error in design and faulty workmanship, and, to the extent available and generally obtained by owners of similar properties in Newfoundland and Labrador, to the full Replacement Cost thereof at all times and in any event in an amount sufficient to prevent the Landlords from being deemed to be a co-insurer.

32. Tenant to Maintain "All Risks" Property Insurance

The Tenant shall, from and after the date of execution and delivery of the Lease, insure or cause to be insured and keep insured or cause to be kept insured the Buildings and Improvements and all other insurable property from time to time forming part of the Leased Property in an amount not less than 100% of the full Replacement Cost from time to time thereof against loss or damage by perils of "all risks" (being the perils from time to time included in the standard "all risks" policy issued by insurers from time to time) including flood and earthquake to the extent available and generally obtained by owners of similar properties in Newfoundland and Labrador.

33. Tenant to Maintain Insurance on Boiler and Machinery

In the event that, and so long as, boiler and pressure vessels are installed and maintained on the Leased Property, the Tenant shall maintain or cause to be maintained, from and after the date of execution and delivery of this Lease, comprehensive boiler and machinery insurance on a repair and replacement basis, in such amount as is normally maintained by prudent owners of similar properties in the Newfoundland and Labrador.

34. Deductibility

The Tenant may at its option effect or cause to be effected the insurance required to be maintained hereunder 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 Tenant.

35. Public Liability Insurance

The Tenant shall, from and after the date of execution and delivery of this Lease, effect and maintain or cause to be effected 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 the operations of the Tenant or its subleasees on the Leased Property, indemnifying and protecting the Landlord and the Tenant in such amounts and to such extent as may from time to time be usual and prudent for companies operating or owning similar properties in equivalent locations which amount shall not under any circumstances be less than 5 million Dollars (\$5,000,000.00) for any personal injury, death, property damage or other claim in respect of any one accident or occurrence, and without limitation of the foregoing, with provisions for cross liability and severability of interests. The insurance policy or policies placed by the Tenant pursuant to this Section 35 shall be primary and shall be fully exhausted before calling into contribution any insurance available to the Landlord. Any additional insurance placed by the Landlord on its own behalf shall be in excess of the primary insurance required under this Section 35. During the course of construction of the Corner Brook Regional Recreation Centre and any other Buildings or Improvements, the liability insurance required under this section shall be a "wrap-up" type including all interests.

36. General

All insurance to be provided pursuant to this Article 6 shall be in amounts and placed with insurers from time to time approved by the Landlord, acting reasonably and shall contain a waiver by the insurer of subrogation against the Landlord.

37. Non-Cancellations

Each of the policies of insurance provided pursuant to this Article 6 shall contain an agreement by the insurer to the effect that it will not cancel or alter such policy prior to its expiration, whether by reason of non-payment of premium, non-fulfillment of condition or otherwise, except after 30 days' prior written notice to the Landlord and to any Freehold and Leasehold Mortgagees named in such policy.

38. Premiums and Evidence of Payment Thereof

The Tenant shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article 6. The Tenant will produce to the Landlord as soon as reasonably feasible, and in any event within 30 days, prior to the expiry of any policy of insurance placed pursuant to this Article 6, evidence of the renewal or replacement of such insurance and shall make available upon request evidence of every payment of all premium and other sums of money payable for maintaining such insurance in force upon the Buildings and Improvements and the Leased Property.

39. Loss Payable

The loss payable under any and all property insurance policies maintained by the Tenant insuring against damage to the Leased Property by any covered perils (including, without limitation, those

policies required under Article 6), shall be payable to the Tenant. Such proceeds of Insurance shall be applied by the Tenant to the cost of repairing, demolishing, rebuilding, or replacing the damaged portions of the Leased Property, in accordance with Sections 26, 27, 28 and 40 of this Lease. If the Tenant exercises its termination right in Section 40 of this Lease, then all proceeds of property insurance payable for the total or substantial damage or destruction of the Leased Premises shall belong to and be paid to the Tenant, except for any portion of the insurance proceeds attributable to the Landlord's reversionary interest in the Leased Property which shall be paid to the Landlord.

40. Damage and Destruction

- (a) **Damage and Destruction.** If, during the Term, all or any part of the Leased Property shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, neither the Tenant nor the Landlord may terminate this Lease (subject to Section 40(c) below), the Tenant may not surrender possession of all or any part of the Leased Property and there shall be no abatement of Rent nor reduction of other amounts payable by the Tenant under this Lease, notwithstanding any applicable laws to the contrary.
- (b) **Repair, Demolish, Rebuild, or Replace.** If, during the Term, all or any part of the Leased Property shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, the Tenant, at its expense, shall repair, rebuild, replace or demolish such damaged or destroyed Improvements on the Leased Property, in accordance with Sections 26, 27 and 28 of this Lease, as soon as reasonably possible after the occurrence of the damage or destruction. The Tenant shall use the proceeds from the property insurance (except for any business interruption insurance) it maintains under Article 6 of this Lease to pay for such repair, demolition, rebuilding or replacement, and to the extent the insurance proceeds are not enough to cover all the costs and expenses thereof, the Tenant shall be responsible to pay for any shortfall. In no event shall the Landlord be obligated to repair, demolish, rebuild or replace all or any part of the Leased Premises or pay any of the costs or expenses thereof.
- (c) **Tenant's Early Termination Right for Damage or Destruction.** If all or 80% (based on area) or more of the Leased Property are totally or substantially damaged or destroyed by fire or any other casualty in the last half of the Term, then the Tenant may terminate this Lease within four (4) months after the occurrence of such damage or destruction on forty five (45) days prior written notice to the Landlord. If the Tenant exercises its right to terminate under this Section 40(c), then on the termination date the Tenant shall surrender the Leased Premises to the Landlord in accordance with this Lease, except that the Tenant, at its expense, shall promptly cause to be constructed on the Leased Property facilities comparable to

those existing on the Leased Property as of the execution date of this Lease. Such facilities shall be acceptable to the Landlord acting reasonably and shall be constructed in accordance with then applicable Laws and Industry standards.

41. Landlord's Right to Insure

The Tenant shall immediately advise the Landlord of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder, and in no circumstances shall the Tenant fail to advise the Landlord within five (5) days of any cancellation, material alteration or lapse or any policies of insurance. If the Tenant fails to effect and keep such insurance in force, or should such insurance be in an amount less than the amount approved by the Landlord, the Landlord shall have the right, upon written notice to the Tenant, without assuming any obligation in connection therewith, to effect such insurance at the cost of the Tenant and all outlays by the Landlord shall be immediately payable by the Tenant to the Landlord as Additional Rent without prejudice to any other rights and recourses of the Landlord hereunder. No such insurance taken out by the Landlord shall relieve the Tenant of its obligations to insure hereunder and the Landlord shall not be liable for any loss or damage suffered by the Tenant in connection therewith.

ARTICLE 7- INDEMNITY

42. General

The Parties shall release, indemnify and save harmless one another from any and all Losses (including legal fees and other professional costs) related to or resulting from, directly or indirectly:

- (a) Any breach, violation or non-performance of any covenant, obligation or agreement of the indemnifying Party under this Lease;
- (b) any damage to property howsoever occasioned by use and occupation of the Leased Property by the indemnifying Party or any person for which it is responsible for at law and any injury to any person or persons including death resulting at any time therefrom, occurring in or on the Leased Property or any part thereof occasioned by use and occupation of the Leased Property a Party or any person for which it is responsible for at law;
- (c) any contract, lien, privilege, mortgage, charge or encumbrance on the Leased Property arising from or occasioned by the act, default or negligence of the indemnifying Party, its officers, agents, servants, employees, contractors, customers, invitees or licensees; and such indemnification shall survive the termination of this Lease, any provision in this Lease to the contrary notwithstanding;
- (d) failure of the indemnifying Party to comply with any applicable Law, including all Environmental Laws; and

- (e) the Tenant shall save harmless and indemnify the Landlord from any and all Losses that occur during the erection and construction of the Corner Brook Regional Recreation Centre, including any Losses resulting from third party contractors.

ARTICLE 8- DISPOSITIONS

43. Assigning and Subleasing

The Tenant covenants and agrees not to, during the Term of the Lease, assign, transfer or set over or otherwise by any grant or deed or otherwise procure this Lease, the Leased Property, to be assigned, transferred, set over, or sublet to any person, persons or firm or corporation(s), except:

- (a) in accordance with the Operating Agreement, or
- (b) with the prior written consent of the Landlord which consent may not be unreasonably withheld. Consent shall be provided or withheld within 30 days of a notice of a request being received by the Landlord.

44. Tenant's Right to Mortgage

Notwithstanding the provisions of Section 43, the Tenant shall have the right at any time and from time to time to grant a Mortgage of the leasehold estate created hereby and to make, by way of security, assignments of subleases and rents, and to extend, modify, renew, or replace any such Mortgage or assignment, provided however, that the Landlord shall be given written notice of each such Mortgage or Assignment by way of security together with the name and address of such Leasehold Mortgagee or Assignee. From and after receiving the written notice neither the Landlord or Tenant shall cancel, terminate or surrender this Lease, or make any modification or amendment which would adversely affect such Leasehold Mortgagee or Assignee without the prior written consent of the Leasehold Mortgagee, acting reasonably.

The Landlord and Tenant shall execute any further documentation and amend this Lease to include any provision that a proposed Leasehold Mortgagee may reasonably request; provided however, that such provision implements Leasehold Mortgagee protection provisions in this Lease or preserves the Mortgage on the occurrence of any event of default under this Lease. Such amendments shall neither affect the Rent or Term provided for in this Lease nor materially adversely affect any other rights of the Landlord under this Lease. All such requested amendments shall be at the sole cost and expense of the Tenant.

45. Rights of Leasehold Mortgagee

The Leasehold Mortgagee may enforce such Mortgage and acquire title to such leasehold estate in any lawful way, and, without limitation, the Leasehold Mortgagee may by its representative or by a receiver, as the case may be, take possession of and manage the Leased Property and the Corner Brook Regional Recreation Centre and any Improvements thereon, and upon foreclosure of, or without foreclosure, upon exercise of any contractual or statutory power of sale under, such Mortgage, may sell or assign the leasehold estate, and the Leasehold Mortgagee shall be

liable to perform the obligations imposed on the Tenant by this Lease only so long as the Leasehold Mortgagee has ownership or possession of such leasehold estate.

46. Recognition of Certain Space Subleases

Whenever required by the Tenant, the Landlord shall recognize by a non-disturbance agreement any sublease made by the Tenant and permitted under this Lease, so as to confer upon such sublessee, while not in default under its sublease, security of tenure in accordance with its sublease and the right and obligation to continue as a tenant of the Landlord in the event of any termination of this Lease for default hereunder prior to the expiration of the Term (in each case upon the terms of its sublease), and from time to time to enter into any instruments appropriate to accomplish such purpose, provided in each case that:

- (a) the Landlord shall have been provided with a copy of the sublease or proposed sublease in respect of which such subordination is required; and
- (b) such sublease has been or is to be entered into by the Tenant in good faith, at arm's length, at a rent and otherwise upon terms which are reasonable in all the circumstances.

Such non-disturbance agreement shall further provide that upon termination of this Lease, the sub-lessee shall attorn and the Landlord shall recognize the sublease. The reasonable costs of the Landlord in reviewing and executing such non-disturbance agreements shall be for the account of the Tenant.

47. Effect of Assignment

No disposition by way of assignment or sublease by the Tenant of this Lease or of any interest under this Lease shall relieve the Tenant from the performance of its covenants, obligations or agreements under this Lease and the Tenant shall continue and remain contractually bound hereunder.

ARTICLE 9 - LESSOR'S REMEDIES

48. Right of Re-Entry

The tenancy granted by this Lease is expressly subject to the condition that if the Tenant fails to pay the Rent or other monies required to be paid by the Tenant hereunder, or if the Tenant fails to observe, perform and keep any of the covenants, provisos or stipulation to be observed, performed or kept by the Tenant hereunder and if such failure shall continue for a period of ninety (90) days after notice to the Tenant in writing of such failure, then, (unless the Tenant is within the said period of ninety (90) days taking all necessary steps to remedy any default which reasonably requires more than ninety (90) days to remedy, is proceeding thereafter to remedy the same with reasonable diligence and has provided to the Landlord, if requested by the Landlord, reasonable evidence satisfactory to the Landlord as to the steps being taken by it toward remedying the same) this Lease shall cease and terminate and the Landlord, in addition to any and all other remedies it may have may immediately re-enter and take possession of the

Leased Property and all the buildings, and improvements thereon and therein.

The Landlord shall also have all remedies, including damages and injunction, available to the Landlord at law or in equity arising upon any default by the Tenant under this Lease, but subject to the provisions of this Section 48:

- (a) the waiver by one party of the breach or default by the other of any of the covenants herein contained shall not prejudice the rights of that party in respect of any future or other breach of any covenant;
- (b) subject to compliance with the Tenant's reasonable requirements with respect to the security and confidentiality of the Tenant's operations in effect in and upon the Leased Property and subject to 48 hours prior notice being given by the Landlord to the Tenant (save and except for an emergency situation in which case no notice is required), the Landlord or the Landlord's agent shall have the right at reasonable times and intervals to enter and examine the Leased Property and the Corner Brook Regional Recreation Centre.

If the Landlord is entitled to exercise its rights and remedies as a Landlord consequent upon a breach or non-performance by the Tenant, the remedy of re-entry and termination of this Lease shall not be exercisable other than in respect of a default which consists of non-payment of Rent or other moneys due to the Landlord, or a non-monetary default which is a major default in the context of this Lease.

49. Remedies of Landlord are Cumulative

The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at law or equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity.

50. Application of the Mechanics' Lien Act

The Tenant shall not suffer or permit any lien under the *Mechanics' Lien Act*, RSNL 1990, c M-3 (as amended, re-enacted or replaced from time to time) or any like statute to be filed or registered against the Landlord's interest in the Leased Property, by reason of work, labour, services or materials supplied or claimed to have been supplied to the Tenant or anyone holding any interest in any part through or under the Tenant. If any such lien shall at any time be filed or registered, the Tenant shall, at its sole cost and expense, procure registration of its discharge within 30 days after the lien has come to the notice or knowledge of the Tenant; provided, however, that should the Tenant desire to contest in good faith the amount or validity of any lien and shall have so notified the Landlord, and if the Tenant shall have deposited with the Landlord's solicitor in trust, or paid into court to the credit of any lien action, the amount of the lien claimed plus a reasonable amount for costs, then the Tenant may defer payment of such lien claim for a period of time sufficient to enable the Tenant to contest the claim with due diligence, provided always that the Landlord's interest in the Leased Property and the improvements thereon shall not thereby become liable to forfeiture or sale. The Landlord may, but shall not be obliged to,

discharge any lien filed or registered at any time if in the Landlord's judgment, exercised reasonably, the Landlord's interest in the Leased Property and Buildings thereon (or any part thereof) becomes liable to immediate forfeiture or sale or is otherwise in jeopardy, and any amount paid by the Landlord in so doing, together with all reasonable costs and expenses of the Landlord, shall be reimbursed to the Landlord by the Tenant on demand and may be recovered as Additional Rent in arrears. Nothing herein contained shall authorize the Tenant or imply any consent or agreement on the part of the Landlord, to subject the Landlord's estate and interest in the Leased Property to any lien.

ARTICLE 10 - QUIET ENJOYMENT

51. Right of Tenant

If the Tenant pays the Rent hereby reserved and performs the covenants on its part contained herein, the Tenant shall and may peaceably enjoy and possess the Leased Property during the Term, without any interruption or disturbance whatsoever from the Landlord or any other person, firm or corporation lawfully claiming from or under the Landlord.

52. Buildings and Fixtures

The portions of the Buildings and Improvements located on the Leased Property or in the Corner Brook Regional Recreation Centre which are fixtures to the Leased Property, subject to the provisions of Sections 13 and 14, are intended to be and become the absolute property of the Landlord upon the expiration or termination of this Lease, but as between the Landlord and the Tenant during the Term shall be the separate property of the Tenant subject to and governed by all the provisions of this Lease applicable thereto; provided that the Landlord's absolute right of property in the portions of the Buildings and Improvements to the extent that they are located upon the Leased Property which will arise upon the termination of this Lease shall take priority over any other interest in portions of the Buildings and Improvements constituting the Corner Brook Regional Recreation Centre which may now or hereafter be created by the Tenant, and that all dealings by the Tenant with the Buildings and Improvements which in any way affect title thereto shall be subject to this right of the Landlord, and the Tenant shall not assign, encumber or otherwise deal with its entire interest in the Buildings or Improvements separately from any permitted dealing with the entire interest of the Tenant under this Lease, to the intent that no person shall hold or enjoy any interest in this Lease acquired from the Tenant who does not at the same time hold a like interest in the Buildings and Improvements located on the Leased Property; provided that nothing herein contained shall prevent the Tenant or any sublessee from removing any fixtures which are in the nature of ornamental or trade fixtures provided the Tenant shall make good any damage caused by such removal.

ARTICLE 11 - COMPLIANCE WITH APPLICABLE LAWS

53. General

The Tenant shall comply with all Laws applicable to the Leased Property including, without limitation, federal and provincial legislative enactments, zoning and building by-laws (where

applicable), and any other governmental or municipal regulations or agreements which relate to the demolition or construction of buildings and to the equipping of and maintenance, operation and use of buildings and public ways adjacent thereto and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Buildings and Improvements of the Corner Brook Regional Recreation Centre or any part thereof to the extent the same are applicable to the Landlord's Interest in the Leased Property and the Improvements thereon. The Tenant shall also comply with all police, fire and sanitary regulations imposed by any federal, provincial or municipal authorities and with the requirements made by fire insurance underwriters to the extent required in order to keep insurance in force and observe and obey all governmental and municipal regulations and other requirements governing the conduct of any businesses conducted on the Leased Property or in the Buildings. Non-compliance by the Tenant with any of the provisions of law or regulations referred to in this Section 53 shall not constitute a breach by the Tenant of any covenant in this Section 53 if, during any period of such non-compliance, the Tenant or a sublessee is actively contesting the validity or interpretation of such provision of law or regulation.

54. Contestation by the Tenant

The Tenant, upon giving such security as may be required to prevent the enforcement by forfeiture or sale against the Landlord's Interest in the Leased Property of any lien, privilege, mortgage, charge, encumbrance or adverse claim with respect to or which affects or might affect the Landlord's interest in the Leased Property (and for which, not being an encumbrance created by the Landlord, the Tenant is accordingly responsible) and for the payment by it of all interest penalties and costs which may accrue thereon during such contest shall have the right at its expense by appropriate proceedings conducted diligently and in good faith:

- (a) to contest or apply for reduction of the amount, legality or mode of payment of all utility charges, Taxes, rates, duties, charges, assessments or fees of any nature whatsoever, to contest any claim for lien (except a mechanic's lien covered by Section 50) levied or charged in respect of the Leased Property or any part thereof, and to contest any statute, law, by-law, ordinance, regulation or order affecting the Leased Property or any part thereof; and
- (b) to intervene in any expropriation proceedings, to defend and to prosecute any claims and in general to take any appropriate action to protect and enforce any rights or interest they may acquire by virtue of this Lease.

55. No Default During Contestation

During the period of any contest, application or action made or taken by the Tenant, no default shall be deemed to have occurred in the performance of the covenant, obligation or agreement under this Lease which is the subject matter of such contest, application or action; provided, however, that during the period of any such contest, application or action there shall be no abatement of Rent by reason of this Section 55.

56. No Sale or Forfeiture

Provided always that no contestation by the Tenant shall be conducted in such a manner as to permit the loss of the Leased Property and the Buildings and Improvements through sale or forfeiture.

57. Assistance of Landlord

At the request of the Tenant, the Landlord will execute and deliver all appropriate papers which may be necessary or proper to permit the Tenant to contest the validity of any lien, privilege, mortgage, charge, encumbrance or adverse claim pursuant to this Article 11 and will, at the expense of the Tenant, co-operate in any proceeding brought by the Tenant so long as such actions and co-operation do not prejudice the Landlord's interest.

ARTICLE 12 - ESTOPPEL CERTIFICATES

58. General

The Landlord and the Tenant shall at any time and from time to time, so long as this Lease shall remain in effect, upon not less than 15 days' prior written request by the other Party, execute, acknowledge and deliver to the other Party a statement in writing certifying that this Lease is not modified and in full force and effect (or if there have been modifications that the same are in full force and effect as modified, stating the modifications), the dates to which the Rent and other charges if any, have been paid in advance, the defaults, if any on the part of the Party requesting such statement known to the Party from whom such statement is requested and the action taken or proposed to be taken by such last mentioned party with respect to the same; it being intended that any such statement delivered pursuant to this Article 12 may be relied upon by any prospective purchaser of the Landlord's freehold estate, Freehold Mortgagee, assignee or sublessee of the Tenant's leasehold estate or Leasehold Mortgagee, as the case may be. The rights of the Parties under this Article 12 may be exercised on their behalf, in the case of the Landlord by any Freehold Mortgagee and in the case of the Tenant by any Leasehold Mortgagee.

ARTICLE 13 - GENERAL PROVISIONS

59. General Covenant of the Tenant

The Tenant covenants with the Landlord:

- (a) to pay Rent; and
- (b) to observe and perform all its covenants and obligations under this Lease.

60. General Covenants of the Landlord

The Landlord covenants with the Tenant:

- (a) for quiet enjoyment;
- (b) to observe and perform all its covenants and obligations under this Lease; and

- (c) that the Landlord has good and marketable title to the Leased Property in fee simple and that there are no leases, tenancies, agreements, encumbrances, liens or defects in title affecting the Leased Property or the right of the Landlord to grant this Lease.

61. Approvals, Covenants and Agreements

Where by a provision of this Lease an approval, consent or agreement (hereinafter in this Section 61 individually or collectively referred to as an **Approval**) is required, unless the contrary is expressly provided:

- (a) the Party whose approval is required will within 15 days, after receipt of a request for approval, accompanied in all cases by reasonable detail if the circumstances require, notify the requesting Party in writing either that it approves, or that it withholds its approval, setting forth in reasonable detail its reasons for withholding;
- (b) if the notification referred to in Section 61(a) is not given within the applicable period of time, the Party whose approval is requested will be deemed conclusively to have given its approval in writing; and
- (c) an approval may not be unreasonably withheld.

62. Registration of Lease

All costs incurred in the registration of this Lease shall be borne by the Tenant.

63. Interest on Payments

All payments by the Tenant to or on behalf of the Landlord or by the Landlord to or on behalf of the Tenant which are required or permitted to be made under this Lease, shall, unless this Lease indicates otherwise, bear interest in or arrears in an amount equal to the Prime Rate plus one per cent (1%) per annum.

64. Excusable Delay

If, because of a circumstance beyond the control of a Party or a Leasehold Mortgagee the Party or the Leasehold Mortgagee is delayed in performing or observing a covenant or in complying with a condition under the Term of this Lease that it is required to do by a specified date or within a specified period of time, and if the circumstance is neither caused by the default or act of commission or omission of that Party or Leasehold Mortgagee nor avoidable by the exercise of reasonable effort or foresight by that Party or Leasehold Mortgagee, the date or period of time by or within which it is to perform, observe or comply will be extended by a period of time equal to the duration of the delay. Nothing in this Section 64, however, excuses a delay caused by lack of funds or other financial circumstances or excuses the Tenant from paying Rent when such is due and payable.

65. Relationship of Parties

The provisions contained in this Lease shall not be deemed to create any relationship other than that of lessor and lessee as to the Leased Property.

66. Easements

The Landlord and Tenant shall execute or join in documents appropriate to subordinate and subject their respective interests in the Leased Property to easements, rights of way and like interests which it is necessary or expedient to grant from time to time to any municipal or other public authority or public utility for any public or quasi-public purpose or in order to secure services or other privileges or advantages benefiting the Leased Property and which do not substantially impair the value of the Leased Property.

67. Notice

All notices, demands, requests and payments (including Rent) which may be or are required to be given pursuant to this Lease shall be in writing and shall be sufficiently given if served personally upon any officer of the Party for whom it is intended, sent by telex or mailed, prepaid and registered.

In the case of the Landlord, addressed to it, as follows:

To: Grenfell campus, Memorial University of Newfoundland and Labrador
Arts & Science Building / Room AS 280
20 University Drive, Corner Brook A2H 5G4

Attention: Director, Facilities Management and Ancillary Services
and
Vice President (Grenfell Campus)

In the case of the Tenant, addressed to it as follows:

To: City Hall, 5 Park Street
P.O. Box 1080
Corner Brook, NL A2H 6E1

Attention: City Manager

or at such other address in Canada as the Parties may from time to time advise by notice in writing. The date of receipt of any such notice, demand or request shall be deemed to be the date of delivery if such notice, demand or request is served personally, by registered mail, courier, or facsimile.

68. Amendment

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

[Execution page follows.]

IN WITNESS WHEREOF the Parties have executed this Lease as of the ____ day of _____, 2021.

MEMORIAL UNIVERSITY OF NEWFOUNDLAND

Per: _____
Name: _____
Title: _____

Witness

Per: _____
Name: _____
Title: _____

Witness

CITY OF CORNER BROOK

Per: _____
Name: _____
Title: Mayor or Deputy Mayor

Witness

Per: _____
Name: _____
Title: City Manager or City Clerk

Witness

SCHEDULE A - LEASED PROPERTY

SCHEDULE B – OPERATING AGREEMENT

The Parties shall use commercially reasonable efforts to reach agreement with respect to the Operating Agreement, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing, and the Operating Agreement shall, at a minimum, address the following:

1. **Parking** – The large existing parking area will be the main parking lot for the Corner Brook Regional Recreation Centre which will be gated and patrons will be required to pay for that parking. All maintenance of this gated parking lot will be the responsibility of the Tenant. The Tenant's use of parking facilities for the Corner Brook Regional Recreation Centre shall not cause the Landlord to lose any parking capacity on the Grenfell campus. To ensure the Landlord loses no capacity, the Tenant intends to construct a parking lot on the green space in front of the Bennett Wing, closest to the road, leaving a section of grass between the building and the new parking lot. The Tenant also intends to construct a trail from the parking lot behind the Recplex to University Drive, including any pedestrian crossing control features required.
2. **Cleaning** – Cleaning of the Corner Brook Regional Recreation Centre will be the responsibility of the Tenant.
3. **Maintenance (interior and exterior)** – All maintenance of the Corner Brook Regional Recreation Centre (past the building "threshold") will be the responsibility of the Tenant. External maintenance responsibilities and responsibilities for any shared systems, including without limitation HVAC, and asphalt and line painting for shared roadways shall be mutually agreed by the parties.
4. **Capital repairs/upgrades** – All capital upgrades on the interior of the Corner Brook Regional Recreation Centre and within the mutually agreed upon externally delineated area shall be the responsibility of the Tenant.
5. **Security and camera viewing** – Internal security will be the responsibility of the Tenant. External security for the gated parking area & the portion of building containing the Corner Brook Regional Recreation Centre will also be the responsibility of the Tenant. The Tenant's security feeds will not be streamed to the Landlord's campus security but footage may be provided (subject to any applicable ATIPPA restrictions) if required for Landlord security investigations.
6. **Garbage removal/dumpsters** – Garbage and dumpsters and waste removal pertaining to Corner Brook Regional Recreation Centre operations shall be the responsibility of the Tenant. The location of any dumpsters shall be mutually agreed.
7. **Recycling/composting** – Compliance with provincial or municipal recycling and composting programs for materials resulting from operation of the Corner Brook Regional Recreation Centre shall be the responsibility of the Tenant unless the parties otherwise agree.
8. **Daycare subsidy** – The Landlord shall provide the Tenant with the sum of \$50,000 per year as a subsidy for operation of a child daycare. In exchange for the subsidy, the Tenant will give first priority to students of MUN's Grenfell campus to reserve childcare spaces for their children. Students shall however, pay the full cost of the childcare service at the same rate as any non-student users of the childcare centre. Rates shall be set by the Tenant and Grenfell students shall be provided with a deadline to reserve a spot for their child prior to the commencement of each academic year.

9. **Gymnasium** - The Tenant shall solely operate the gymnasium and all other aspects of the Corner Brook Regional Recreation Centre, subject to the Landlord's reasonable requirements.

10. **Guaranteed access/memberships/special rate** – The parties will agree on a subsidy from the Landlord and mandatory student fees for usage of the Corner Brook Regional Recreation Centre by students of the Landlord and what benefits that may provide to the Landlord/students.

11. **Operating hours** –The parties will agree to hours of operation for the Corner Brook Regional Recreation Centre.

12. **Interior access from Campus** –Students, faculty and staff of the Landlord will have controlled access to the Corner Brook Regional Recreation Centre from the existing campus building.

13. **Exam requirements** – The Tenant will make best efforts to accommodate student exam periods if the Landlord is unable to come up with an alternative site on campus. The Landlord must make best efforts to arrange an alternative site for exams and provide sufficient notice of its requirement to the Tenant.

14. **Rec Centre as throughway** –The Tenant will allow direct access to campus from existing and new parking areas to students, faculty and staff of the Landlord who hold membership cards so that access (who has entered and exited facility) can be controlled and monitored.

15. **Snow Clearing and Ice Control.** All snow clearing and ice control of the Corner Brook Regional Recreation Centre and associated parking lot will be the responsibility of the Tenant, subject to any agreement made by the parties in respect of shared roadways.

16. **Landscaping.** All landscaping including lawn mowing of the Corner Brook Regional Recreation Centre will be the responsibility of the Tenant, subject to any agreement made by the parties in respect of shared areas.

17. **Term.** The term of the Agreement shall be five (5) years. If, upon expiry of the Agreement, the Ground Lease remains in effect, a renewal of the Operating Agreement shall be negotiated in accordance with "Negotiation and Mediation" below.

Negotiation and Mediation

1. Negotiation

1.1 If the Parties are unable to reach agreement on the terms of the Operating Agreement (whether at or prior to the deadline set out above), the matter shall be referred in writing to appropriate representatives of the Parties. Each party shall designate its representative and in the absence of a Party's specific designation, the designated representatives shall be as follows:

- Tenant – City Manager,

- Landlord –Vice-president (Grenfell Campus).

- 1.2 References to such representatives may be initiated at any time by either Party by Notice to the other Party requesting a review under this Section 1 for the purpose of reaching a negotiated resolution (a "Review Notice").
- 1.3 Each Party shall be afforded a reasonable opportunity to present all relevant information regarding its position to the other Party's representative. All information disclosed by a Party shall be treated as confidential.
- 1.4 The Parties' designated representatives shall consider the information provided and seek to resolve the Dispute through negotiation.
- 1.5 Negotiations shall be concluded within 30 days from the date of delivery of the Review Notice or within such extended period as may be agreed in writing by the Parties.

2. Mediation Phase

- 2.1 If the Parties have not resolved the matter through negotiation as set out above, either Party (the "Requesting Party") may then request that the matter be referred to non-binding mediation by delivering to the other Party a Notice (a "Mediation Notice") to the other Party containing a written summary of relevant information relative to the matters that remain unresolved and the names of three individuals who are acceptable to the Requesting Party to act as a sole Mediator. Any mediator must be impartial and independent of each of the Parties and be an experienced commercial mediator.
- 2.2 Within five business days after receiving the Mediation Notice, the receiving Party shall send a written response to the Mediation Notice (the "Mediation Response") to the Requesting Party including its summary of information relating to the matters that remain unresolved and accepting one of the individuals proposed as Mediator in the Mediation Notice, or proposing another individual or individuals, up to a maximum of three, as Mediator.
- 2.3 Within 10 Business Days after receipt of the Mediation Response by the Requesting Party, the Parties shall attempt to appoint a Mediator. The appointment shall be in writing and signed by the Parties and the Mediator.
- 2.4 Any mediation commenced under this Mediation Procedure will continue only until the first of the following occurs:
 - (a) the Party in receipt of a Mediation Notice (i) gives notice that it declines to submit the matter to mediation or (ii) or fails to send a Mediation Response;
 - (b) the Parties are unable to agree to the appointment of a Mediator within the timeframes set out above;
 - (c) either Party gives Notice to the other Party that it terminates the mediation;
 - (d) the Mediator provides the Parties with a written determination that the mediation

is terminated because the matter cannot be resolved through mediation;

(e) the mediation is not completed within 45 days of the appointment of the Mediator or such other time period as the parties ; or

(f) the matter is resolved to the satisfaction of the Parties.

2.5 The Parties shall participate in good faith and in a timely and responsive manner in the Mediation Procedure. A copy of the Mediation Notice and the Mediation Response shall be delivered to the Mediator within two Business Days after his or her appointment. The Mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.

2.6 The Parties shall provide such assistance and produce such information as may be reasonably necessary, and shall meet together with the Mediator, or as otherwise determined by the Mediator, in order to resolve the Dispute.

2.7 Each Party shall each bear its own costs and expenses associated with the mediation, but the Parties shall share the common costs of the mediation equally (or in such other proportions as they may agree), including the costs of or attributable to the Mediator and the facilities used for the mediation.

2.8 The mediation will be non-binding except to the extent a written agreement is reached signed by the Parties. The mediation will be conducted on a without prejudice basis.

3. Arbitration Phase

3.1 If the parties are unable to resolve the matter through negotiation or mediation as set out above, either Party may submit the matter to binding arbitration by giving notice to the other Party (an "Arbitration Notice").

3.2 The arbitration will be subject to the *Arbitration Act* (Newfoundland and Labrador) as supplemented and modified by these provisions and as the Parties may otherwise agree.

3.3 The arbitration will be heard and determined by one Arbitrator where the Parties agree to arbitration by a single Arbitrator and jointly appoint the Arbitrator within 15 Business Days of the Arbitration Notice. If the Parties do not agree to arbitration by a single Arbitrator and appoint the Arbitrator within such time, the arbitration will be heard by three Arbitrators appointed as set out below.

3.4 If the Parties are unable to agree to a single Arbitrator, the arbitration will be heard and determined by three Arbitrators. Each Party shall appoint an Arbitrator of its choice within 20 Business Days after delivery of the Arbitration Notice. The Party-appointed Arbitrators shall in turn appoint a third Arbitrator, who shall act as Chair of the tribunal, within 20 Business Days after the appointment of both Party-appointed Arbitrators. If the Party-appointed Arbitrators cannot reach agreement on a third Arbitrator, or if a Party fails or refuses to appoint its Party-appointed Arbitrator within 20 Business Days after delivery of the Arbitration Notice, the appointment of the Chair of the Tribunal and the third

Arbitrator will be made in accordance with the *Arbitration Act* (Newfoundland and Labrador).

- 3.5 The Parties shall each submit to the panel their proposed form of Operating Agreement, flagging the provisions with which the parties have been unable to reach agreement on.
- 3.6 The arbitration panel will determine a version of the agreement that will stand as the Operating Agreement between the Parties. In so determining the agreement, the panel may compromise between the two versions or combine parts of the two versions to reach an intermediate version.
- 3.7 The form of agreement determined by the panel shall be the Operating Agreement between the Parties binding on the Parties.

SCHEDULE C – PROJECT COMMITTEE

1. Formation and Purpose

- 1.1 Upon the execution of this Agreement, a Project Committee is established consisting of up to two representatives each from Memorial and the City.
- 1.2 The purpose of the Committee is to provide and agree on a common understanding of the construction project and project progress

2. Reporting and Approvals

- 2.1 *Reporting* – The following topics shall be reported upon at meetings of the Project Committee and upon request by the Project Committee:

- (a) safety performance and any environmental issues;
- (b) construction status and schedule;
- (c) other topics as the Project Committee may from time to time determine.

- 2.2 *Approvals* – The City shall submit for approval by the Project Committee any decision that may:

- (a) have a material impact on Memorial's campus or operations; or
- (b) negatively impact Memorial or its students, faculty, or staff.

- 2.3 *Consensus* – The Project Committee shall endeavour to reach consensus on matters submitted to it for approval. If the representatives of the Parties are unable to reach consensus on a matter requiring approval, the issues preventing consensus shall be referred to senior representatives of the Parties for resolution.

3. Meetings

- 3.1 *Quorum* – One member from each of Memorial and the City shall constitute a quorum.
- 3.2 *Regular Meetings* – The Project Committee shall meet (electronically or in person) at least quarterly or as the Project Committee otherwise decides.
- 3.3 *Calling of Special Meetings* – Either Memorial or the City may call a meeting of the Project Committee by sending notice at least 5 days in advance (or as otherwise unanimously agreed) of the proposed meeting.
- 3.4 *Meeting Materials* – At least 24 hours in advance of all meetings, an agenda shall be circulated of matters to be considered at the meeting with sufficient information to allow members to properly and effectively consider the matters to be discussed at such meeting. Summary minutes shall be taken at the meeting and circulated in advance of the next meeting.

3.5 *Procedures* – The Project Committee may establish procedures for the conduct of its affairs except to the extent otherwise provided in this Schedule.

4. **Duration**

4.1 The Project Committee shall continue to exist until the earlier of:

- (a) the termination of this Ground Lease; and
- (b) the day that is 6 months following Substantial Completion.

