

THIS LEASE dated as of the 18<sup>th</sup> day of July, 2023.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF PORT COLBORNE**  
(hereinafter referred to as the “**CITY**”)

**AND**

**THE KENNEDY CLUB**  
(hereinafter referred to as the “**LESSEE**”)

**WHEREAS:**

The CITY is the owner of a recreational facility known as the Vale Health and Wellness Centre and municipally described as 550 Elizabeth Street, in the City of Port Colborne; and

The CITY has agreed to lease to the LESSEE certain retail space at the Vale Health and Wellness Centre (hereinafter sometimes referred to as the “**VHWC**”) for the provision of food services; and

The entry into this Lease has been authorized by the Municipal Council of the City of Port Colborne By-law as attached.

**NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants and other terms and conditions hereinafter contained and sufficient consideration having been given one to the other, the parties hereby covenant and agree as follows:

**1.0 Grant of Lease**

1.1 The CITY hereby leases to the LESSEE an area comprised of approximately 310 square feet on the main level of the VHWC, as highlighted in orange in Appendix A hereto (hereinafter referred to as the “**Leased Premises**” or “**Food Services Areas**”).

1.2 The CITY, at its sole discretion, may from time to time make additional space available to the LESSEE in the VHWC or on the property of the T.A. Lannan Sports Complex. One such area comprised of approximately 203 square feet on the second floor of the VHWC as highlighted in orange in Appendix “B” attached hereto (hereinafter referred to as the “**Second Floor Premises**”) available to the LESSEE for lease. In the event additional space is made available to the LESSEE all of the terms and conditions contained within this Lease shall apply to the lease of the additional space unless modified by an addendum to this Lease. For greater certainty, all sales made in such additional space will be added to the sales of the Leased Premises for the purposes of calculating the Gross Sales for the Percentage Rent pursuant to this Lease.

1.3 Subject to the execution of this Lease, the Indemnity Agreement and the LESSEE providing a certificate of insurance satisfactory to the CITY, the LESSEE shall have possession of the Leased Premises prior to the Commencement Date, subject to the LESSEE paying utility charges set forth in Section 5 herein during the fixturing period.

1.4 In the event the CITY, in its sole discretion, determines that a relocation of the Leased Premises is necessary, the LESSEE agrees to move to a similar size space in an alternative location within the VHWC. Any alternative location would be constructed at the cost of the CITY.

1.5 The LESSEE is granted a licence to service vending machines located within the VHWC designated by the CITY (the “**Vending Machines**”).

## **2.0 Term**

### **INITIAL TERM – YEARS ONE TO FIVE**

2.1 The initial term of this Lease shall commence on August 1<sup>st</sup>, 2023 (the “**Commencement Date**”) and shall terminate five (5) years from the Commencement Date (the “**Initial Term**”).

### **OPTION TO EXTEND TERM**

2.2 Upon the expiry of the Initial Term, the LESSEE and the CITY shall have the option to extend the Initial Term of this Lease for one (1) additional period of five (5) year (the “**Extended Term**”) upon giving notice in writing to the CITY at least six (6) months prior to the expiration of the Initial Term, and the CITY agreeing to the Extended Term prior to the termination of the Initial Term. In the event of the exercise of the renewal option, such extension shall be upon the same terms and conditions as this Lease with the exception of the annual base rent which shall be increased in accordance with Article 7.0 of this Lease. In the event that the CITY or the LESSEE do not agree to the Extended Term, this Lease shall terminate at the end of the Initial Term.

### **OPTION TO TERMINATE LEASE**

2.3 The LESSEE shall have the option of terminating this Lease during the Initial Term upon giving at least three (3) months’ prior notice in writing to the CITY, provided that all amounts due and owing to the CITY pursuant to this Lease are paid in full and the LESSEE is in compliance with all other terms and conditions of this Lease. For greater certainty, the LESSEE shall be entitled to terminate this Lease pursuant to the provisions of this Section 2.3 only during the Initial Term and the LESSEE acknowledges and agrees that it shall not be entitled to terminate this Lease on prior written notice during any Extended Term.

2.4 The CITY shall have the option of terminating this Lease in accordance with the provisions herein provided.

## **3.0 Leased Premises and Use**

3.1 Subject to compliance by the LESSEE with the provisions of this Lease, the LESSEE shall have exclusive use and quiet possession of the Leased Premises. The Leased Premises shall be used by the LESSEE for the operation of a food and beverage business for on and off the Leased Premises consumption operating as “The Kennedy Club” and for no other purposes whatsoever.

3.2 The Common Lounge Area, as highlighted in orange on Appendix ‘C’ is available for use by the LESSEE’s customers, but shall remain accessible to members of the public and shall be controlled by the CITY.

3.3 The CITY acknowledges that the LESSEE’s menu consists of primarily sandwiches, French fries, hot dogs, “grab and go” food, and related items. The LESSEE must submit a listing of all menu items, including pricing, to the CITY for approval. The LESSEE’s menu items must highlight the healthy choice options. Any material changes to the menu items, including pricing, shall require the approval of the CITY. The CITY shall determine what is a material change in its sole discretion. The LESSEE is expressly forbidden from sale of any tobacco or cannabis products of any kind.

3.4 The LESSEE, at its sole cost and expense, may, with the consent of the CITY, which consent may be unreasonably withheld, apply for a licence from the Alcohol and Gaming Commission of Ontario for the sale of alcohol from spaces within in the VHWC and the T.A. Lannan Sports Complex that have subsequently been leased to the LESSEE. Notwithstanding a successful application for a liquor sales licence by the LESSEE, the CITY maintains the right to withdraw their consent to the sale of alcohol by the LESSEE at any time.

3.5 The LESSEE shall supply the Vending Machines and keep supplied the Vending Machines in areas designated by the CITY at prices approved by the CITY. In the event the LESSEE, in the sole discretion of the CITY, fails to adequately service the Vending Machines, the CITY may terminate the licence to service the Vending Machines.

#### **4.0 Rent and Percentage Rent**

4.1 The annual base rent payable by the LESSEE to the CITY for the Initial Term of this Lease is \$7,200.00 per annum for the Leased Premises, plus Sales Taxes (as hereinafter defined) payable in equal monthly installments of \$600.00, plus Sales Taxes, for the Initial Term, subject to the adjustments hereinafter set forth.

Annual base rent for the Leased Premises payable during the Initial Term and any Extended Term thereof is payable by the LESSEE without any prior demand therefor and without deduction, abatement or set off. Annual base rent shall be increased in accordance with the provisions of Section 7.1 herein.

#### **PERCENTAGE RENT**

4.2 In addition to the annual base rent, the LESSEE shall pay further rent to the CITY, in the manner and upon the conditions and at the times hereinafter set forth during each Lease Year (as hereinafter defined), a sum equivalent to the amount of seven percent (7%) of the first \$150,000.00 of Gross Revenue (as hereinafter defined) of the LESSEE for such Lease Year, plus ten percent (10%) of Gross Revenue in excess of \$150,000.00 for such Lease Year (collectively, the “**Percentage Rent**”). Percentage Rent is payable, as hereinafter provided without any prior demand therefor and without any deduction, abatement or set-off whatsoever. Percentage Rent shall be subject to and the LESSEE shall be liable to pay, any and all Sales Taxes attributed thereto. For greater clarity, each Lease year ends May 31<sup>st</sup> and all sales of the Lessee in the VHWC or on the T.A. Lannan Sports Complex property are included in the calculation of Gross Sales for the purposes of calculating Percentage Rent. This includes additional premises the CITY may make available and vending machine sales.

#### **PAYMENT OF PERCENTAGE RENT**

4.3 The LESSEE covenants to pay an amount monthly on account of Percentage Rent within 60 days following the end of each month. The payments will be accompanied by a sales summary of sales by location, by month and year to date with vending machine sales broken out as one location. The payment will be calculated by the applicable rates of Seven Percent (7%) for the first \$150,000.00 of aggregate Gross Sales and Ten Percent (10%) of aggregate Gross Sales greater than \$150,000.00.

#### **LESSEE’S RECORDS**

4.4 For the purposes of ascertaining the amount payable as Percentage Rent, the LESSEE shall prepare and keep on the Leased Premises or at the LESSEE's principal office in the Province of Ontario for at least eighteen (18) months following the end of each Lease Year, adequate books and records which shall show all inventories and receipts of merchandise and goods at the Leased Premises and daily receipts from all sales, charges, services and other transactions on, at or from the Leased Premises and the VHWC made by the LESSEE and any other persons conducting business upon or from the Leased Premises as well as sales tax returns, all pertinent original sales records and such other sales records as the CITY reasonably determines which would normally be examined by an independent chartered professional accountant pursuant to accepted auditing standards in performing a detailed audit of the LESSEE's sales. The LESSEE shall cause all such records to be kept by all sub-tenants, assignees, concessionaires, franchisees, licensees or other persons doing business on or from the Leased Premises and the VHWC. The LESSEE and all other persons conducting business on or from the Leased Premises and the VHWC shall record at the time of sale, in the presence of the customer, all receipts from sale, charges, services or other transactions whether for cash or credit, in a cash register or point of sale system having a sealed cumulative total.

4.5 *Intentionally deleted.*

### RIGHT TO EXAMINE BOOKS

4.6 The receipt or use by the CITY of any statement of Gross Revenue from the LESSEE or any payment of Percentage Rent based thereon, shall neither constitute acceptance of such statement or of the Percentage Rent payable with respect to any period, nor constitute a waiver by the CITY of any obligation by the LESSEE hereunder and shall be without prejudice to the CITY's right to an examination of the LESSEE's books and records relating to the Gross Revenue and inventories of merchandise and goods at the Leased Premises, for the period covered by any statement issued by the LESSEE as above set forth. The CITY and CITY's authorized representatives shall have the right to examine the LESSEE's records and procedures aforesaid during regular business hours and shall have the right to enter the Leased Premises, through its agents, accountants, auditors and officers, to check, verify and tabulate Gross Revenue, or to examine accounting records and procedures including control features affecting the determination of Gross Revenue.

### AUDIT

4.7 The CITY may at any reasonable time cause a complete audit to be made of the LESSEE's entire business affairs and records relating to the Leased Premises and the calculation of Gross Revenue for the period covered by any statement issued by the LESSEE as above set forth. If the auditor or chartered accountant performing such audit reports to the CITY that in his opinion the LESSEE's records and procedures are insufficient to permit a determination of Gross Revenue for any Lease Year, or part thereof, or if the LESSEE is not complying with each of the provisions of this Lease in respect thereto, the LESSEE shall immediately, after notice from the CITY, take such steps as are necessary to remedy such default. If the LESSEE is unable to satisfy forthwith the objections contained in the auditor's report as aforesaid, the CITY may thereafter deliver to the LESSEE an estimate (which shall be final and binding on the LESSEE) made by the CITY of Gross Revenue for the period under consideration (which estimate shall be based on any information or records of the LESSEE that have been made available and such other information as the CITY considers relevant) and the LESSEE shall immediately pay to the CITY any amount shown thereby to be owing on account of Percentage Rent.

If the CITY's auditor or chartered professional accountant reports that the LESSEE is in default pursuant to the requirements of this Article 4 or that in his opinion the LESSEE's records and procedures are insufficient to permit a determination of the LESSEE's Gross Revenue or if such audit discloses that Gross Revenue for the period in question is understated by three percent (3%) or more of Gross Revenue actually received by the LESSEE from the business operations on the Leased Premises and the VHWC, the LESSEE shall forthwith, after notice from the CITY, pay to the CITY the cost of said audit, in addition to the deficiency, which deficiency is payable in any event. If there is any substantial or continuing breach by the LESSEE of the requirements of this Article 4, or if the LESSEE substantially or continually fails to produce records and procedures to permit a determination of Gross Revenue, or if Gross Revenue is understated by three percent (3%) or more as aforesaid, then, in addition to any other remedies of the CITY under this Lease or otherwise, the CITY may terminate this Lease upon five (5) days notice to the LESSEE. The report of the CITY's auditor from time to time is final and binding upon the parties hereto.

### LESSEE'S FAILURE

4.8 If the LESSEE fails to deliver any of the statements to the CITY provided for by this Article 4 and within the time herein provided, the CITY, in addition to any other rights or remedies hereunder, has the right thereafter to employ a chartered professional accountant or auditor to examine such of the LESSEE's books and records as are necessary to certify the amount of Gross Revenue for such period as it related to the statement in question, and the LESSEE shall pay to the CITY on demand the cost of any such examination, together with any and all sums shown to be owing on account of Percentage Rent pursuant thereto.

### DEFINITIONS

4.9 For purposes of this Lease, the following terms shall have the meanings ascribed to them below:

“Gross Revenue” means the entire amount of the sales price, whether for cash or credit or otherwise, of merchandise, goods and services (including amounts received for equipment rental, if any) and all other receipts or receivables whatsoever of all business conducted at, in or upon or from the Leased Premises, the additional space made available at the VHWC, or the T.A. Lannan Sports Complex, including receipts of receivables in respect of orders taken at or received at the Leased Premises (although such orders may be filled elsewhere), by the LESSEE and every sublessee, franchisee, concessionaire and licensee of the LESSEE or otherwise in or from the Leased Premises and all proceeds from vending carts, but shall not include:

- (a) delivery or installation charges;
- (b) the sale price of merchandise or goods returned or exchanged by customers for which a credit or refund is made, to the extent of such refund, provided that the sales price of such merchandise shall have been previously included in Gross Revenue;
- (c) any sums or credits received in settlement of claims for loss or damage to merchandise or goods; and
- (d) taxes which are required to be collected as a direct and separate tax from customers and which are not included in the sales price of such merchandise, goods or services;

“Indemnifier” means the individuals who have executed the Indemnity Agreement attached as Appendix “G” hereto and any replacement Indemnifiers required pursuant to the provisions of this Lease.

“Lease Year” means a period of time, the first lease year commencing on the earlier of the date of possession of the Leased Premises and Commencement Date the last day of the month of May next following. Each subsequent Lease Year commences on the first day following the expiration of the preceding Lease Year and terminates on the earlier of the expiration of twelve (12) months thereafter or on the termination of this Lease.

“LESSEE” means The Kennedy Club and any reference to “LESSEE” includes, where the context allows, (as in, by way of example, but without limitation Section 4.5, Section 4.6, Section 10.2, Section 10.4, Section 10.6, Article 24 and Section 25.5), the directors, officers, servants, employees, contractors, agents, invitees, franchisees, sublessees and licensees of the LESSEE and all other persons or entities over whom the LESSEE: (i) may be expected to exercise control; and (ii) is in law responsible.

“rent” includes base rent, Percentage Rent and any and all sums of money or charges required to be paid by the LESSEE under this Lease whether or not designated as “additional rent” or whether or not payable to the CITY or to any other person or entity.

“Sales Taxes” includes any and all goods and services taxes, sale taxes, value added taxes, harmonized sales taxes, business transfer taxes and any other taxes imposed on the CITY with respect to amounts due under this Lease whether characterized as goods and services taxes, sales taxes, value added taxes, harmonized sales taxes, business transfer taxes or otherwise, it being the intention of the parties that the CITY shall be fully reimbursed by the LESSEE with respect to any and all Sales Taxes payable by the CITY in respect of the rent and other amounts payable by the LESSEE to the CITY under this Lease.

## **5.0 Utility Charges**

5.1 The CITY shall provide the LESSEE with utilities (electricity, potable water, heating and cooling to building standards) on a best efforts basis. The LESSEE is responsible, at its own cost and expense, for all telephone, internet, cable television or other non-building supplied utility-type services required by the LESSEE. The City reserves the right to require the LESSEE to shut down utilities for any reason. In the event a required shut down exceeds 24 hours in any given month, for a reason other than weather, it is anticipated that month’s financial terms will be prorated accordingly.

## **6.0 Intentionally Deleted.**

## **7.0 CPI Increases and Total Lease Payment**

7.1 The annual base rent payable by the LESSEE hereunder shall be increased commencing at the beginning of each Lease Year by the most recent percentage increase in the Consumer Price Index for Ontario (All Items) published by Statistics Canada (the “**Index**”), as hereinafter set forth. It is understood and agreed by the parties that in the event that: (i) there is a reduction in the Index as at the Index Date, the LESSEE shall not be entitled to a reduction in annual base rent for the next succeeding Lease Year of the Initial Term or any Extended Term; and (ii) the Index is no longer published at any time during the Initial Term or any Extended Term, then the CITY shall, in its sole discretion, use such other price index it determines appropriate for the adjustments to be made pursuant to this Section 7.1.

7.2 The LESSEE covenants to make all payments in respect of base rent, in equal monthly installments on the first day of every calendar month in advance, and Percentage Rent in accordance with section 4.3 of this Lease, without deduction, abatement or set off.

Cheques shall be made payable to the Corporation of the City of Port Colborne and delivered to the attention of the Director of Corporate and Community Services of the City of Port Colborne, at 66 Charlotte Street, Port Colborne, Ontario, L3K 3C8.

7.3 Any and all sums of money or charges required to be paid by the LESSEE under this Lease shall be deemed to be and shall be paid as additional rent, whether or not the same be designated “additional rent” hereunder, or whether or not the same be paid to the CITY or otherwise, and all such sums shall be payable in lawful money of Canada without deduction, set-off or abatement whatsoever. Any additional rent provided for in this Lease, unless otherwise provided herein, shall become due with the next installment of monthly base rent and upon default of payment shall be collectable by the CITY as rent, in arrears.

## **8.0 Intentionally Deleted.**

## **9.0 Lessee Leasehold Improvements and Fixtures**

9.1 The LESSEE shall be responsible for the installation, maintenance and replacement of all trade fixtures and leasehold improvements within the Leased Premises, including, but not limited to, all shelves, racks, counters, sinks, oven, freezers and signage. Modifications and improvements, including, but not limited to fixtures and trade fixtures, made by the LESSEE to the VHWC building which are affixed to the VHWC building shall become property of the CITY upon their installation and shall not be removed by the LESSEE at the termination or expiration of this Lease, nor at any other time, unless required by the CITY. During the Initial Term and any Extended Term and provided the LESSEE is not in default of any of its obligations or covenants in this Lease, the LESSEE may remove its trade fixtures provided it replaces such trade fixtures with new or like new trade fixtures and equipment. At the termination or expiration of this Lease the LESSEE must return the Leased Premises to its original condition to the extent required by the CITY, to the complete satisfaction of the CITY and shall immediately repair any damage to the Leased Premises caused by the removal of the LESSEE’s trade fixtures. All leasehold improvements, renovations or redecorating shall be subject to prior written approval by the CITY, as set forth below.

The LESSEE shall not make any repairs, alterations, replacements, decorations or improvements (collectively, the “**Work**”) to the Leased Premises without submitting to the CITY: (i) details of the proposed Work, including drawings and specifications; and (ii) evidence that the LESSEE has obtained the necessary consents, permits, licenses and inspections from the governmental authorities having jurisdiction in relation to the Work to be performed. The Work will be completed (1) at the LESSEE’s sole cost; (2) by competent workmen who are duly qualified or licensed as required by law; (3) in a good and workmanlike manner, using only new or like new materials; (4) in accordance with the drawings and specifications approved by the CITY; and (5) subject to the reasonable restrictions imposed by the CITY.

9.2 The LESSEE will not install any equipment which overloads the capacity of any utility, electrical or mechanical facilities in the Leased Premises or the VHWC or which the CITY does not approve of and the LESSEE will not bring upon the Leased Premises any machinery, equipment or thing which might, in the opinion of the CITY, damage the Leased Premises or overload the floors of the Leased Premises and the LESSEE shall forthwith repair or pay to the CITY, as additional rent, on demand, any damage caused for failure to abide by this provision.

9.3 The LESSEE shall not suffer or permit any liens under the *Construction Act*, or other or similar liens or orders to be filed against the Leased Premises, the VHWC or any parts thereof by reason of work, labour, services or materials holding the Leased Premises or any part thereof through or under the LESSEE. If any such liens or orders as aforesaid shall be at any time filed against the Leased Premises, the VHWC or any part thereof, the LESSEE shall cause same to be discharged from the record and from title to the Leased Premises and the VHWC within ten (10) days after notice to the LESSEE of the filing of the same. If the LESSEE shall fail to discharge such lien or order within such period, the CITY may, in addition to any other right, or remedy of the CITY, but shall not be obligated to, discharge same either by paying the amount claimed to be due or by procuring the discharge of such lien or order by deposit in Court or by bonding. Any amount paid by the CITY for any of the aforesaid purposes and all fees and expenses (including legal fees on a full indemnity basis) and all other expenses of the CITY in defending such action or in procuring the discharge of such lien or order, with all necessary disbursements in connection therewith, shall be repaid by the LESSEE to the CITY on demand, and if unpaid may be treated as rent in arrears. Nothing herein contained shall authorize the LESSEE, or imply any consent or agreement or request on the part of the CITY, to subject the CITY's estate or interest in the Leased Premises or the VHWC to any construction lien or other lien of any nature or kind whatsoever.

9.4 The CITY and its agents, upon prior written notice, at all reasonable times during the Initial Term and any Extended Term of this Lease, shall have the right to enter the Leased Premises and inspect the condition thereof. Where an inspection reveals that repairs or replacements are necessary, the CITY shall give the LESSEE notice in writing, and thereupon the LESSEE will, within thirty (30) days from the date of delivery of the notice, make the necessary repairs and replacements in a good and workmanlike manner. If the LESSEE shall not, within thirty (30) days after the service of such notice, commence to proceed diligently with the execution of the repairs and replacements and work mentioned in such notice, it shall be lawful for the CITY to enter onto the Leased Premises and execute such repairs, replacements and work and the cost thereof shall be collectible as additional rent on demand. Entry by the CITY in accordance with this Section 9.4 shall not be deemed to be a breach of the LESSEE's quiet enjoyment of the Leased Premises and the CITY will not be liable for any damage or injury caused to any property of the LESSEE or others located on the Leased Premises by reason of such entry.

**10.0** *Intentionally deleted.*

### **11.0 Food Services at VHWC**

11.1 The LESSEE acknowledges and agrees that the CITY may permit food vendors, food carts, food kiosks, or stationary food facility other than the LESSEE to operate within the VHWC and the T.A. Lannan Sports Complex.

### **12.0 Conduct and Operating of Business**

12.1 The overall governance of the VHWC will be the responsibility of the CITY. The CITY will develop the facility operations policy and procedures manual. The facility policies and procedures will be adhered to by the LESSEE. The LESSEE agrees to abide by all rules, regulations and facility policies and procedures established and approved from time to time by the CITY.

12.2 The CITY may make reasonable regulations with regard to the use and occupancy of the Leased Premises and the LESSEE shall fully comply with such regulations.

12.3 The LESSEE shall, during the Initial Term and any Extended Term;

- operate its business with due diligence and efficiency and maintain an adequate compliment of staff to properly serve its customers;

- obtain and file with the CITY police checks for all staff, including ownership of the LESSEE;
- observe and obey the rules and regulations of the CITY promulgated from time to time for reasons of safety, health or preservation of property or for the maintenance of the good and orderly appearance and operation of the VHWC. The CITY agrees that except in cases of emergency, it will give the LESSEE notice of every new rule or regulations adopted by it at least thirty (30) days before the LESSEE shall be required to comply therewith;
- abide by all rules and regulations and general polices formulated by the CITY from time to time;
- shut down operations for any reason given by the CITY. In the event a required shut down exceeds 24 hours in any given month, for a reason other than weather, it is anticipated that months' base rent shall be prorated accordingly;
- from time to time participate, along with the LESSEE's staff, in CITY training on topics that range from, but not limited to, health and safety to diversity, equity and inclusion. In such situations the CITY shall cover the costs of training and the LESSEE shall be responsible for its staff wages;
- keep the Food Services Area free of hazards and fire dangers at all times;
- encourage patrons to dispose of garbage and recycling in the appropriate receptacles to maintain a clean facility;
- make use of biodegradable packaging when the LESSEE is reasonably able to; and
- meet with and negotiate with other partners and organizations for special events such as birthday parties, tournaments, team parties etc.
- be liable to the CITY to pay for structural repairs that are due to the acts and omissions of the LESSEE, as additional rent due on demand;
- The LESSEE covenants and agrees that it will not use or permit to be used any part of the Leased Premises, or any part of the VHWC and T.A. Lannan Sports Complex so as to cause a nuisance, and will not cause or maintain any nuisance in, at or on the Leased Premises, or any part of the VHWC and T.A. Lannan Sports Complex nor do or permit to be done or omitted anything upon, in or about the Leased Premises, or any part of the VHWC and T.A. Lannan Sports Complex the doing, permission or omission of which shall be, or result in a nuisance; and
- The LESSEE will at its expense promptly, (i) comply with the requirements of all governmental authorities, including, without limitation, federal, provincial and municipal legislative enactments, laws, by-laws, regulations and environmental laws, policies and regulations now or subsequently in force which pertain to the LESSEE's use of the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, or the conduct of LESSEE's business in the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, or the making of any repairs, replacements, alterations or changes to the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, (ii) comply with the policy, fire and sanitary regulations imposed by any governmental authorities or made by fire insurance underwriters, in connection with the LESSEE's use of the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, and (iii) carry out all modifications or changes to the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex and the LESSEE's conduct of business in or use of the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex which are required by any of those authorities.



### **13.0 Independent Contractor**

13.1 The LESSEE shall act solely as an independent contractor and shall retain complete control over its agents, employees and administrators.

### **14.0 Employees**

14.1 The LESSEE shall provide at all times, a sufficient number of qualified and trained employees to operate the Food Services Area and any other additional space made available to the LESSEE by the CITY. Employed personnel of the LESSEE shall not be employees of the CITY.

### **15.0 Labour**

15.1 The LESSEE shall remain in good standing with the Workers Safety & Insurance Board as well as comply with all other relevant employment statutes, including the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code.

15.2 The LESSEE agrees to implement and comply with all health and safety legislation and regulations.

### **16.0 Sanitation and Housekeeping**

16.1 The LESSEE shall at all times be responsible for the regular housekeeping and sanitation in the preparation, storage and service areas of the Food Service Area and any additional spaces made available to the LESSEE by the CITY.

The LESSEE shall not permit garbage, ash, waste or other objectionable material to accumulate on the Leased Premises. The LESSEE shall, during the Initial Term and any Extended Term, at its own cost and expense, remove all garbage and debris from the Leased Premises and shall comply with all applicable laws and regulations regarding the disposal of same.

16.2 The LESSEE agrees to be responsible for the removal of waste from and cleaning/clearing of tables and the cleaning of minor spills in the Common Lounge Area and any area in the VHWC or on the grounds of the T.A. Lannan Sports Complex impacted by the operations of the LESEE during daily operational hours. For greater certainty this includes space not identified as leased by the LESSEE and includes any adjacent space. The YMCA in agreement with the CITY is responsible for the overall cleaning of the Common Lounge Area of the VHWC.

16.3 The LESSEE is responsible to supply all their own cleaning materials and supplies for their operations.

### **17.0 Waste Management**

17.1 The LESSEE agrees to be responsible for emptying and transporting waste from the Food Services Area and any additional spaces made available to the LESEE by the CITY to the waste confinement and recycling area inside or outside the VHWC as directed by the CITY. The LESSEE shall participate in all recycling programs required by the CITY.

17.2 The CITY shall be responsible, at its expense, for emptying waste containers on a daily basis in the Common Lounge Area and any additional spaces made available to the LESEE by the CITY.

**18.0 Security and Repairs**

18.1 The LESSEE acknowledges and agrees that the CITY is not responsible for providing security to the Food Services Area. The LESSEE acknowledges that it is responsible for security of the Food Services Area during the Initial Term and any Extended Term of this Lease. The LESSEE will, throughout the Initial Term and any Extended Term, at its sole cost and expense, keep the Leased Premises in good condition and repair, reasonable wear and tear only excepted, and will make, with due diligence and dispatch, all repairs and replacements to the whole of the Leased Premises, including all appurtenances, fixtures and equipment, as would a careful and prudent owner. The LESSEE shall, at its own expense, keep the whole of the Leased Premises in a neat and tidy condition and shall keep the Leased Premises well painted, clean and in a first class condition. The CITY shall not be obligated to repair, replace or maintain any part of the Leased Premises during the Initial Term or any Extended Term of this Lease.

18.2 The CITY shall not be liable to the LESSEE for any interference, disruption or inconvenience caused by repairs, alterations, improvements or construction to the VHWC, provided such are carried out as expeditiously as reasonably possible.

**19.0 Keys/Alarms**

19.1 The LESSEE covenants to provide a key to the Leased Premises to the CITY’s facility manager. The LESSEE hereby grants permission to the City of Port Colborne’s staff to enter the Leased Premises in case of an emergency. If the CITY enters the Leased Premises in an emergency situation, the facility manager will contact the LESSEE as soon as possible and, as a matter of record, will provide the date, time and entry point for their information.

**20.0 Washrooms**

20.1 The CITY acknowledges that the LESSEE’s staff and customers shall be entitled to use the VHWC public washrooms, in common with others.

**21.0 Other Taxes**

21.1 The LESSEE shall collect any applicable taxes in respect of the sales to its customers and shall remit the taxes to the appropriate taxing authority as required by applicable laws.

**22.0 Hours of Operation**

22.1 The LESSEE agrees that the hours of operation of the Leased Premises shall be adjusted seasonally to meet the needs of the programs offered at the VHWC. The CITY will be requested to review hours of operation with the LESSEE if any concerns are raised as to hours of operation. The LESSEE acknowledges and agrees to modify the hours of operation for tournaments and other special events.

**BASE HOURS**

22.2 The LESSEE covenants to be open for business during the proposed hours of:

Sunday to Saturday                                6:00 am to 11:00 pm

The LESSEE acknowledges that the proposed hours are subject to change to meet the demands of the facility.

The CITY will circulate electronically a schedule of all regular program and upcoming events in the VHWC to the LESSEE for scheduling purposes.

**23.0 Signage**

23.1 The LESSEE shall have the right during the Initial Term and any Extended Term, at its expense, to have signage as follows:

(a) Store name above the Food Services Area on the main floor in size, materials and colours approved by the CITY

(b) Store name on the road pylon sign at a cost of \$1,000.00 per year (plus Sales Taxes) for the Initial Term, payable as additional rent, in equal monthly installments of \$83.33, plus Sales Taxes on the first day of each month during the Initial Term, and \$500.00 per year for each year of an Extended Term, plus Sales Taxes, thereafter payable in equal monthly installments of \$41.67, plus Sales Taxes, payable on the first day of each month during each year of the Extended Term, for advertising in size, materials and colours approved by the CITY.

(c) Store Name above the outside service window in size, materials and colours to be approved by the CITY.

(d) The City of Port Colborne will supply directional signage at all three building entrances indicating The Kennedy Club as the food services provider in size, materials and colours approved by the CITY. The LESSEE shall supply appropriate art work and specifications for text and font.

23.2 All signs purchased by the LESSEE will remain the property of the LESSEE and shall be removed by the LESSEE upon the expiration or termination of the Initial Term or any Extended Term. The LESSEE must return the area where signage was installed to its original condition at its sole expense and shall repair all damage caused by such removal.

23.3 The Lessee shall not affix or maintain upon the glass panes and/or supports or within twelve (12) inches of any opening/window/glass or exterior wall of the Leased Premises, any signs, advertisements, placards, descriptive material, names, logos, insignia, trademark or other such items, except those that have been approved by the CITY in writing as to size, type, color, location, display quantities, copy and nature. The Lessee shall not affix any sign within the common area of the VHWC. This excludes signage pursuant to Section 23.1, an 'OPEN' sign on the outside service window of the Leased Premises (as approved by the CITY), and signage on the LESSEE's vending cart. All signage shall conform to LESSEE's logo.

23.4 Any unauthorized advertising displayed by the LESSEE shall be removed by the CITY, with the cost of removal charged to the LESSEE, as additional rent.

#### **24.0 LESSEE'S Insurance**

24.1 The LESSEE will, throughout the Initial Term and any Extended Term, at its own expense, take out and maintain, in the names of the LESSEE and the CITY, as an additional named insured, the following insurance:

(a) insurance upon all property owned by the LESSEE or for which the LESSEE is legally liable, or which is installed by or on behalf of the LESSEE, and which is located within the Leased Premises including, but not limited to, fittings, installations, alterations, additions, partitions, trade fixtures, fixtures and anything in the nature of a leasehold improvement as well as the LESSEE's stock-in-trade, furniture and personal property, in an amount not less than the full replacement cost thereof with coverage against at least the perils of fire and standard extended coverage, including sprinkler leakages (where applicable), earthquake, flood and collapse. If there is a dispute as to the amount which comprises full replacement cost, the decision of the CITY will be conclusive;

(b) commercial general liability insurance including products liability, personal injury liability and property damage insurance coverage with respect to the Leased Premises, the Second Floor Premises and the LESSEE's use of the common areas, Exterior Sales Area and the VHWC, coverage to include the activities and operations conducted by the LESSEE and any other persons on the Leased Premises, the Second Floor Premises, the Exterior Sales Area and by the LESSEE and any other person performing work on behalf of the LESSEE in the Leased Premises, the Second Floor Premises, the Exterior Sales Area or any other part of the VHWC. Such policies shall: (i) be written on a comprehensive basis with inclusive limits of not less than \$2,000,000.00 per occurrence, \$5,000,000.00 annual aggregate, for product liability, bodily injury or property damage; (ii) contain a severability of interests clause and a cross-liability clause; (iii) have a deductible not greater than five thousand dollars (\$5,000.00); and (iv) not contain any exclusions of liability for damage, etc., to property, building or land arising from the removal or weakening

of support of any property, building or land whether such support be natural or otherwise;

(c) LESSEE's legal liability insurance with limits of not less than \$750,000.00, including loss of use of the Leased Premises thereof;

(d) Standard Automobile Policy on both owned and non-owned vehicles with inclusive limits of not less than five million dollars (\$5,000,000.00) Bodily Injury and Property Damage with a deductible not greater than five thousand dollars (\$5,000.00); and

(e) Professional Liability Insurance in the minimum amount of five million dollars (\$5,000,000.00). The LESSEE shall provide to the City proof of Professional Liability Insurance carried by the LESSEE.

24.2 The LESSEE hereby waives all claims against the CITY whatsoever nature or kind where such claims arise out of, or in consequence of, this Lease.

24.3 The policies mentioned in this Article 24 will contain a waiver of any subrogation rights which the LESSEE's insurers may have against the CITY and against those for whom the CITY is in law responsible, whether the damage is caused by the act, omission or negligence of the CITY and those for whom the CITY is in law responsible.

24.4 All insurance policies: (i) will be in a form satisfactory from time to time to the CITY; (ii) will be non-contributing with, and will apply only as primary and not as excess to any other insurance available to the CITY; and (iii) will not be invalidated as respects the interests of the CITY by reason of any breach or violation of any warranties, representations, declarations or conditions contained in the policies. All policies of insurance will contain an undertaking by the insurers to notify the CITY in writing by registered mail at least thirty (30) days before any material change, cancellation or termination of such policies.

24.5 Certificates of insurance or, if required by the CITY, certified copies of each of the insurance policies will be delivered to the CITY as soon as possible after the placing of the required insurance but in any case before the LESSEE obtains possession or use of the Leased Premises for any purpose. No review or approval of any insurance certificate by the CITY derogates from or diminishes the CITY's right or the LESSEE's obligations in this Lease including, but not limited to, those contained in this Article 24.

24.6 If the LESSEE fails to take out or keep in force any insurance referred to in this Article 24, and should the LESSEE not commence to diligently rectify (and afterwards to proceed diligently to rectify) the situation within forty-eight (48) hours after written notice by the CITY to the LESSEE, the CITY may, without assuming any obligation in connection with its doing so, effect the insurance at the LESSEE's cost and all costs and expenses of the CITY will be immediately paid by the LESSEE to the CITY as additional rent due on demand. This right is without prejudice to the other rights and remedies of the CITY under this Lease.

24.7 If the occupancy of the Leased Premises, the conduct of business in the Leased Premises or within the VHWC, or any acts or omissions of the LESSEE in the Leased Premises, the Exterior Sales Area the VHWC or any part of it cause an increase in premiums for the insurance carried from time to time by the CITY, the LESSEE will pay the increase as additional rent immediately after invoices for the additional premiums are rendered by the CITY.

24.8 If any insurance policy on the Leased Premises or any part of it is cancelled or threatened by the insurer to be cancelled, or if the coverage under it is reduced in any way by the insurer because of the use or occupation of any part of the Leased Premises or the VHWC by the LESSEE or by any occupant of the Leased Premises, and if the LESSEE fails to remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after notice by the CITY, the CITY may, either: (i) re-enter and take possession of the Leased Premises immediately by leaving upon the Leased Premises a notice of its intention to do so upon which the CITY will have the same rights and remedies as are contained in Article 25; or (ii) enter upon the Leased Premises and remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage, and the LESSEE will immediately pay the costs and expenses to the CITY, , which costs and expenses may be collected by the CITY as additional rent

and the CITY will not be liable for any damage or injury caused to any property of the LESSEE or others located on the Leased Premises as the result of the entry. Such an entry by the CITY is not a re-entry or a breach of any covenant for quiet enjoyment.

24.9 The CITY will not be liable for any death or injury from or out of any occurrence in, upon, at, or relating to the Leased Premises, or damage to property of the LESSEE or of others located on the Leased Premises, nor will it be responsible for any loss of or damage to any property of the LESSEE or others from any cause whatsoever. Without limiting the general nature of the previous sentence, the CITY will not be liable for: (i) any injury or damage to persons, or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof, or subsurface of any floor or ceiling or from the street or any other place, or by dampness, or caused by or arising from any interruption or failure in the supply of any utility or service to the Leased Premises; (iii) any interruption of or non-supply of heating, ventilation, air-conditioning or other utilities and services; or (iv) any indirect or consequential damage that may be suffered by the LESSEE. The CITY will not be liable for any damage caused by occupants of adjacent property, or the public, or caused by construction or by any private, public or quasi public work. All of the property of the LESSEE kept or stored on the Leased Premises will be kept or stored at the risk of the LESSEE only and LESSEE will indemnify the CITY and save it harmless from any claims arising out of any damages to that property including, but not limited to, any subrogation claims by the LESSEE's insurers.

## **25.0 Default**

25.1 If during the Initial Term or any Extended Term of this Lease:

- (a) without the written consent of the CITY the Leased Premises shall become and remain vacant or not used for a period of thirty (30) days while the same are suitable for use by the LESSEE; or
- (b) in case the Initial Term or any Extended Term hereby granted or any of the goods and chattels of the LESSEE shall be at any time seized; or
- (c) an order or appointment is made for a receiver or a receiver and manager of the LESSEE's assets or any INDEMNIFIER's assets or any part of them; or
- (d) the LESSEE or any INDEMNIFIER shall make any assignment for the benefit of creditors or give any bill of sale without complying with the *Bulk Sales Act* (Ontario), or becomes bankrupt or insolvent, or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or any order shall be made for the winding up or liquidation of the LESSEE or any INDEMNIFIER; or
- (e) the LESSEE assigns this Lease or sublets the whole or any part of the Leased Premises without the prior written consent of the CITY, except for any permitted assignment or sublease pursuant to this agreement; or
- (f) the LESSEE fails to obtain and deliver to the CITY an executed indemnity required pursuant to the provisions of Sections 26.5(c) within the time period therein prescribed; or
- (g) the LESSEE fails to perform any one (1) or more of the Review Procedures (as such term is defined in Section 26.5(b) herein) prior to an assignment of this Lease or sublet of the Leased Premises in accordance with Section 26.5(b) herein; or
- (h) the LESSEE shall default in payment of base rent, Percentage Rent, additional rent or any other amount required to be paid by the LESSEE by any provision of this Lease, following ten (10) days written notice from LESSOR; or
- (i) the LESSEE shall default in performing or observing any of its other covenants or obligations under this Lease and the CITY shall have given to the LESSEE written notice of such default and, at the expiration of thirty (30) days after the giving of such written notice, the default shall continue to exist (or in the case of such default which cannot, with due diligence, be cured within a period of thirty (30) days, the LESSEE fails to commence to cure such default

within such period and thereafter to continue with due diligence to cure such default as determined by the CITY in its sole discretion),

then, if any of such events occur, the LESSEE shall be deemed to be in default hereunder and the then current month's rent and the next ensuing three months' rent shall immediately become due and payable, and at the option of the CITY this Lease shall cease and determine and the Initial Term or any Extended Term hereby demised shall immediately become forfeited and void, in which event the CITY may re-enter and take possession of the Leased Premises as though the LESSEE or any occupant or occupants of the Leased Premises was or were holding over after the expiration of the Initial Term or any Extended Term hereby demised without any right whatsoever.

25.2 The CITY's right of re-entry hereunder shall become exercisable immediately upon such default being made. Upon such re-entry by the CITY under the terms of this Article 25 or any other provisions of this Lease, the CITY may, in addition to any other remedies which the CITY may be entitled, at its option, at any time and from time to time relet the Leased Premises or any part or parts thereof for the account of the LESSEE or otherwise and receive and collect the rents therefrom, applying the same first to the payment of such expenses as the CITY may have incurred in recovering the possession of the Leased Premises, including legal expenses and solicitor's fees and for putting the same into good order or condition or preparing or altering the same for re-rental and all other reasonable expenses, commissions and charges paid, assumed or incurred by the CITY in or about re-letting the Leased Premises and then to the fulfilment of the covenants of the LESSEE hereunder. Any such re-letting herein provided for may be for the remainder of the Initial Term or any Extended Term as originally granted or for a longer or shorter period. In any such case and whether or not the Leased Premises or any part thereof are re-let, the LESSEE shall pay to the CITY the rent that would have been payable and all other sums required to be paid by the LESSEE up to the time of termination of this Lease or of recovery of possession of the Leased Premises by the CITY, as the case may be, and thereafter the LESSEE covenants and agrees, if required by the CITY, to pay to the CITY until the end of the Initial Term or any Extended Term of this Lease the equivalent of the amount of all of the rent hereby reserved and all other sums required to be paid by the LESSEE hereunder, less the net avails of re-letting, if any, and the same shall be due and payable by the LESSEE to the CITY on the days herein provided for rent, that is to say, upon each of the days herein provided for payment of rent, the LESSEE shall pay to the CITY the amount of the deficiency then existing.

25.3 In the case of the removal by the LESSEE of the goods and chattels of the LESSEE from the Leased Premises in breach of this Lease, the CITY may follow such goods and chattels in the manner as is provided for in the *Commercial Tenancies Act* (Ontario).

25.4 Notwithstanding the benefit of any present or future statute taking away or limiting the CITY's right of distress, none of the goods and chattels of the LESSEE on the Leased Premises, at any time during the Initial Term or any Extended Term, shall be exempt from levy by distress for rent in arrears.

25.5 The LESSEE will indemnify the CITY and save it harmless from and against any and all loss (including, loss of rent, payable by the LESSEE under this Lease) claims, actions, damages, liability and expenses in connection with a breach, violation or non-performance of any covenant to be performed on the part of the LESSEE, the loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in, upon, or at the Leased Premises, the Second Floor Premises, the Exterior Sales Area, the VHWC, or the occupancy or use by the LESSEE of the Leased Premises, the Second Floor Premises, the Exterior Sales Area, the VHWC or any part of them occasioned wholly or in part by any act or omission of the LESSEE, including, without limitation, by anyone permitted to be on the Leased Premises by the LESSEE. If the CITY, without fault on its part, is made a party to any litigation commenced by or against the LESSEE, then the LESSEE will protect, indemnify and hold the CITY harmless and will pay all costs, expenses and legal fees (on a full indemnity basis) incurred or paid by the CITY in connection with that litigation. The LESSEE will also pay all costs, expenses and legal fees (on a full indemnity basis) that may be incurred or paid by the CITY in enforcing the terms, covenants and conditions in this Lease

For good and valuable consideration, the CITY agrees to the following provision: In the event of a default by the LESSEE, the CITY acknowledges an affirmative duty to mitigate damages and shall in no event accelerate rent due to the remainder of the term. Further, CITY and LESSEE agree that LESSEE's liability upon default shall not exceed the lesser of twelve (12) months' rent or the sum of \$20,000.00. Upon the termination of this Lease, whether in accordance with this

section or otherwise, LESSEE shall be permitted access to the Leased Premises to remove any and all logo or trademark items, such items shall include, but shall not be limited to, signage and murals, provided the LESSEE repairs all damage occasioned by such removal to the satisfaction of the CITY.

## **26.0 Conditions**

26.1 This Lease, any assignment of this Lease and any sublet of the Leased Premises in whole or in part is conditional upon: (i) the INDEMNIFIER executing and delivering the Indemnity Agreement attached as Appendix G; and (ii) the LESSEE obtaining all necessary permits, approvals and licenses to construct its leasehold improvements and to operate a business from the Food Services Area on or before the Commencement Date. If the INDEMNIFIER fails to execute and deliver the Indemnity Agreement attached as Appendix G hereto, or the LESSEE is unable to obtain any such necessary permits, licenses and approvals on or before the Commencement Date then the CITY in its discretion shall be entitled to terminate this Lease without any liability whatsoever.

26.2 The LESSEE agrees to ensure all required inspections (i.e. Legislated by Fire, Public Health etc.) and servicing of all equipment shall be conducted on or before the Commencement Date and thereafter according to the frequency at which they are required, all at the expense of the LESSEE. Failure to obtain required inspections and provide proof of inspection if and when requested by the CITY, shall entitle the CITY to terminate this Lease forthwith. Required inspections include, but are not limited to:

- Restaurant Inspection, Niagara Regional Public Health
- Fire Safety Inspection, Port Colborne Fire Department. Annual inspection.
- Fire Protection System Inspection – Semi-annual inspection.
- Portable Fire Extinguisher (Kitchen Type K) Inspection Annually.

26.3 The CITY is responsible for and has committed to complying with the Accessibility Standards for Customer Service, O. Reg. 429/07 to ensure that all persons who deal with members of the public or other third parties on behalf of the CITY shall be trained with respect to the provision of Accessible Customer Service. The LESSEE agrees to provide said training to all staff, volunteers and persons providing customer service to the public or third parties. Disclaimer: The Port Colborne Accessible Customer Service Training Manual is specific to the Corporation of the City of Port Colborne and there may be different requirements for the LESSEE under the legislation and the LESSEE is responsible, at its own cost and expense, to comply with the legislation. For reference purposes, the LESSEE may visit the Ministry of Community and Social Services' website for information and updates regarding accessibility standards applicable to the LESSEE at:

[www.mcass.gov.on.ca](http://www.mcass.gov.on.ca)[www.mcass.gov.ca](http://www.mcass.gov.ca)

26.4 Intentionally deleted.

26.5 The LESSEE shall not assign this Lease or assign or sublet the whole or any part of the Leased Premises without prior written consent of the CITY, which consent shall not be unreasonably withheld. Any attempt to assign any of the rights, duties or obligations of this Lease or sublet the whole or any part of the Leased Premises without prior written consent of the CITY will be void. No assignment of this Lease or sublet of the whole or any part of the Leased Premises shall relieve the LESSEE from the obligation to pay rent, all other amounts due hereunder and to perform all of the terms, covenants and conditions contained herein. Notwithstanding an assignment or sublet as aforesaid, the LESSEE shall not be relieved from the obligation to pay rent, all other amounts due hereunder and to perform the terms, covenants and conditions of this Lease.

26.6 The LESSEE covenants and agrees that the Indemnifiers will be jointly and severally liable with the LESSEE, as principal obligors and not as sureties, in respect of all the LESSEE's obligations under this Lease, and that the Indemnifiers will execute the Indemnity Agreement in

the form attached as Appendix G. If the Indemnifiers fail to execute and deliver to the CITY the Indemnity Agreement contemporaneously with the execution and delivery of this Lease by the LESSEE, or in the event of a sale, sublease or assignment contemplated in Section 26.5(c) herein, the indemnity agreement is not executed and delivered in accordance with all of the provisions and the time period specified in Section 26.5(c), then the CITY shall be entitled to terminate this Lease without any liability to the LESSEE whatsoever.

### **27.0 Damage to Leased Premises**

27.1 If during the Initial Term or any Extended Term, the Leased Premises are damaged by fire or any of the perils insured against by the CITY, then and in every such event if the damage or destruction is such that the Leased Premises are rendered wholly unfit for occupancy, or it is impossible or unsafe to use and occupy it, and if in either event the damage, in the opinion of the CITY, acting reasonably to be given to the LESSEE within ten (10) days of the happening of the damage:

- (a) cannot be repaired with reasonable diligence within one hundred and eighty (180) days from the happening of the damage, either party may within five (5) days next succeeding the giving of the opinion terminate this Lease by giving to the other notice in writing, in which event this Lease shall cease as of the date of the damage and the rent and all other payments for which the LESSEE is liable under this Lease shall be apportioned and paid in full to the date of damage. If neither the CITY nor the LESSEE terminates this Lease, then the CITY shall repair the Leased Premises with all reasonable speed and the rent shall abate from the date of the happening of the damage until the damage shall be made good and the LESSEE can again use and occupy the Leased Premises; or
- (b) can be repaired with reasonable diligence within one hundred and eighty (180) days from the happening of the damage, then the rent shall abate from the date of the happening of the damage until the damage shall be made good and the LESSEE can again use the Leased Premises and the CITY shall repair the damage with all reasonable speed; or
- (c) is such that the Leased Premises are capable of being partially used for the purposes for which they are leased, then until the damage has been repaired the rent shall be reduced by the fraction that the area of that part of the Leased Premises which is rendered unfit for occupancy is to the area of the Leased Premises, and the CITY shall repair the damage with all reasonable speed.

Notwithstanding anything in this Lease, the CITY shall only be required to expend funds to repair and replace the Leased Premises in the amounts received by the CITY under the proceeds of insurance maintained by the CITY.

### **28.0 Mediation and Arbitration**

- (a) General operational issues with respect to this Lease shall be resolved through the CITY.
- (b) The parties agree that should a significant dispute arise as to any matters contained in this Lease, the first step to resolve the issue shall be a meeting between the CITY's CAO and the LESSEE. The second step shall be the appointment of a third party mediator and they will attempt to mediate a resolution. This will not limit or otherwise change any legal rights of the parties. The mediator will be chosen by and acceptable to both parties. The parties agree to equally split the cost of the mediation. If the parties are unable to reach a resolution within thirty (30) days of the appointment of a mediator, then the matter shall be referred to arbitration as set out below.
- (c) In the event any dispute between the parties hereto, arising out of the interpretation, performance or observance hereof or any portion hereof, cannot be resolved through mediation, then such dispute shall be submitted to arbitration by the giving of a written notice by either party to the other party. In the event of arbitration, the arbitrator shall be such person as the parties may agree to on or before thirty (30) days from the submission by either party of the dispute to arbitration; in default of agreement on or before the expiration of such thirty (30) days, then within ten (10) days thereafter the LESSEE shall



appoint an arbitrator, the CITY shall appoint an arbitrator, and the two so chosen shall appoint a third arbitrator. If either party defaults in such appointment within the said ten (10) days, the arbitrator appointed by the other party shall act as sole arbitrator as if appointed by both parties. The arbitrator or arbitrators, as the case may be, shall have all the powers given by the *Arbitration Act* (Ontario) to arbitrators and may at any time and from time to time proceed in such manner as she, he or they may think fit on such notice as she, he or they may deem reasonable and after notice in the absence of either party, the award and determination of the arbitrator or a majority of the arbitrators shall be final and binding and each party agrees not to appeal from such award or determination. The costs of any such arbitration shall be borne equally by the parties.

### **29.0 Notice**

29.1 Any notice or communication required or permitted to be given to the LESSEE or to the CITY under terms of this Lease shall be in writing and shall be served personally, delivered by courier or sent by registered mail, postage prepaid with return receipt requested, addressed to the parties and the Indemnifiers as follows:

Notice to the CITY:

The Corporation of the City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON L3K 3C8  
Attention: City Clerk

Notice to the LESSEE:

The Kennedy Club

Notice to the INDEMNIFIERS:

the Leased Premises  
Attention: Geoff Black, Christopher Bruno and Brent Barnai (or such other parties as may become Indemnifiers under the provisions of this Lease)

29.2 Any notice required to be given under the terms of this Lease shall be deemed to have been received on the date of its delivery in person, or in the case of mailing or by courier, two (2) days after the date of mailing or delivery to the courier, as the case may be. A party or the Indemnifiers may change its address for service from time to time by notice given in accordance with the provisions of this Lease.

### **30.0 Consent**

30.1 If at any time under the provisions of this Lease the consent of the CITY is required, it may be unreasonably withheld.

### **31.0 Governing Law**

31.1 This Lease and the rights, obligations and relations of the parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province without regard to the principles of conflicts of law and each party irrevocably attorns to the jurisdiction of the courts of the Province of Ontario. In addition, both parties hereby waive their rights to a trial by jury.

### **32.0 Severability**

32.1 If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent or for any reason be held invalid or unenforceable, the remainder of this Lease and the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

### **33.0 Whole Agreement**

33.1 This Lease and the Schedules attached hereto contains the whole agreement between the parties with respect to the subject matter of this agreement. There is no representation, warranty, collateral agreement (express or implied) affecting this Lease or the Leased Premises. The Schedules attached hereto form part of this Lease. This Lease may not be amended or altered except by instrument in writing signed by the CITY and LESSEE.

### **34.0 General Provisions**

34.1 The LESSEE shall from time to time at the request of the CITY produce to the CITY satisfactory evidence of the due payment by the LESSEE of all payments required to be made by the LESSEE under this Lease.

34.2 Other than expressly set forth herein, it is the explicit intention of this Lease that the rent herein provided to be paid shall be on a completely carefree and net basis to the CITY and clear of all taxes, cost and charges arising from or relating to the Leased Premises and the LESSEE shall pay all charges, impositions, expenses of every nature and kind relating to the Leased Premises and the LESSEE covenants with the CITY accordingly.

34.3 The LESSEE acknowledges that the CITY or its agents, shall have the right upon at least twenty-four (24) hours written notice to enter the Leased Premises at all reasonable times, to be arranged with the LESSEE acting reasonably, and without unreasonably interfering with the operation of the LESSEE's business, to show them to prospective purchasers, encumbrancers, lessees or assignees, and may also, during the six (6) months preceding the termination of the Initial Term or any Extended Term of this Lease, place upon the Leased Premises the usual type of notice to the effect that the Leased Premises are for rent, which notice the LESSEE shall permit to remain thereon.

34.4 The parties hereto expressly disclaim any intention to create hereby a joint venture or partnership relationship or any relationship, except that of lessor and lessee. The provisions of this Lease relating to Percentage Rent are included solely for the purpose of providing a method whereby such rent is to be measured and ascertained.

34.5 In the event the LESSEE shall hold over or continue to occupy the Leased Premises after the expiration of the Initial Term or any Extended Term, with or without the consent of the CITY and without any further written agreement, the LESSEE shall be a month-to-month tenant only on the terms and conditions herein set forth, and such holding over shall have no greater effect, any custom, statute, law or ordinance to the contrary notwithstanding.

34.6 The failure of the CITY to insist upon a strict performance of any of the agreements, terms, covenants and conditions herein shall not be deemed a waiver of any rights or remedies that the CITY may have and shall not be deemed a waiver of any subsequent breach or default in any such agreements, terms, covenants and conditions. Notwithstanding any other provision of this Lease to the contrary, the CITY may from time to time resort to any or all of the rights and remedies available to it in the event of default by the LESSEE, either by any provision of this Lease or by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the CITY by statute or common law.

34.7 No payment by the LESSEE or receipt by the CITY of a lesser amount than the payment of the rent herein stipulated is deemed to be other than on account of the earliest stipulated rent, nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as rent deemed an acknowledgement of the full payment or an accord and satisfaction, and the CITY may accept and cash such cheque or payment without prejudice to the CITY's right to recover the balance

of such rent or pursue any other remedy provided in this Lease.

34.8 In the event that it shall be necessary for the CITY to commence an action for the collection of the rent, or any other payment, herein reserved, or any portion thereof, or if the same must be collected upon the demand of a solicitor, or if in the event that it becomes necessary for the CITY to commence an action to compel performance of any of the terms, conditions, obligations, covenants and agreements contained herein, then it shall be entitled to collect from the LESSEE all legal fees and disbursements in respect thereof on a full indemnity basis as if the same were rent reserved and in arrears hereunder.

34.9 Where the context so requires, words importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender and neuter and words importing persons shall include firms and corporations and vice versa.

34.10 Except as herein expressly provided, this Lease and everything herein contained shall extend to and bind and enure to the benefit of the respective heirs, executors, personal representatives, administrators, successors and permitted assigns (as the case may be) of each and every one of the parties hereto. All rights and powers reserved to the CITY hereunder may be exercised by either the CITY or its agents or representatives.

34.11 The headings in this Lease are included for convenience only and shall not be taken into consideration in any construction or interpretation of this Lease or any of its provisions.

34.12 The CITY, within twenty (20) days of the LESSEE's request and at the LESSEE's expense, shall deliver to the LESSEE an executed, written, estoppel certificate identifying the LESSEE and this Lease and certifying and confirming, in addition to any information or confirmation the LESSEE may reasonably require, the following:

- (a) That this Lease is either unmodified since its execution and in full force and effect, or modified since its execution but still in full force and effect as modified;
- (b) That the LESSEE is not in default of any of its obligations under this Lease or the details of any default of any of the LESSEE's obligations under this Lease, as the case may be; and
- (c) The term, commencement date, expiration date, rent, renewal periods remaining as to the Leased Premises for which the estoppel certificate applies.

34.13 Time shall be of the essence of this Lease and every part thereof.

**(the following page is the signature page)**

**IN WITNESS WHEREOF** the parties hereto have duly executed this Lease as of the date first above written under the hands of their proper signing officers duly authorized in that behalf.

**THE CORPORATION OF THE CITY OF  
PORT COLBORNE**

Per:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

THE **KENNEDY CLUB**

Per:

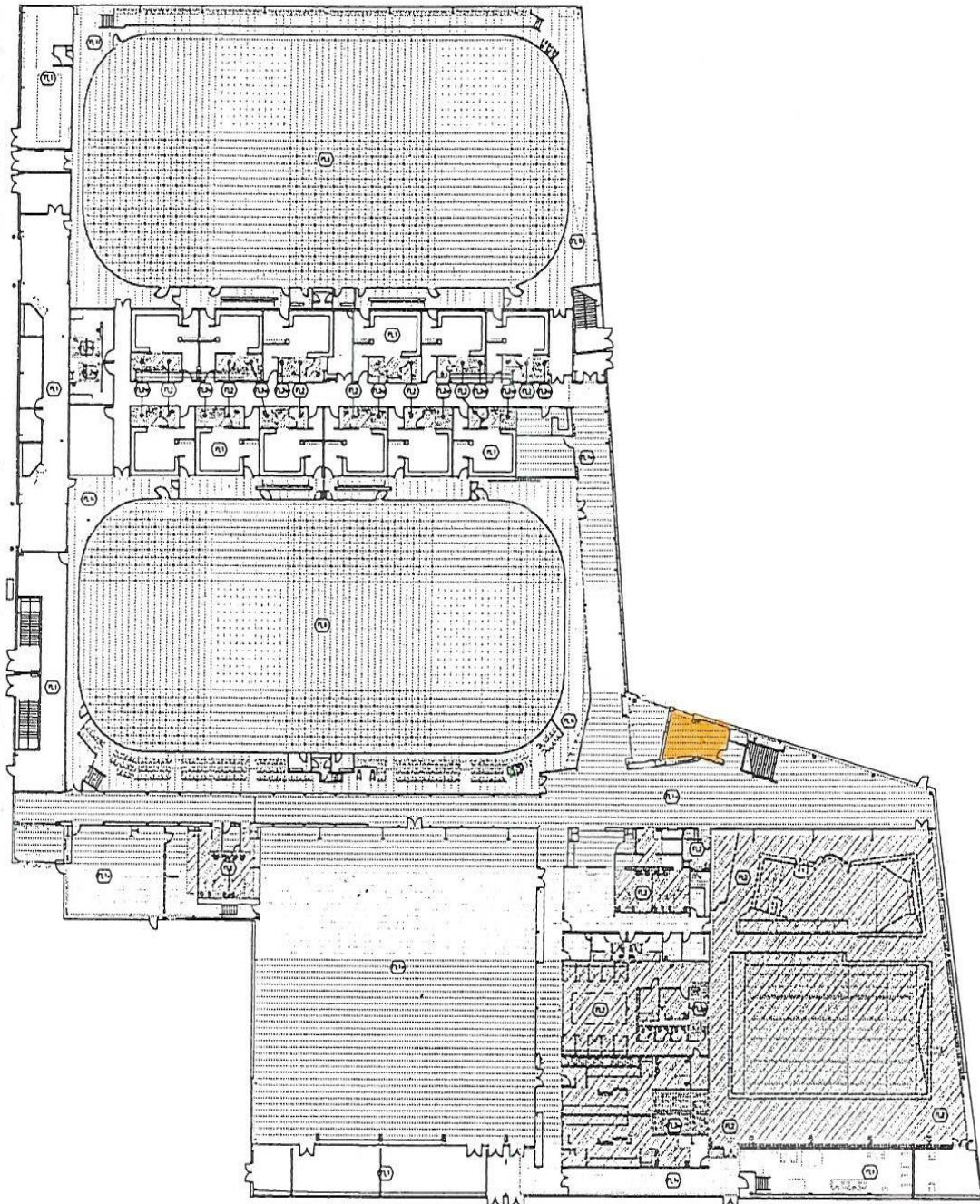
\_\_\_\_\_  
Name:

Title:

I have authority to bind the Corporation

APPENDIX A

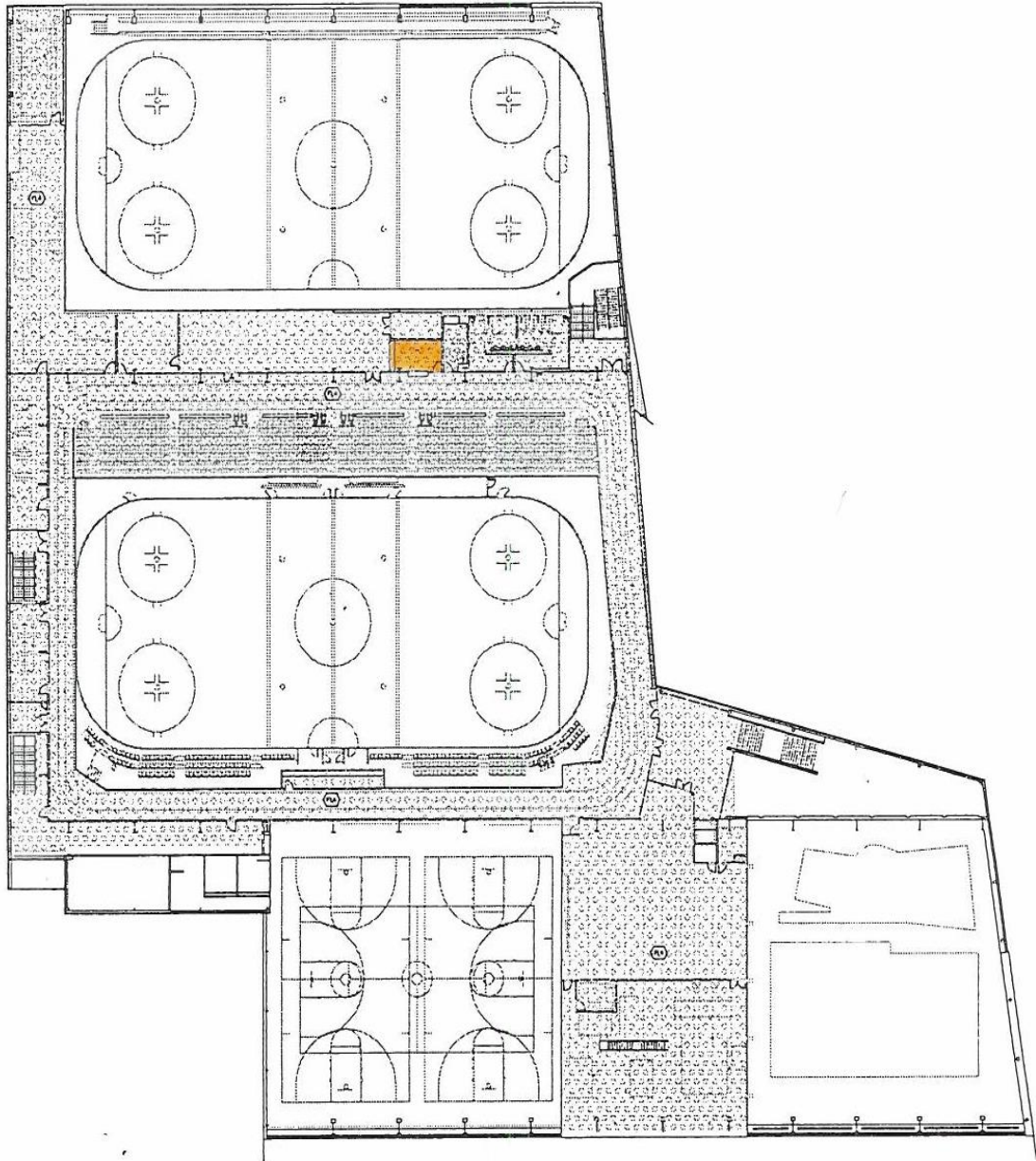
FIRST FLOOR PREMISES



- GROUND FLOOR PLAN

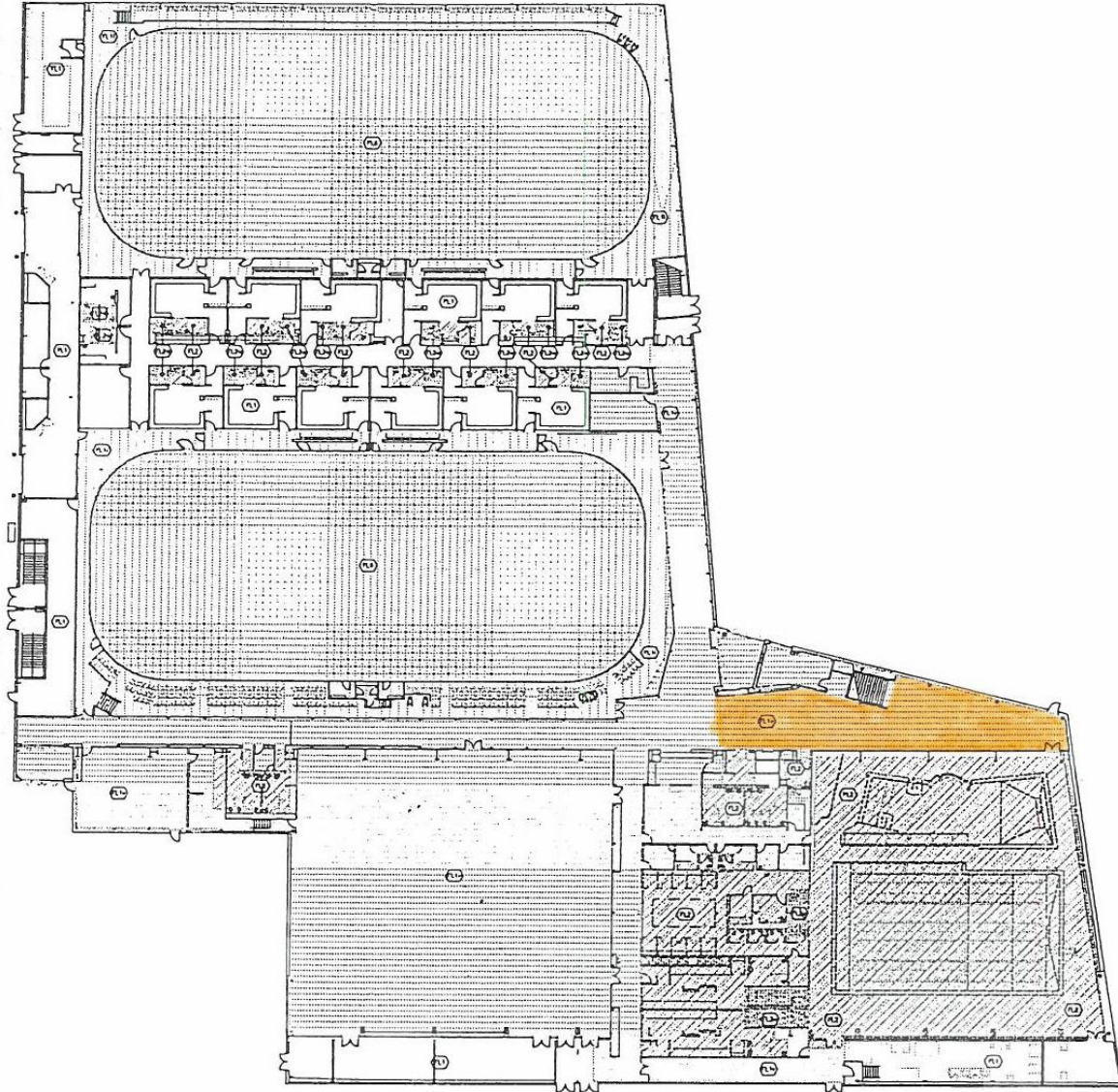
APPENDIX B

SECOND FLOOR PREMISES



APPENDIX C

COMMON LOUNGE AREA



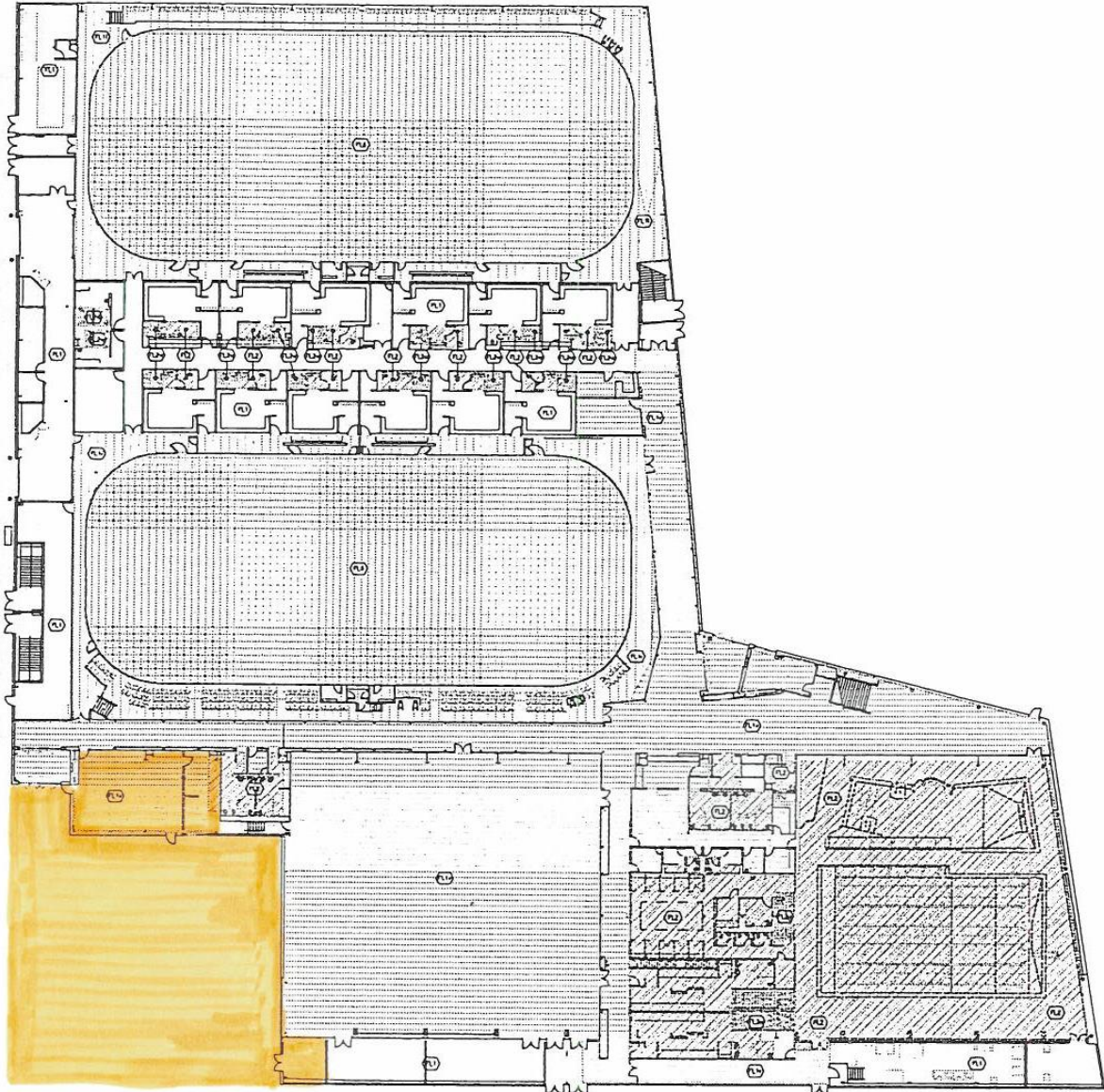
**APPENDIX 'D'**

**Intentionally Deleted.**

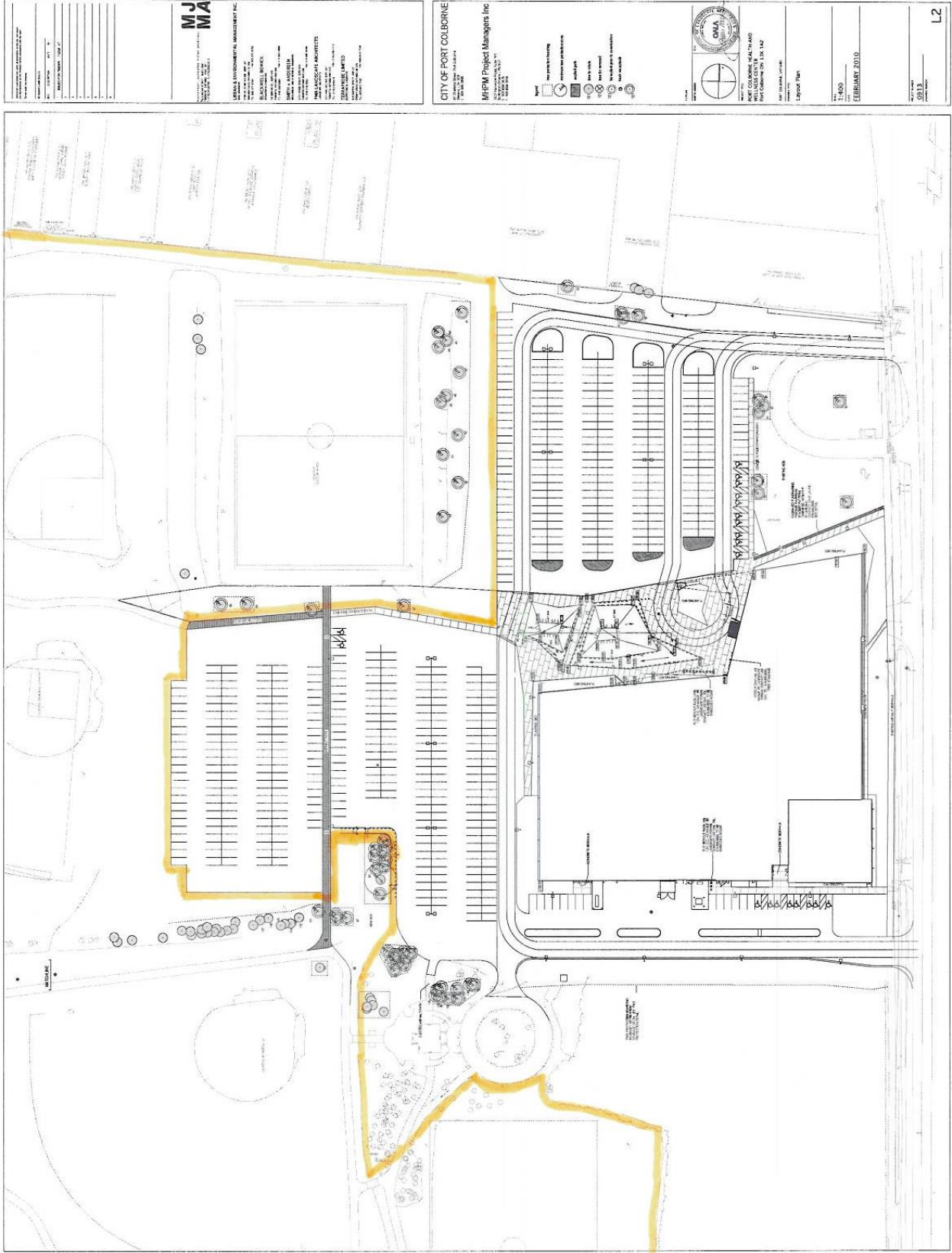


APPENDIX E

BOCCE CLUB PREMISES



**APPENDIX F**  
**EXTERIOR SALES AREA**



**APPENDIX G**

**INDEMNITY AGREEMENT**

## INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT is made as of the 13<sup>th</sup> day of July, 2023 between Geoff Black, Christopher Bruno and Brent Barnai (hereinafter collectively called the "**Indemnifier**") and THE CORPORATION OF THE CITY OF PORT COLBORNE (hereinafter called the "**City**").

**WHEREAS** the City is the owner of the lands and premises known municipally as 550 Elizabeth Street, in the City of Port Colborne;

**AND WHEREAS** Geoff Black, Christopher Bruno and Brent Barnai own all of the issued and outstanding shares of "The Kennedy Club" (the "LESSEE");

**AND WHEREAS** the LESSEE and the INDEMNIFIER have requested the City to enter into a lease (the "**Lease**") of even date between the City, as landlord, and the Lessee, as tenant, relating to the Leased Premises, and the City has agreed to do so only if the Indemnifier executes and delivers this Indemnity under seal in favour of the City;

**NOW THEREFORE** in consideration of the sum of One (\$1.00) Dollar and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Indemnifier) the Indemnifier agrees with the City as follows:

1. The Indemnifier hereby agrees with the City that, at all times during (i) the Initial Term; and (ii) any Extended Term, the Indemnifier shall be bound to the City for the performance of all the obligations of the Lessee and that it shall be jointly and severally liable with the Lessee for all the obligations of the Lessee, as if named as a tenant under the Lease, and the Indemnifier's liability shall be that of a direct and primary obligor (and not as surety), and, in this regard, Indemnifier shall: (a) make due and punctual payment of all base rent, Percentage Rent, additional rent, moneys, charges and other amounts of any kind whatsoever due and payable under the Lease by the Lessee (collectively, hereinafter referred to as "**Rent**"), whether to the City or to any other Person and whether the Lease has been disaffirmed, disclaimed, terminated or surrendered and irrespective of the fact that the Lessee's liability may be limited under the terms of the Lease; (b) effect prompt and complete performance of all the terms, covenants and conditions contained in the Lease on the part of the Lessee to be kept, observed and performed; and (c) promptly indemnify and save the City harmless from and against any and all Claims arising out of any failure by Lessee to pay all Rent or resulting from any failure by the Lessee to observe or perform any of the terms, covenants and conditions contained in the Lease on the part of the Lessee to be kept, observed and performed.

2. This Indemnity is an absolute and unconditional indemnity with respect to all Claims of any nature or kind incurred by the City as a result of non-payment of the Rent or the failure to perform and observe any terms, covenants and conditions contained in the Lease by the Lessee. This Indemnity shall be enforceable against the Indemnifier without the necessity of any suit or proceedings on the City's part of any kind or nature whatsoever against the Lessee, its successors and assigns, and without the necessity of any notice of non-payment, non-performance or non-observance or any notice of acceptance of this Indemnity or of any other notice or demand to which the Indemnifier might otherwise be entitled, all of which the Indemnifier hereby expressly waives; and the Indemnifier hereby expressly agrees that the validity of this Indemnity and the obligations of the Indemnifier hereunder shall, in no way, be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by the City against the Lessee, or against the Lessee's successor and assigns, of any of the rights or remedies reserved to the City pursuant to the provisions of the Lease or allowed at law or in equity or by the relief of the Lessee or variation, reduction, suspension or waiver of any of the Lessee's obligations under the Lease or otherwise by:

- (a) the release or discharge of the Lessee in any creditor's proceedings, receivership, bankruptcy or other proceedings;
- (b) the impairment, limitation or modification of the liability of the Lessee or the estate of the Lessee in bankruptcy, or of any remedy for the enforcement of the Lessee's said liability under the Lease resulting from the operation of any present or future bankruptcy or insolvency legislation or legislation of benefit or potential benefit to debtors or other statutes or laws or from the decision in any court or tribunal;
- (c) the occurrence of any of the events mentioned in paragraph 3 hereof; or

- (d) the compromise, variation, reduction, suspension or waiver of any of the Lessee's obligations under the Lease either pursuant to the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or pursuant to any other statute or law for the benefit of debtors or dealing with the relations of debtors and their creditors.

3. The Indemnifier hereby expressly acknowledges and agrees that this Indemnity is absolute and unconditional and the obligations of Indemnifier shall not be released, discharged, mitigated, impaired or affected (whether or not the Indemnifier has notice thereof or is a party thereto) by: (a) any extension of time, indulgences or modifications which the City extends to or makes with the Lessee in respect of the performance of any of the obligations of the Lessee under the Lease; (b) any waiver by or failure of the City to enforce any of the terms, covenants, agreements, stipulations, provisos, conditions and rules and regulations contained in or made pursuant to the Lease; (c) any Transfer of the Lease, any sublease, or of all or any part of the Leased Premises by Lessee or by any Transferee, by any trustee, receiver, receiver-manager or liquidator; (d) any change in the ownership of the capital stock or partnership interests or other interests in the Lessee or of any assignee of the Lease, any sublessee or any other Person (collectively a "Change of Control"); (e) any consent which the City gives to any Transfer or Change of Control; (f) any relocation, expansion or reduction of the Leased Premises, the VHWC and any changes to the Lease resulting therefrom; (g) any amendment, modification or variation to the Lease (whether such amendment, modification or variation is made between the City and the Lessee, or between the City and any Transferee); (h) any waiver by the Lessee or any Transferee of any of its rights under the Lease; (i) any alteration, modification or physical change in, to or for the Leased Premises, the VHWC, or any part thereof; (j) the expiration of the Initial Term, any Extended Term or termination of the Lease; (k) any overholding by the Lessee or Transferee of the Leased Premises or any part thereof; (l) any renewal or extension of the Lease pursuant to any option or right of the Lessee or otherwise, it being understood and agreed that this Indemnity shall extend throughout the Initial Term and any Extended Term; (m) any loss of, or any loss in respect of, any security received or intended to have been received by the City from the Lessee or any other Person, whether or not occasioned or contributed to by or through the act, omission, default or neglect of the City or those for whom the City is in law responsible; (n) any act, omission, default or neglect of the City or any other Person whereby: (i) the Lessee (or any one or more Persons comprising the Lessee) or (ii) the Indemnifier (or any one or more Persons comprising Indemnifiers) is released or has its obligations under the Lease or this Indemnity, as the case may be, discharged, mitigated, impaired or affected in any way whatsoever; (o) any present or future statute or any existing or future common law under which: (i) the Lessee (or any one or more Persons comprising the Lessee); or (ii) the Indemnifier (or any one or more Persons comprising the Indemnifier) is released or has its obligations under the Lease or this Indemnity (as the case may be) discharged, mitigated, impaired or affected in any way whatsoever; or (p) any limitation of the Lessee's liability contained in the Lease. Nothing but payment and satisfaction in full of all Rent and the due performance and observance of all terms, covenants and conditions on the part of the Lessee to be paid and performed under the Lease shall release the Indemnifier from its obligations under the Lease or this Indemnity, as the case may be.

4. No dealings between the City and the Lessee of any kind whatsoever shall exonerate, release or discharge the Indemnifier, in whole or in part hereunder, or diminish, affect or reduce the liability of the Indemnifier under this Indemnity provided notice thereof is provided to the Indemnifier. Without limiting the generality of the foregoing, this Indemnity shall be a continuing indemnity and the liability of the Indemnifier shall, in no way, be affected, modified or diminished by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease or by reason of any indulgence, release, postponement, extension of time, waiver of any covenant or provision of the Lease or any obligation of the Lessee which may be granted by the City to the Lessee, its successors or assigns, or by reason of the City taking or releasing any security or securities or other indemnities for performance by the Lessee or by reason of any dealings or transactions or matters or things occurring between the City and the Lessee, its successors and assigns.

5. In the event of termination of the Lease, except by surrender accepted by the City in writing, or in the event of termination, rejection, disaffirmation or disclaimer of the Lease by any trustee in bankruptcy or by any receiver or receiver and manager or in any proceedings whatsoever or pursuant to or in or as a result of any proceeding or order under any statute or law, then, at the option of the City, the Indemnifier shall execute and deliver a new lease of the Leased Premises between the City, as landlord, and the Indemnifier, as tenant, for a term equal in duration to the remainder of the unexpired portion of the Initial Term or any Extended Term of the Lease as it may be extended, from

time to time. Such new lease shall contain the same City and Lessee obligations, respectively, and the same covenants, obligations and agreements, terms and conditions, in all respects, including the provisos for re-entry on non-payment of Rent or non-performance or observance of covenants as are contained in the Lease, save and except that the Indemnifier, as tenant, shall accept the Leased Premises in a then "as is" condition and the City shall have no obligation to pay or to provide to the Indemnifier, as tenant, any allowance, concession or inducement of any nature, or to pay or provide any Rent free or Rent reduced periods or any fixturing period or to perform any work in or in respect of the Leased Premises. Such lease shall be prepared by the City, at the expense of the Indemnifier and shall be promptly executed by the Indemnifier forthwith upon presentation thereof by the City. The liability of the Indemnifier shall not be affected by any re-possession of the Leased Premises by the City.

6. Notwithstanding any provision in this Indemnity to the contrary, the Indemnifier shall be released from its obligations under this Indemnity if the City receives an executed replacement indemnity in accordance with all of the provisions specified in Section 26.5(c) of the Lease and within the time period therein specified. For greater certainty, if the Lessee retakes possession of the Leased Premises from a licensee, franchisee, sublessee or an assignee that is comprised of one or more of the Indemnifiers, the obligations of the Indemnifier under this Indemnity shall not be released, discharged, mitigated, impaired or affected in any way whatsoever and they shall remain and continue to be liable under this Indemnity until a new indemnity is signed and delivered to the City in accordance with Section 26.5(c) of the Lease.

7. All of the City's rights and remedies under the Lease or under this Indemnity shall be distinct, separate and cumulative and no such right or remedy in the Lease or herein mentioned, whether exercised by the City or not, shall operate as an exclusion of a waiver of any of the other such rights or remedies. The obligation of the Indemnifier hereunder shall not be released by the City's receipt, application or release of security given for the performance and observance of any covenants and conditions required to be performed or observed by the Lessee under the Lease or shall the Indemnifier be released by the maintenance of or execution upon any lien which the City may have or assert against the Lessee and/or the Lessee's assets.

8. In the event of the occurrence of any circumstances defined within the Lease as an event of default and if both the City and the Indemnifier shall have Claims against the Lessee, and while the Claim of the City is or remains unsatisfied, in whole or in part, as to the Rent, then the Indemnifier:

- (a) shall not enforce any right of subrogation against the Lessee by reason of any payments or acts of performance by the Indemnifier in compliance with the obligations of the Indemnifier hereunder;
- (b) shall not enforce any remedy which the Indemnifier now or hereafter shall have against the Lessee by reason of any one or more payments or acts of performance in compliance with the obligations of the Indemnifier hereunder; and
- (c) subordinates all liabilities or indebtedness of the Lessee now or hereafter held by the Indemnifier to the obligations of the Lessee to the City under the Lease.

9. The Indemnifier hereby covenants to and agrees with the City, its successors and assigns, that the Indemnifier may be joined in any action against the Lessee in connection with the Lease and that recovery may be obtained against the Indemnifier in such action or any independent action against the Indemnifier without the City, its successors and assigns, first pursuing or exhausting any remedy or Claim against the Lessee, its successors or assigns, and the City shall not be obliged to resort to or realize upon any security or other indemnities which the City may, from time to time, have before being entitled to Claim against the Indemnifier.

10. If more than one individual, corporation, partnership or other entity (or any combination of them) execute this Indemnity as Indemnifiers, the liability of each such individual, corporation, partnership or other entity hereunder is joint and several. In like manner, if the Indemnifier named in this Indemnity is a partnership or other business association, the members of which are by virtue of statutory or common law subject to personal liability, the liability of each such member is joint and several. If two (2) or more Persons are named as Indemnifiers in this Indemnity, the release of one or more of such Persons does not release any remaining Person named as an Indemnifier in this Indemnity.

11. Any account or debt settled or stated or any other settlement made between the City and the Lessee shall be binding upon the Indemnifier even though the Indemnifier was not a party to such settlement or statement or had no notice thereof.

12. If any term or provision of this Indemnity or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Indemnity, or the application of the terms or provisions to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Indemnity shall be valid and enforced to the fullest extent permitted by law.

13. This Indemnity sets forth all of the promises, inducements, agreements, conditions and understandings between the City and the Indemnifier relative to the Indemnity of the Lease and there are no promises, agreements, conditions or understandings either oral or written, expressed or implied between them, other than as expressly set forth herein.

14. The Indemnifier shall, without charge and at any time and from time to time, within ten (10) days after request therefor by the City, certify, by written instrument, duly executed by the Indemnifier and addressed to or delivered to any party specified by the City that this Indemnity has been duly authorized, executed and delivered and is a valid and binding obligation upon the Indemnifier, enforceable in accordance with its terms and provisions and is unmodified and in full force and effect (or, if there has been modifications, then stating that the same is in full force and effect as modified and describing the modifications).

15. Any notice or communication required or permitted to be given to the City or the Indemnifier under terms of this Indemnity shall be in writing and shall be served personally, delivered by courier or sent by registered mail, postage prepaid with return receipt requested, addressed to the parties as follows:

Notice to the City:

The Corporation of the City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON L3K 3C8  
Attention: City Clerk

Notice to the Indemnifier:

the Leased Premises  
Attention: Geoff Black, Christopher Bruno and Brent Barnai

Any notice required to be given under the terms of this Lease shall be deemed to have been received on the date of its delivery in person, or in the case of mailing or by courier, two (2) days after the date of mailing or delivery to the courier, as the case may be. A party may change its address for service from time to time by notice given in accordance with the provisions of this Indemnity.

16. This Indemnity shall enure to the benefit of the City and the City's successors and assigns and shall be binding upon and enforceable against the Indemnifier and the Indemnifier's heirs, executors, administrators, personal representatives, successors and assigns.

17. The Indemnifier hereby submits itself and attorns to the exclusive jurisdiction of the courts of the Province of Ontario. The Indemnifier further covenants and agrees that any final judgment or order of the Courts of the Province of Ontario shall be final, binding and conclusive as against the Indemnifier.

18. The Indemnifier acknowledges that it has received a true copy of the Lease and is familiar with the terms, covenants and conditions contained therein.

19. The words "the City", "the Lessee", "Initial Term" or "Extended Term" and "Leased Premises" and all other words and phrases used in this Indemnity that are defined in the Lease are used in this Indemnity as so defined in the Lease unless otherwise defined in this Indemnity, or the

context otherwise requires. For the purposes hereof, the following words shall have the following meanings set forth below:

(a) “Claims” means claims, losses, actions, suits, proceedings, causes of action, demands, damages (incidental, direct, indirect, special, consequential or otherwise), fines, duties, interest, penalties, judgments, executions, liabilities, responsibilities, costs, charges, payments and expenses including, without limitation, any professional, consultant and legal fees (on a full indemnity basis).

(b) “Person” includes any individual, partnership, firm, company, corporation, incorporated or unincorporated association, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, government, governmental or quasi-governmental agency, board, commission or authority, organization or any other form of entity howsoever designated or constituted, or any group, combination or aggregation of any of them.

(c) “Transfer” means (a) an assignment, sale, conveyance, sublease, licensing or other disposition, or a mortgage, charge or debenture (floating or otherwise) or other encumbrance of the Lease or any interest in it or all or any part of the Leased Premises (whether by operation of law or otherwise), or of any interest in a partnership that is a Lessee under the Lease; (b) a parting with or sharing of possession of all or part of the Leased Premises; (c) a transfer or issue by sale, subscription, assignment, bequest, inheritance, operation of law or other disposition, of all or part of the shares of the Lessee or any of its affiliates (as currently defined under the *Canada Business Corporations Act*) which results in a change in the effective voting control of the Lessee; or (d) a merger, amalgamation or other similar corporate reorganization involving the Lessee. “Transferor” and “Transferee” have corresponding meanings.

20. Each party acknowledges that it has reviewed and participated in settling the terms of this Indemnity, and each of the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Indemnity.

21. The Indemnifier declares and represents that it has had an opportunity to obtain and has obtained independent legal advice in respect of this Indemnity and that the terms of this Indemnity have been completely read by it and that those terms are fully understood and voluntarily accepted by the Indemnifier.

22. In this Indemnity words importing the singular number only shall include the plural and vice versa words importing the masculine gender shall include the feminine gender and neuter and vice versa.

**(the following page is the signature page)**



**IN WITNESS WHEREOF** the parties hereto have duly executed this Indemnity as of the date first above written, under the hands of their proper signing officers duly authorized in that behalf or by setting their respective hands and seals in their personal capacity, as the case may be.

**SIGNED, SEALED AND DELIVERED** )

in the presence of )

) \_\_\_\_\_ 1/s

) Geoff Black

)

) \_\_\_\_\_ 1/s

) Christopher Bruno

)

) \_\_\_\_\_ 1/s

) Christopher Bruno

**THE CORPORATION OF THE CITY OF  
PORT COLBORNE**

Per:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk