

THIS LEASE AGREEMENT (“Agreement”) is made this ____ day of ____, 2019

BETWEEN:

THE CORPORATION OF THE CITY OF BURLINGTON,
a municipal corporation pursuant to the *Municipal Act, 2001* (Ontario)

(hereinafter referred to as “City”)

- and -

Burlington Public Library Board
a non-share capital corporation incorporated under the laws of the Province of Ontario

(hereinafter referred to as “Library”)

WHEREAS:

- A. The City is the owner of the buildings and park lands located at the premises municipally known as:
 - a. 2255 Brant Street, Burlington, Ontario and commonly referred to as Brant Hills Community Centre; and
 - b. 1996 Itabashi Way Street, Burlington, Ontario and commonly referred to as Tansley Woods Community Centre;
- B. The City and the Burlington Public Library Board wish to continue providing an opportunity for the community to access the Facility (as hereinafter defined), and as such, the City and the Library have agreed to enter into this Agreement on the terms and conditions hereinafter set forth.

IN CONSIDERATION of the foregoing recitals and the respective covenants and agreements of the parties contained herein, the sum of one dollar (\$1.00) paid by each party to the other, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the parties agree as follows:

ARTICLE 1 – INTERPRETATIONS

1.1 Definitions

For the purpose of this Agreement, unless the context otherwise requires, the following terms have the respective meanings set out below and grammatical variations of such terms have the corresponding meanings:

- (a) **Additional Rent** means all amounts in addition to Basic Rent which are payable by the Library to the City or any other person pursuant to this Agreement;

- (b) **Agreement** means this agreement, including its recitals, schedules, and addenda annexed hereto together with all instruments in amendment or confirmation thereof;
- (c) **Basic Rent** means the rent which is payable pursuant to Section 2.2.1;
- (d) **Board of Directors** means the appointed Board of directors of the Library;
- (e) **Building Systems** means all building mechanical, electrical, emergency, life safety, and security systems, as well as elevating devices, interior finishes, interior fixtures, building envelope, roofing, structural components, building site work and facility specific components located inside and outside of the Facility as identified in Schedule A & C;
- (f) **Business Day** means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or a day on which the administration office of the City is closed;
- (g) **City** means The Corporation of the City of Burlington;
- (h) **Library** means the Burlington Public Library Board, a non-share capital corporation established by municipal bylaw incorporated under the *Public Libraries Act*, R.S.O. 1990, c. P.44.
- (i) **Common Areas** means those areas and equipment in, on or around the Facility existing from time to time that do not comprise part of the Facility and are provided or designated from time to time by the City for use in common by the City, the Library, customers, invitees, licensees and/or the public and as identified in Schedule B & D;
- (j) **Condition Assessment Report** means the report conducted and updated by the City from time to time regarding the condition assessment of the Facility;
- (k) **Confidential Information** means any information disclosed by one party to the other party that the disclosing party designates as being confidential, whether or not such information is marked as being 'confidential' or which, under the circumstances surrounding disclosure, should be treated as confidential, regardless of whether the disclosing party provides such information to the receiving party in tangible form or it is retained in the intangible memory of the receiving party. Confidential Information includes plans and strategies, budgets and projections, business operations and systems, personnel records, and personal information (as defined in the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario));
- (l) **Director** means the City's Director of Parks and Recreation or his/her designate;
- (m) **Dispute** has the meaning ascribed to it in Section 7.1.1;
- (n) **Event of Default** has the meaning ascribed to it in Section 8.1.1;
- (o) **Facility** means that portion of the Property identified in Schedule B & D, including the Building Systems, and having an area of approximately 6,572 square feet (6,572 sq ft);

- (p) **Leasehold Improvements** means all fixtures, improvements, installations, alterations, and additions from time to time made, erected or installed by or on behalf of the Library or any former occupant of the Facility, but excluding the Library's Trade Fixtures;
- (q) **Major Alterations** has the meaning ascribed to it in Section 3.2.2 (b);
- (r) **Minor Alterations** has the meaning ascribed to it in Section 3.2.2 (a);
- (s) **Notice** has the meaning ascribed to it in Section 9.11;
- (t) **Nuisance** means any activity or state of affairs causing a substantial and unreasonable interference with a person's land or his/her use or enjoyment of that land;
- (u) **Operating Costs** means all costs associated with the operation, maintenance, and repair of the Facility, including the Common Areas, either billed directly from the service provider or from the City, including heating, electrical power, and water and sewer surcharge;
- (v) **Property** means those lands identified in Schedule B & D, together with the improvements, buildings, fixtures, and equipment (whether fixtures or chattels) on such lands (but excluding the Library's Trade Fixtures or chattels) from time to time;
- (w) **Term** has the meaning ascribed to it in Section 2.3;
- (x) **Trade Fixtures** means trade fixtures as determined at common law and includes all personal chattels installed and attached in any manner to the Facility (other than by their own weight) at any time during the Term by or on behalf of the Library for the purpose of allowing the Library to carry on its activities in the Facility; and
- (y) **Utilities** means the on-demand consumable resources supplied to the Facility by a service provider and the physical components attributed to them, including electricity, natural gas, oil, water, sewer, and communications (including telephone, cable, wireless, and satellite telecommunications).

1.2 Schedules and Exhibits

The following documents are Schedules annexed hereto and form part of this Agreement:

- Schedule A – Brant Hills Building Systems
- Schedule B – Brant Hills Property, Facility & Common Area
- Schedule C – Tansley Woods Building Systems
- Schedule D – Tansley Woods Property, Facility & Common Area
- Schedule E – Chargebacks and Cost Sharing Summary

From time to time, the parties may enter into addenda and such addenda will form a part of this Agreement upon being signed by duly authorized representatives of both parties.

1.3 Sections and Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereto”, hereunder”, and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections, and Schedules are to Articles and Sections of and Schedules to this Agreement.

1.4 Currency

Unless otherwise indicated, all dollar amounts referred to in this Agreement herein are to Canadian currency.

1.5 Severability

If any provision of this Agreement is held to be invalid, void or unenforceable, then the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

1.6 Governing Law

This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties submit to the non-exclusive jurisdiction of the courts of the Province of Ontario for the resolution of any and all disputes relating to this Agreement.

1.7 Recitals

The recitals of fact and representations as set forth above are true and are incorporated into the body of this Agreement by reference.

1.8 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

ARTICLE 2 – DEMISE, RENT, AND TERM

2.1 Demise

2.1.1 In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Library to be paid, observed, and performed, the City hereby

demises and leases the Facility to the Library to have and to hold during the Term (unless earlier terminated as set forth herein), and the Library rents from the City the Facility.

- 2.1.2 The Library acknowledges having inspected the Facility and accepts the Facility on an “as is” basis. The Library acknowledges that the City makes no representations or warranties concerning the condition or the suitability of the Facility for the Library’s intended purpose.
- 2.1.3 The City hereby grants to the Library a non-exclusive licence during the Term to the benefit or use (as may be appropriate) of the Common Areas in common with all others entitled thereto; provided that the City may from time to time reserve to itself or third parties and thereby exclude the Library’s right to use some or all of the Common Areas for special events or activities. The City may lease parts of the Common Areas from time to time and may alter the layout or configuration of or reduce or enlarge the size of the Common Areas.

2.2 Rent

- 2.2.1 The Library shall pay to the City the amount of one dollar (\$1.00) (“Basic Rent”) upon the execution of this Agreement; the receipt and sufficiency of which is acknowledged by the parties.
- 2.2.2 For Brant Hills Community Centre:
 - a) The Library shall pay 100% of the costs for utilities and all operating costs associated with the Facility for Brant Hills Community Centre.
 - b) The Library shall also pay to the City during each year of the Term 25% per cent of 14% per cent of the Brant Hills Operating Costs for the Common Area for that year. The Library shall pay to the City its portion of the Operating Costs within thirty (30) Business Days of delivery of invoices to the Library by the City and the City has all the rights against the Library for default in payment of such amounts that it has against the Library for default in payment of Basic Rent. The Library shall also pay during the Term, at the times and in the manner provided in this Agreement, all Additional Rent. The City has all the rights against the Library for default in payment of Additional Rent that it has against the Library for default in payment of Basic Rent. A summary of these charges is provided in Schedule E.
- 2.2.3 For Tansley Woods Community Centre:
 - a) The Library shall pay 100% of the costs for utilities and all operating costs associated with the Facility for Tansley Woods Community Centre.
 - b) The Library shall also pay to the City during each year of the Term 13% per cent of 10% per cent of the Tansley Woods Community Centre operating costs for the Common Area for that year. The Library shall pay to the City its portion of the Operating Costs within thirty (30) Business Days of delivery of invoices to the

Library by the City and the City has all the rights against the Library for default in payment of such amounts that it has against the Library for default in payment of Basic Rent. A summary of these charges is provided in Schedule E.

- c) The Library shall be responsible for the payment of any taxes, including any business or real property tax and any tax on Additional Rent. In the event that such taxes are paid by the City, the Library shall immediately, upon being invoiced, reimburse the City for such taxes paid.
- d) All Additional Rent and any other amounts to be paid by the Library to the City will be paid without any deduction, set-off or abatement whatsoever.

2.3 Term

2.3.1 The term of this Agreement is for a period of ten (10) years commencing on July 1, 2019 and ending on June 30, 2029 (“Term”), unless earlier terminated as set forth herein.

2.3.2 The Term of this Agreement may be extended for a further period of ten (10) years upon the mutual agreement of the City and the Library and provided that each of the following conditions is met prior to the expiration of the Term:

- a) The Library is not in default of any provision of this Agreement and has complied with the terms and conditions of this Agreement during the Term; and
- b) The Library is willing to execute the City’s then current form of agreement which may contain terms and conditions substantially different from those set forth herein, together with such other documents and agreements as reasonably required by the City.

2.4 Quiet Enjoyment

If the Library pays the Additional Rent and fully performs all of its obligations under this Agreement and there has been no Event of Default, then the Library is entitled, subject to the provisions of this Agreement, to peaceful and quiet enjoyment of the Facility for the Term.

2.5 Net Lease

The Library acknowledges and agrees that it is intended that this Agreement is a net lease for the City and that the City is not responsible for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Facility, whether foreseen or unforeseen and whether or not within the contemplation of the parties at the commencement of the Term, except as otherwise expressly provided in this Agreement.

ARTICLE 3 – RESPONSIBILITIES OF THE PARTIES

3.1 Organizational Responsibilities of the Library

3.1.1 The Library shall make best efforts and take all appropriate steps to:

- a) operate a not-for-profit public library facility to residents in Burlington, Ontario;
- b) Maintain status set by the City's By-law 70-2003, as amended, to establish Burlington Public Library Board, and to establish a policy for the budget variance reporting.
- c) provide to the Director copies of the Library's letters patent, by-laws, and other constitutional documents; provide to the Director notice of the decision to make any changes or amendments thereto within thirty (30) Business Days of such decision, and provide to the Director such changes or amendments thereto within ninety (90) Business Days of such change or amendment;
- d) ensure that the Board of Directors or a designate who is authorized by the Board of Directors acts as the official representative on behalf of the Library in any dealings with the City for matters arising from this Agreement. The Board of Directors shall provide to the City written confirmation that a certain designate has the authority to act as the official representative on behalf of the Library.

3.2 Operational Responsibilities of the Library

3.2.1 During the Term, the operational responsibilities of the Library are as follows:

- a) The Library shall operate, maintain, and keep the Facility in such condition and state of good and substantial repair as would a prudent owner of similar facilities in the vicinity, taking into account the age and nature of the Facility, the standards recommended for the Facility by the City, and any specific requirements or directions from the City, including the Condition Assessment Report. The Library shall make best efforts to maintain the appropriate function and appearance of the Facility, including its Building Systems, by properly and diligently carrying out all maintenance, repairs, and replacement of the Facility, including its Building Systems, and any Leasehold Improvements therein, thereon or used in connection therewith (whether or not any repairs or replacements are major, are of a capital nature or are exterior or interior). Without limiting the generality of the foregoing, the Library shall be responsible for repainting and redecorating at reasonable intervals, janitorial care, and waste and recycling removal of the Facility. The City shall be responsible for snow and ice removal of all areas of the Property (including for the parking lot) and, in particular, shall ensure that the entrances and walkways of the Property are free from the accumulation of snow and ice. For Charge Backs and Shared Charges summary, please refer to Schedule E.

- b) The Library shall ensure that all work and services hereunder are completed in a good and workmanlike fashion in compliance with all laws, carried out in a diligent fashion, and will be at the sole expense of the Library.

3.2.2 The Library may make changes, modifications or alterations to the Facility or any part thereof as follows:

- a) **Minor Alterations** refers to the maintenance, repair, modification, removal or addition of components of a Building System that does not change the structure, area or purpose of any room or space in or around the Facility and that will not result in changes to the Facility which may pose health or safety concerns. For example, Minor Alterations includes painting, ceiling tile replacement or carpet replacement. The Library may perform Minor Alterations without notifying the City and without the use of licensed workers, but shall take into consideration any specific requests made by the City from time to time
- b) **Major Alterations** refers to the maintenance, repair, modification, removal or addition of any components of the Facility that changes the structure, area or purpose of any room or space in or around the Facility, that results in changes to the Facility which may pose health or safety concerns, that typically requires the use of licensed workers or that changes any emergency or life safety systems. For example, Major Alterations includes door or window replacement, electrical panel repair, asbestos removal, accessibility enhancements, HVAC replacement, structural alterations, roof replacement or safety equipment repair. The Library shall obtain written consent from the City prior to commencing Major Alterations (which consent may be subject to entering into a separate construction agreement with the City), and shall take into consideration any specific requests made by the City (including the use of appropriate signage); it being understood that, notwithstanding such consent, the City will have no responsibility with respect to the adequacy of such Major Alterations. The Library shall retain the necessary engineers, architects, inspectors or licensed workers and shall obtain the appropriate permits and any insurance as required by the City. At times, the City may offer to manage Major Alterations on the Library's behalf or may retain the necessary engineers, architects, inspectors or licensed workers at the Library's expense. The Library shall ensure the health and safety of all staff, members, invitees, and guests when Major Alterations are underway. The City shall inform the Library when major alterations are planned on the Property.
- c) For any Minor Alteration or Major Alteration, the City may inspect any work-in-progress at the Facility at any time and without prior notice to the Library.
- d) For any other changes, modifications or alterations to the Facility or any part thereof, the Library shall obtain written consent from the City prior to commencing any such changes, modifications or alterations; it being understood that, notwithstanding such consent, the City will have no responsibility with respect to the adequacy of such changes, modifications or alterations.

- e) Upon affixation, any Minor Alteration, Major Alteration or any other changes, modifications or alterations will immediately become the property of the City and will be regarded for all purposes as part of the Facility.
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- 3.2.3 If the Library, at any time, fails or refuses to perform or make any maintenance, repairs or replacements that may be required for the purpose of health and safety, legislative requirements, environmental protection or risk management (as determined by the City), then the City may make them or cause them to be made and the cost thereof will be charged to and paid by the Library forthwith. The Library will permit the City and its agents, at all reasonable times, to enter upon and view the Facility and the state of repair thereof and make such needed maintenance, repairs, and replacements as the City may specify in writing; except that, in the case of an emergency, the City and its agents may enter upon the Facility and make such needed maintenance, repairs or replacements at any time and without prior notice to the Library. The Library will not be compensated for any inconvenience, disruption or discomfort occasioned thereby.
 - 3.2.4 The Library shall maintain records regarding the maintenance, repair, and replacement of the Facility (in particular, its Building Systems) for the purpose of updating the Condition Assessment Report which records will contain such information to the satisfaction of the Director. The Library shall retain such records for a period of five (5) years from the creation of such records and shall produce to the City such records on an annual basis and upon request from the City.
 - 3.2.5 The Library shall pay promptly when due all charges, costs, accounts, and any other sums payable for all Utilities used or consumed in the Facility during the Term. The Library shall make all arrangements with, payments to, and deposits required by any utility company.
 - 3.2.6 Upon the request of the City, the Library shall provide the City with three (3) names and telephone numbers for the alarm monitoring call-out list. The Library shall be responsible for any damage to the Facility, to the surrounding premises or to City property if such damage was caused by or attributable to any vandalism, break-in or unauthorized entry of the Facility.
 - 3.2.7 The Library shall ensure that the City will have a key for the Facility or the Library shall inform the City of the keypad code and any changes to the keypad code.
 - 3.2.8 If, during the months from November to April, the Facility is not being used and occupied for the Library's activities, then the Library shall properly winterize the Facility. If the Facility has a sprinkler system, then the Library shall ensure that a minimum temperature of four degrees Celsius (4°C) will be continuously maintained during such months. A representative of the Library shall inspect the security and condition of the Facility on a weekly basis during such months except if access to the Facility is restricted due to winter weather conditions.

- 3.2.9 The Library shall prevent the accumulation of debris and other items in and around the Facility that might attract rodents, insects or other forms of infestation. The Library shall make reasonable efforts to keep the Facility free of pests, including the provision of pest control devices or services, and shall promptly address evidence of any infestation that is observed.
- 3.2.10 The Library shall obtain written approval of the City prior to removing, replacing or installing any exterior signage at the Facility, including any signage that alters the name of the Facility from its current name. The Library shall take into consideration any requirements and limitations provided by the City regarding the appearance, size, content, and location of the exterior signage.
- 3.2.11 If the City, at any time, provides the Library with an asbestos audit, then the Library shall retain a copy of such asbestos audit at the Facility and shall provide such asbestos audit to workers whenever components of a Building System are being repaired, modified or removed. The Library shall observe all directions and precautions related to the handling of asbestos-containing materials which are set out in such asbestos audit.
- 3.2.12 The Library shall promptly notify the City of any damage to or deficiency or defect in any part of the Facility that may require a Major Alteration as soon as the Library becomes aware thereof.
- 3.2.13 The Library shall maintain a reserve account to allow the library to contribute available funds to be used for future projects.
- 3.2.14 If, after discussion with the Library, the Library fails or refuses to expeditiously perform any obligation for which it is responsible under this Article, then the City may perform any such obligation and the Library shall pay the City's costs thereof forthwith.

3.3 Operational Responsibilities of the City

- 3.3.1 During the Term, the operational responsibilities of the City are as follows:
- a) The City shall develop an asbestos audit in connection with the Facility in accordance with the City's asbestos management program for other facilities of a similar nature and shall provide such audit to the Library.
 - b) The City shall develop and review the Condition Assessment Report in accordance with the City's standards.
 - c) The City shall develop an accessibility report in connection with the Facility in accordance with the City's standards for other facilities of a similar nature and provide such report to the Library.
 - d) The City shall be responsible for the repair and replacement of existing infrastructure for electricity, water, sewer, and natural gas that service the Facility, up to the Facility.

- e) The City shall perform grounds maintenance, including snow and ice removal, for the portion of the Property; all in accordance with the City's standards.
- f) The City shall ensure that a staff member who is authorized by the City acts as the official representative on behalf of the City in any dealings with the Library for matters arising from this Agreement. The City shall provide to the Library written confirmation that a certain staff member has the authority to act as the official representative on behalf of the City.
- g) Upon the request of the Library, the City will consider whether the Library can be included as a part of the City's contracts for services such as pest control, mechanical maintenance, and emergency or life safety equipment maintenance on a charge-back basis.
- h) Upon the request of the Library, the City will provide to the Library copies of the City's publicly available policies and standard operating procedures.

3.4 Mutual Responsibilities

- 3.4.1 The City and the Library shall develop and maintain a fire safety plan in connection with the Facility. Both parties shall review and update such fire safety plan on an annual basis and as often as it is necessary to do so. The Library shall be responsible for implementing and adhering to such fire safety plan, including the fire emergency procedures and emergency and life safety systems maintenance. The Library shall ensure that its staff or volunteers are trained in, implements, and adheres to such fire safety plan and that its volunteers and permit holders adhere to such fire safety plan. The Library shall pay promptly when due all charges, costs, accounts, and any other sums payable for false alarm charges and any other fire department charges.
- 3.4.2 On an annual basis, the City shall conduct or cause to be conducted an inspection of the emergency and life safety systems pursuant to the Fire Code made under the *Fire Protection and Prevention Act, 1997* (Ontario). The Library shall correct all deficiencies and shall make all repairs as a result of the aforesaid inspection.
- 3.4.3 On an annual basis, the City and the Library shall jointly undertake an on-site review of the Facility in order to update the Condition Assessment Report as necessary.
- 3.4.4 On an annual basis, the City and the Library shall jointly undertake a back-flow inspection at the Facility which inspection will be at the cost of the Library. The Library shall correct all deficiencies and shall make all repairs as a result of the aforesaid inspection.
- 3.4.5 Each party shall inform the other party in a timely manner of any incident or occurrence that may have a detrimental effect on any subject matter hereof; in particular, any incident or occurrence as it relates to health and safety, legislative requirements, environmental protection or risk management with respect to the Facility or Property.

3.5 Ownership

The parties agree that all right, title, interest, estate, trust, and property of the Facility shall remain and vest with the City without compensation to or claim by the Library. All Leasehold Improvements (excluding Library Trade Fixtures) will become the City's property without compensation to or claim by the Library when the Library vacates the premises.

3.6 Use of the Facility

Subject to the terms and conditions of this Agreement, the Library shall use the Facility for the operation of a public library and such other lawful uses as the City and the Library mutually agree as being ancillary, complementary, and supportive to the operation of a public library, and for no other purpose.

3.7 Conduct of Activities

The Library shall, during the Term, conduct continuously and actively public library activities in the Facility during its normal business hours.

3.8 Compliance with Laws

The Library shall, at all times, comply with all provisions of any present or future law, regulation, by-law, order or directive enacted or made by any federal, provincial or municipal authority having jurisdiction or the City's fire insurance underwriters and shall not commit any act or omission that causes an increase in the fire risk or the cost of insurance or prevents the placing of insurance on the Facility or the Property, and shall promptly effect any changes to the Facility that are necessary to so comply or to cease so affecting the fire risk or the insurance. The foregoing obligations will apply both with respect to the use of the Facility and any Leasehold Improvements.

3.9 Nuisance, Overloading, Community Standards

The Library shall not cause or allow any act or thing which constitutes a Nuisance or which interferes with the operation of any Building System. The Library shall keep the Facility free of anything of a dangerous, noxious or offensive nature or which could create a fire, environmental, health or other hazard or undue vibration, heat or noise (including the use of a sound system). The Library shall not install any equipment which would exceed or overload the capacity of the electrical wiring and service in the Facility. The Library shall not cause or allow any overloading of the floors of the Facility or the bringing into any part of the Property, including the Facility, of any articles or fixtures that by reason of their weight, use or size might damage or endanger the Property, including the Facility. The Library shall adhere to the occupancy requirements of the Facility.

3.10 Liens

The Library shall pay before delinquency for all materials supplied and work done in respect of the Facility. Should a claim be made or filed in which a lien is claimed on the Property or any part thereof, the Library shall forthwith vacate, discharge or settle such claim pursuant to the *Construction Lien Act* (Ontario) to the satisfaction of the City. The Library shall cause all registrations of such claim or certificate of action related thereto to be discharged or vacated within ten (10) Business Days of notice from the City requiring it to do so, failing which the City, in addition to any other rights or remedies it may have hereunder, may cause such claim or certificate of action to be discharged or vacated by payment into court, and in such event, the Library shall pay the City's costs thereof, together with an administration fee of twenty-five per cent (25%) of such costs.

3.11 Access to the Facility by the City

In addition to any other rights hereunder, the City or its agents may enter the Facility to inspect the Facility, to make repairs, replacements, changes or alterations as set out in this Agreement, or to take such steps as the City may deem necessary for the safety, improvement, alteration or preservation of the Facility or the Property. In carrying out such rights, the City shall whenever possible give sixty (60) days notice to the Library prior to such entry (other than in the case of an emergency) to permit the Library to accompany the City for such entry, but no such entry will constitute a re-entry by the City or an eviction of the Library.

3.12 Control of the Property by the City

The City may do and perform such acts in and to the Property or any portions thereof as the City considers reasonable for the proper and efficient operation, management, and control of the Property for the purpose of health and safety, legislative requirements, environmental protection or risk management (as determined by the City); provided that in the course of the City's exercise of its rights hereunder, the City will be deemed not to have re-entered the Facility nor to have breached any obligation of this Agreement.

3.13 Damage or Destruction

Notwithstanding any other provision of this Agreement, if the Facility or any portion thereof is substantially damaged or destroyed by fire, lightning or other peril, natural or otherwise, then the City shall consult with the Library and shall work with the City's insurers in order for the City to determine whether the Facility can be repaired or rebuilt within a reasonable time period from the peril. The City shall inform the Library of its final decision with respect to the Facility. If the City determines that the Facility cannot be repaired or rebuilt within a reasonable time period from the peril, then the City may terminate this Agreement by giving to the Library notice of termination and the Library shall immediately deliver up vacant possession of the Facility to the City.

3.14 Sales or Dispositions by the City

The City may sell, transfer, lease, license, charge or otherwise dispose of all or any part of its interest in the Property or any interest of the City in this Agreement but shall consult with the Library prior to such disposition. In the event of any sale, transfer, lease, licence, charge or other disposition, the City will thereupon and without further agreement be released of all liability under this Agreement arising from and after such disposition.

ARTICLE 4 – REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Library

4.1.1 At the execution of this Agreement and during the Term, the Library represents and warrants to and in favour of the City and acknowledges that the City is relying thereon as follows:

- a) The Library has full power and authority and has obtained all necessary approvals to execute, deliver, and perform this Agreement; and
- b) The Library's execution, delivery, and performance of this Agreement will not constitute: (i) a violation of any judgment, order or decree; (ii) a default under any agreement by which it or any of its assets are bound; or (iii) an event that would with notice or lapse of time constitute such a default.

ARTICLE 5 – INSURANCE AND INDEMNITY

5.1 Insurance Policies of the City

5.1.1 The City shall, at its cost, obtain and maintain in force during the Term the following insurance policies:

- a) all-risks property insurance which will insure the Facility for an amount of not less than the full replacement cost thereof from time to time without deduction for depreciation, against loss or damage by perils now or hereafter from time to time embraced by or defined in a standard all-risk insurance property policy, including fire, explosion, impact by aircraft or vehicles, lightning, riot, vandalism, malicious acts, smoke, leakage from defective equipment, wind storm, hail, collapse, flood or earthquake; and
- b) machinery breakdown insurance for loss or damage from an accident to an object which is in use or connected ready for use at the Facility in an amount not less than the full replacement cost. The policy will cover the perils of wind, fire, smoke, combustion explosion, and lightning.

5.2 Insurance Policies of the Library

5.2.1 The Library shall obtain and maintain in force during the Term the following insurance policies:

- a) directors and officers liability insurance protecting the Library, its directors, secretary, and executive officers from and against any claim and all claims made against the Library, its directors, secretary, and executive officers or any of them, jointly or severally, for a wrongful act to a limit of no less than one million dollars (\$1,000,000.00);
- b) commercial general liability insurance insuring the Library's use, occupancy, maintenance, operations, and management of the Facility for the purposes of fulfilling its obligations in accordance with this Agreement. The policy will be extended to include bodily injury, property damage, personal and advertising injury, participant to participant liability, products liability, host liquor liability, and contractual liability to a limit of no less than two million dollars (\$2,000,000.00) per occurrence. The policy will include a cross liability and severability of interest clause and be endorsed to name the City as an additional insured;
- c) all-risks tenant's legal liability insurance in an amount of no less than five hundred thousand dollars (\$500,000.00) per occurrence to pay compensatory damages arising from physical injury to or destruction of the Facility caused by an occurrence to the Facility or portions thereof licensed, leased, rented to or occupied by the Library;
- d) non-owned automobile liability insurance to a limit of no less than one million dollars (\$1,000,000.00); and
- e) all-risks property insurance for loss or damage to property and equipment of every description and kind owned by the Library or in the Library's care, custody, and control or for which the Library is legally liable which is located in or about the Facility in an amount not less than the full replacement cost. The policy will cover the perils of fire, sprinkler leakage (where applicable), earthquake, flood, and collapse.

5.2.2 The Library shall ensure that its insurance policies will:

- a) be written with an insurer licensed to do business in the Province of Ontario;
- b) be non-contributing with and will apply only as primary and not excess to any other insurance or self-insurance available to the City; and
- c) contain an undertaking by the insurers to notify the City in writing no less than thirty (30) Business Days prior to any change, termination or cancellation of coverage unless otherwise required by law.

- 5.2.3 Any deductible amounts will be borne by the Library for its insurance policies under Section 5.2.
- 5.2.4 Upon the execution of this Agreement, the Library shall provide to the City proof of insurance on a form of certificate of insurance which has been signed by an authorized representative of the insurer. Upon the request of the City, the Library shall make available complete certified copies of all applicable insurance policies for examination by the City.
- 5.2.5 The Library shall deliver to the City certificates of insurance evidencing renewal or replacement of the policies required under this Agreement at least fifteen (15) Business Days prior to the expiration or replacement of the current policies without demand by the City.
- 5.2.6 Upon the request of the City, the Library shall purchase such additional insurance coverage and in such higher limits of insurance or otherwise alter the types of insurance coverage.
- 5.2.7 If the Library fails to maintain in force any insurance required to be maintained by it hereunder, then the City, without prejudice to any of its other remedies, may obtain such insurance on behalf of and at the cost of the Library.
- 5.2.8 The Library shall not do, omit to do or permit to be done upon the Facility anything that may contravene or be prohibited by any of the City's insurance policies in force from time to time covering or relevant to any part of the Facility or which would prevent the City from procuring such policies with companies acceptable to the City.
- 5.2.9 If there is a cancellation or threatened cancellation of or adverse change in any policy of insurance of the City for the Facility by reason of anything done or permitted by the Library anywhere in, on or about the Facility and if the Library fails to remedy the situation giving rise to such cancellation or threatened cancellation or adverse change within three (3) Business Days after notice from the Director, then the City may:
- a) terminate this Agreement; or
 - b) remedy the situation giving rise to such cancellation or threatened cancellation or adverse change; all at the cost of the Library to be paid to the City forthwith upon demand.
- 5.2.10 If the Library grants any sub-licences in respect of the rights granted to it under this Agreement, then the Library shall ensure that its sub-licensees obtain and maintain commercial general liability insurance insuring the sub-licensees' use and occupancy of the Facility to a limit of no less than two million dollars (\$2,000,000.00) per occurrence and name the City as an additional insured. The Library shall also ensure that its sub-licensees provide proof of such insurance upon the request of the City.

5.2.11 The Library and its agents, employees, and insurer(s) hereby release the City from any and all liability or responsibility, including anyone claiming through or under them, by way of subrogation or otherwise for any loss or damage which the Library may sustain incidental to or in any way related to the Library's obligations under this Agreement. All agreements between the Library and its contractors, subcontractors, and sub-licensees will contain a similar release in favour of the City.

5.2.12 The above insurance requirements will not be read to limit the liability of the Library and will not be deemed a waiver by the City of its right to damages and indemnity from the Library for default under this Agreement or for any loss arising out of or related to the performance or non-performance by the Library of its obligations under this Agreement.

5.3 Payment of the Premium and Claims under the City's Property Policy

On an annual basis and upon receipt of an invoice from the City, the Library shall pay the City for the Library's pro-rated share of the City's property policy premium based on the Library's area occupancy of the Facility. In the event a claim is made under such policy, the Library shall be responsible for paying the City's deductible in the amount of one thousand dollars (\$1,000.00) per claim.

5.4 Notification of Incidents and Claims

The Library shall immediately notify the City of all incidents or circumstances that may result in a claim or give rise to a claim as well as claims that are made against the Library arising from the responsibilities as set out in this Agreement. The Library shall provide the City with complete copies of all incident reports, correspondence, and notices of claims upon request.

5.5 Release of the City

5.5.1 The Library agrees that the City, regardless of negligence or alleged negligence on the part of the City, shall not be liable for and hereby releases, remises, and forever discharges each of the City and its elected officials, officers, employees, and agents from:

- a) any and all claims, actions, causes of action, damages, demands for damages, and other liabilities for or related to:
 - (i) any injury to, illness of or death of the Library or its employees, volunteers, members, coaches, participants, guests, and invitees; and
 - (ii) any loss or theft of or damage to any property however caused in or about the Facility owned by the Library or its employees, volunteers, members, coaches, participants, guests, and invitees;
- b) any loss or damage caused as a result of any destruction, construction, alteration, expansion, expropriation, reduction, repair, replacement or reconstruction from time to time of the Property, of any parts or components of the Property or of

improvements on adjoining properties or by anything done or omitted to be done by any other tenant or occupant;

- c) any loss or damage resulting from the interruption of the Library's activities caused by fire or other perils (whether insured or not) or by interruption of or failure in the supply of Utilities to the Facility;
- d) any act or omission (including theft, malfeasance or negligence) on the part of any employee, agent or contractor employed or retained by the City from time to time to perform any maintenance or other work in or about the Facility; and
- e) any indirect, special, remote, consequential, and economic damages.

5.7 Indemnity by the Library

5.7.1 The Library shall indemnify and hold harmless each of the City and its elected officials, officers, employees, and agents from and against any and all claims, actions, demands, damages, losses, liabilities, and expenses arising out of or as a result of:

- a) any breach, violation or non-performance of the terms and conditions on the part of the Library set out in this Agreement;
- b) any damage to City property occasioned by the use or occupancy of the Facility by the Library or its employees, volunteers, members, coaches, participants, guests, and invitees;
- c) any injury to, illness of or death of any person or any damage to property or other losses arising from or resulting from the use or occupancy of the Facility by the Library or its employees, volunteers, members, coaches, participants, guests, and invitees;
- d) any act or omission (including theft, malfeasance or negligence) on the part of the Library or its employees, volunteers, members, coaches, participants, guests, and invitees;
- e) any breach of any intellectual property rights arising from or resulting from the use or occupancy of the Facility; or
- f) any environmental contamination of the Facility, the Property or any adjoining lands that occurs during or after the use or occupancy of the Facility by the Library or its employees, volunteers, members, coaches, participants, guests, and invitees.

5.7.2 These obligations will survive any expiry or termination of this Agreement, notwithstanding anything to the contrary.

ARTICLE 6 – RESTRICTIVE CONDITION

6.1 Confidential Information

The City or the Library shall not divulge or disclose any Confidential Information which is communicated to or acquired by it or disclosed by the City in the course of carrying out this Agreement. The City or the Library shall not use Confidential Information for any other purpose except for carrying out this Agreement. These obligations of confidentiality will not apply to information which is publicly available, which is provided to the City or the Library by a third party without obligation of confidentiality, or which is required to be disclosed by law or by court order (so long as the City or the Library has received prior written notification of such court order). Upon the expiry or termination of this Agreement, the City or the Library shall immediately cease to use Confidential Information in any manner whatsoever, shall return to the City all Confidential Information in its possession, custody or control, and shall not retain any copies of the Confidential Information. These obligations of confidentiality will survive the expiry or termination of this Agreement however caused.

ARTICLE 7 – DISPUTE RESOLUTION MECHANISM

7.1 Dispute Resolution

- 7.1.1 Any dispute or disagreement arising out of or in connection with this Agreement (“Dispute”), with the exception of those provisions dealing with the termination of this Agreement, will be dealt with as follows:
- a) The Dispute will first be referred to the Manager of Parks and Recreation (or his/her designate) for the City and the Director, Content, Spaces & Technology for the Library.
 - b) Should the Dispute not be resolved within ten (10) Business Days of its referral to the Manager of Parks and Recreation (or his/her designate) and the Director, Content, Spaces & Technology for the Library, the Dispute will be escalated to the Director and the CEO of the Library.
 - c) Should the Dispute not be resolved within ten (10) Business Days of its referral to the Director and the CEO, either party may exercise its rights available at law.
- 7.1.2 All negotiations and settlement discussions to resolve a Dispute will be treated as compromise and settlement negotiations between the parties, will not be subject to disclosure through discovery or any other process, and will not be admissible into evidence in any proceeding.
- 7.1.3 Except where clearly prevented by the nature of the Dispute, the City and the Library agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the provisions of this Article.

ARTICLE 8 – TERMINATION

8.1 Events of Default

8.1.1 The Library will be in default upon the occurrence of any of the following events (each an “Event of Default”):

- a) any Additional Rent or other amount is not paid within thirty (30) Business Days after payment is due hereunder;
- b) the Library breaches any term or condition of this Agreement, provided that the City gives the Library notice of the breach and such breach is not remedied to the satisfaction of the City within the time period set out in such notice;
- c) the Library is in default of any loan, is unable or unwilling to pay its debts as they become due, is in receivership, becomes bankrupt (whether voluntary or involuntary) or insolvent, makes an assignment for the benefit of, or compromise with its creditors, makes a plan of arrangement, or is subject to a similar circumstance;
- d) a trustee, receiver, receiver and manager or a person acting in a similar capacity is appointed with respect to the assets of the Library;
- e) the Library is wound up or dissolved or ceases to carry on;
- f) the Library makes a sale in bulk of all or a substantial portion of its assets;
- g) this Agreement or any of the Library’s assets are taken under a writ of execution and such writ is not stayed or vacated within ten (10) Business Days after the date of such taking;
- h) the Library abandons or attempts to abandon the Facility or leaves the Facility vacant or substantially unoccupied for a period of seven (7) consecutive calendar days or more without the consent of the City;
- i) the Library moves or commences, attempts or threatens to move its Trade Fixtures or chattels out of the Facility (other than in the ordinary course of its activities);
- j) any of the Library’s representations or warranties in this Agreement or any statements made by the Library to the City are materially false, misleading or inaccurate;
- k) the Library permits any conduct or act which in the opinion of the City, acting reasonably, is improper or renders it inadvisable that the Library should be allowed to continue using the Facility under this Agreement;

- l) the Library fails or refuses to vacate, discharge or settle a claim pursuant to the *Construction Lien Act* (Ontario) to the satisfaction of the City;
- m) the Library fails or refuses to maintain the insurance coverage as required hereunder; or
- n) any insurance policy covering any part of the Facility or the Property is, or is threatened to be, cancelled or adversely changed (including a substantial premium increase) as a result of any act or omission by the Library or any person for whom it is legally responsible.

8.2 Remedies upon an Event of Default

8.2.1 If and whenever an Event of Default occurs, then, without prejudice to any other rights which it has pursuant to this Agreement or at law, the City may exercise all or any of the following remedies, which are cumulative and not alternative:

- a) to enter the Facility as agent of the Library and to relet the Facility for whatever length of time and on such terms as the City in its discretion may determine, and (i) to take possession of any property of the Library in the Facility; (ii) to store such property at the expense and risk of the Library; (iii) to sell or otherwise dispose of such property in such manner as the City sees fit without notice to the Library; and (iv) to make alterations to the Facility to facilitate the reletting. The City may receive Additional Rent, any other amounts, and any proceeds of sale as agent of the Library and may apply such proceeds of sale as the City sees fit. The Library will remain liable to the City for any deficiency;
- b) to remedy or attempt to remedy any default of the Library under this Agreement for the account of the Library and to enter upon the Facility for such purposes without effecting a termination of this Agreement. No notice of the City's intention to remedy or attempt to remedy such default need be given to the Library unless expressly required by this Agreement, and the City will not be liable to the Library for any loss, injury or damages caused by acts of the City in remedying or attempting to remedy such default. The Library shall pay to the City all expenses incurred by the City in connection therewith;
- c) to recover from the Library all damages, costs, and expenses incurred by the City as a result of any default by the Library, including, if the City terminates this Agreement, any deficiency between those amounts which would have been payable by the Library for the portion of the Term following such termination and the net amounts actually received by the City during such period of time with respect to the Facility;
- d) to recover from the Library the full amount of the current reserve account established pursuant to section 3.2.13;

- e) to recover from the Library the full amount of the current month's Additional Rent, together with the installments of Additional Rent for the next three (3) months; all of which will immediately become due and payable as accelerated rent; and/or
- f) to terminate this Agreement and re-enter the Facility. The City may remove all persons and property from the Facility and store such property at the expense and risk of the Library or sell or otherwise dispose of such property in such manner as the City sees fit without notice to the Library. Notwithstanding any termination of this Agreement, the City may receive Additional Rent and any other amounts up to the time of termination plus accelerated rent as provided in this Agreement and damages, including costs of reclaiming, repairing, and re-leasing the Facility.

8.3 Distress

Notwithstanding any other provision of this Agreement or any provision of any applicable legislation, the Library agrees with the City that none of the Trade Fixtures or chattels of the Library in the Facility at any time during the Term will be exempt from levy by distress for Additional Rent in arrears and the Library waives all and every benefit that could or might have accrued to the Library, but for this Section. If the City makes any claim against the Trade Fixtures or chattels of the Library by way of distress, then this provision may be pleaded as an estoppel against the Library in any action brought in which the rights of the City to levy such distress are in question.

8.4 Costs

The Library shall pay to the City all damages, costs, and expenses incurred by the City in enforcing the terms of this Agreement, or with respect to any matter or thing which is the obligation of the Library under this Agreement, or in respect of which the Library has agreed to insure or to indemnify the City.

8.5 Termination with Notice

Notwithstanding any other provision of this Agreement, the City may terminate this Agreement upon thirty (30) Business Days written notice to the Library. The City will exercise such right reasonably and notwithstanding that it may have provided notice of termination in accordance with any other provision of this Agreement at such time as it exercises its rights pursuant to this Section.

8.6 Effect of Expiry or Termination with Notice

8.6.1 In the event that this Agreement expires or that the City terminates this Agreement pursuant to Section 8.5 or Section 9.8, the following will apply:

- a) The Library shall peaceably surrender and deliver up to the City vacant possession of the Facility in as good condition and state of repair as the Library is required to

- maintain the Facility during the Term and the Library shall deliver to the City all keys to the Facility;
- b) The Library shall remove such of its Trade Fixtures and chattels and the Leasehold Improvements, as the City may require, and in effecting such removal, shall do no damage to the Facility or the Property;
 - c) The Library will have no further obligations to contribute to the reserve account pursuant to section 3.2.13 and the reserve account will remain the property of the Library;
 - d) The Library will have no claim against the City;
 - e) Such expiry or termination will not relieve the Library from liability accrued prior to the time such expiry or termination became effective; and
 - f) Nothing in this Agreement will limit the rights of the City to recover damages from the Library or to exercise any other rights or remedies it may have at law or in equity or otherwise.
- 8.6.2 In the event that the City terminates this agreement pursuant to Section 8.5, the City will consult with the Library and may provide an alternate location to accommodate the Library.
- 8.6.3 In the event that the City terminates this Agreement pursuant to Section 8.5 and the Library has a joint venture loan pursuant to the City's Joint Venture Policy, the Library will only be responsible for repayments of such loan to the date of termination of this Agreement and any loan agreement between the parties for such joint venture loan will terminate on the date of termination of this Agreement.

8.7 Survival of Terms

On the expiry or any termination of this Agreement, the Library's right of possession will cease and terminate, but the obligations of the parties with respect to payment of Additional Rent or covenants not performed at the date of such expiry or termination, indemnification or any other obligations which, by their nature or by reason of the circumstances at the time of such expiry or termination, are not completely performed prior to such expiry or termination, will remain in full force and effect until satisfied. It is agreed, however, that in no event will the Library have any interest in or right to possession of the Facility after the expiry or termination of this Agreement.

8.8 Overholding

If, with the City's written consent, the Library remains in possession of the Facility after the expiry or termination of this Agreement, then the Library will be deemed to be occupying the Facility on a month-to-month tenancy only and at a monthly rental rate as stated in such written consent. Such month-to-month tenancy may be terminated by the City on the last day of any

calendar month by delivery of at least ten (10) Business Days advance written notice of termination to the Library. Such month-to-month tenancy will be subject to all other terms and conditions of this Agreement except any right of extension and nothing contained herein will be construed to limit or impair any of the City's rights of re-entry or eviction or constitute a waiver thereof.

ARTICLE 9 – GENERAL

9.1 Waiver

No waiver by any party hereto of any breach by the other party of any of its covenants, agreements or obligations contained in this Agreement will be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations, nor will any forbearance by any party hereto to seek a remedy for any breach by the other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of Additional Rent or any other payment by the City will not be deemed to be a waiver of any preceding breach by the Library of any term, covenant or condition regardless of the City's knowledge of such preceding breach at the time of the acceptance of such payment.

9.2 Subordination

Upon the request of the City, the Library shall promptly subordinate this Agreement and all its rights hereunder or shall accept a subordination of any security in favour of this Agreement, in such form as the City may require to any such security holder, and to all advances made or hereinafter to be made upon the security thereof and will, if required, attorn to the holder thereof.

9.3 Registration

Neither the Library nor anyone on the Library's behalf shall register this Agreement or a notice or caveat thereof against the Property.

9.4 Amendment

Except as expressly provided otherwise in the Agreement, neither party may amend this Agreement, other than by an instrument in writing executed by the authorized representatives of both parties.

9.5 Assignment

The Library shall not assign, sublet, sublicense, transfer, set over, mortgage, charge, hypothecate, create any security interest in, or part with possession of all or any part of the Facility or of this Agreement, without the prior written consent of the City in each instance, which consent may, notwithstanding any statutory provision to the contrary, be unreasonably or arbitrarily withheld.

9.6 Relationship of the Parties

It is understood and agreed by the parties that nothing herein is intended to make either party an agent, legal representative, subsidiary, joint venturer, partner, fiduciary, employee or servant of the other for any purpose. Neither party will make any express or implied agreements, guarantees or representations or incur any debt or obligation in the name of or on behalf of the other, and neither party will be obligated by or have any liability under any agreements or representations made by the other.

9.7 Further Assurances

Each of the City and the Library will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning in this Agreement.

9.8 Force Majeure

If the performance of this Agreement is interfered with, in whole or in part, by circumstances beyond the reasonable control of either party, including fire, explosion, power failure, acts of God, war, revolution, civil commotion, acts of public enemies, law, order, regulation, ordinance or requirement or any government or its representative or legal body having jurisdiction, or labour unrest such as strikes, slowdowns, picketing or boycotts, or other circumstances of a like nature, then the party affected will be excused from such performance on a day-to-day basis to the extent that such party's obligations relate to the performance so interfered with, provided that the party so affected shall use commercially reasonable efforts to expeditiously remove such causes of non-performance. If the performance of this Agreement is so interfered with for a period of more than five (5) consecutive Business Days, then the City may terminate this Agreement upon written notice to the Library. The provisions of this Section will not under any circumstances operate to excuse the Library from prompt payment of Additional Rent or any other charges payable under this Agreement.

9.9 Benefit of the Agreement

Subject to the restrictions on assignment contained in the Agreement, this Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, other legal representatives, successors, and permitted assigns of the parties hereto.

9.10 Entire Agreement

Except as provided otherwise herein, this Agreement, and the attached Schedules, constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

9.11 Notices

Any notice, request, demand, consent or other communication provided or permitted hereunder (“Notice”) will be in writing and given by personal delivery or sent by registered mail or transmitted by facsimile addressed to the recipient as follows:

To the City at:

426 Brant Street, P.O. Box 5013
Burlington, Ontario L7R 3Z6
Attention: Director of Parks and Recreation
Facsimile: 905-335-7782

To the Library at:

2331 New Street
Burlington, Ontario L7R 1J4
Attention: CEO
Facsimile: 905-681-7277

or to such other address or individual as may be designated by Notice given by either party to the other. Any Notice given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof, and if given by registered mail, on the third (3rd) Business Day following the mailing thereof, and if given by facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient, failing which, on the next following Business Day. In the event of actual or threatened disruption of postal service, Notices will not be sent by mail.

9.12 Remedies Cumulative

The rights and remedies of the parties hereunder are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.13 Time of the Essence

Time is of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement will operate as a waiver of this provision.

9.14 Contra Proferentum

The parties hereto understand, agree, and acknowledge that: (a) this Agreement has been freely negotiated by both parties; and (b) in any controversy, dispute or contest over the meaning,

interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there will be no inference, presumptions or conclusions drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

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

**THE CORPORATION OF THE
CITY OF BURLINGTON**

Chris Glenn
Director of Parks and Recreation

**BURLINGTON PUBLIC LIBRARY
BOARD**

Brian Kenny
Board Chair

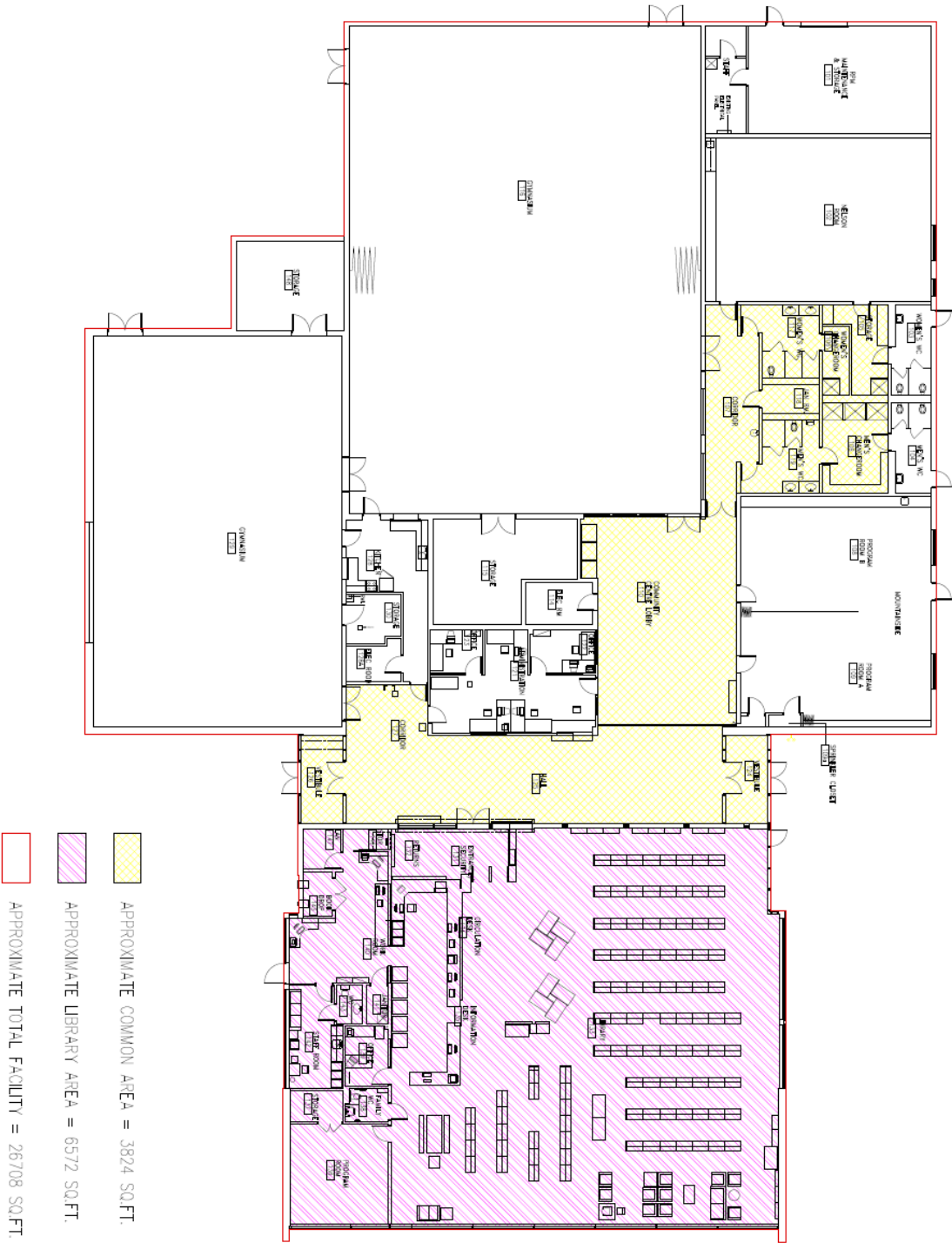
Lita Barrie
CEO

I/We have the authority to bind the Library.

**SCHEDULE A – Brant Hills Community Centre
BUILDING SYSTEMS**

Item	Ownership	Maintenance (clean, preventative maintenance)	Ongoing Repairs	Replacement (Like with Like)	Planned Renewal
PROPERTY (including COMMON AREA)					
Building Automation System	City	City	City	City	City
HVAC	City	City	Library	Library	City
Electrical Systems Exterior lights, emergency battery and backup systems	City	City	City	City	City
Parking Lots and Walkways	City	City	City	City	City
Exterior – Building Envelope Roof, exterior doors, etc.	City	City	City	City	City
Fire Life Safety System	City	City	City	City	City
Alarm System	City	Library	Library	City	City
Exterior Signage	City	City	City	City/Library	City
FACILITY (Library)					
Interior Finishes Painting, wall coverings etc.	City	Library	Library	Library	Library
Fixtures and Furniture Shelving, washrooms fixtures, etc.	Library	Library	Library	Library	Library
HVAC	City	Library	Library	Library	Library
Equipment Computers, telephones, etc.	Library	Library	Library	Library	Library
Fire Life Safety System	City	Library	Library	Library	Library

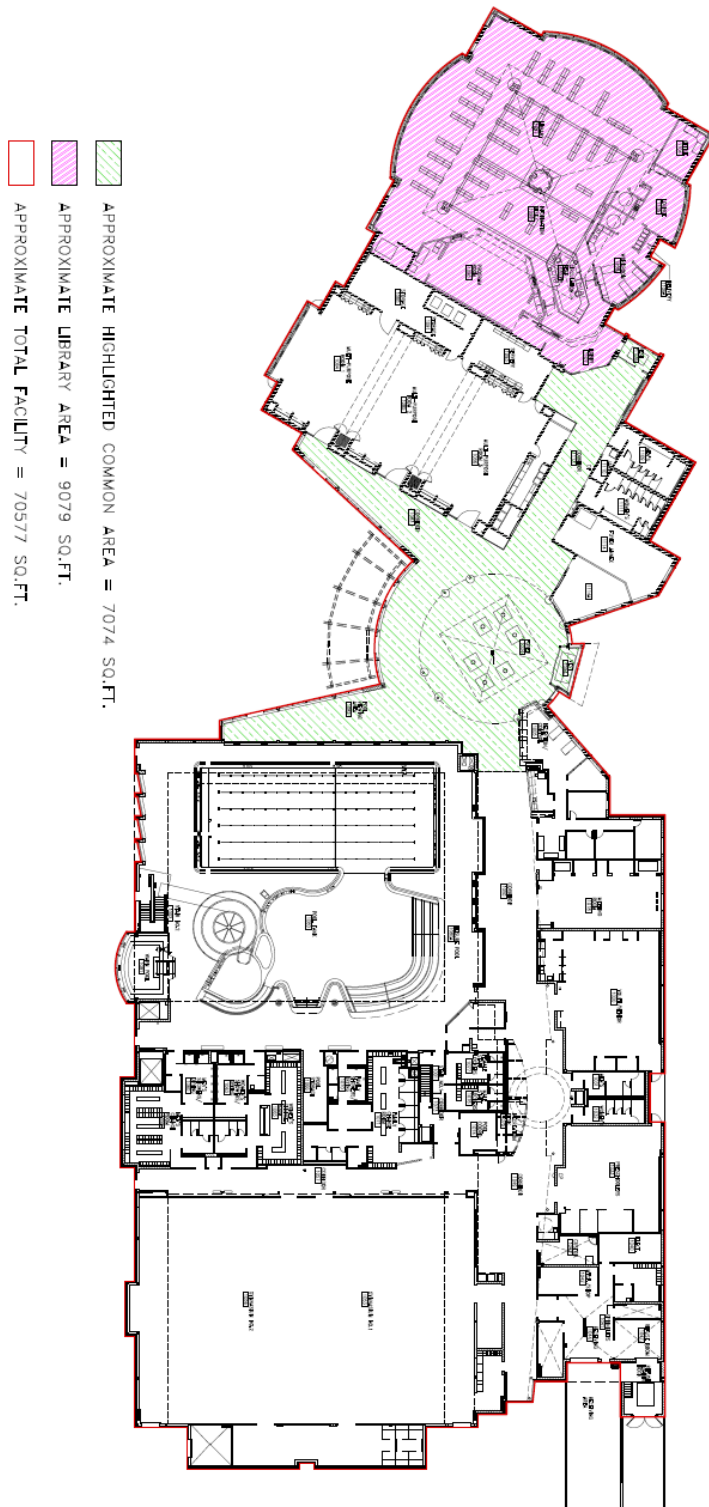
**SCHEDULE B – Brant Hills Community Centre
PROPERTY, FACILITY & COMMON AREAS**



**SCHEDULE C – Tansley Woods Community Centre
BUILDING SYSTEMS**

Item	Ownership	Maintenance (clean, preventative maintenance)	Ongoing Repairs	Replacement (Like with Like)	Planned Renewal
PROPERTY (including COMMON AREA)					
Building Automation System	City	City	City	City	City
HVAC	City	City	City	City	City
Electrical Systems Exterior lights, emergency battery and backup systems	City	City	City	City	City
Parking Lots and Walkways	City	City	City	City	City
Exterior – Building Envelope Roof, exterior doors, etc.	City	City	City	City	City
Fire Life Safety System	City	City	City	City	City
Alarm System	City	Library	Library	City	City
Exterior Signage	City	City	City/Library	City	City
FACILITY (Library)					
Interior Finishes Painting, wall coverings etc.	City	Library	Library	Library	Library
Fixtures and Furniture Shelving, washrooms fixtures, etc.	Library	Library	Library	Library	Library
HVAC	City	Library	Library	City	City
Equipment Computers, telephones, etc.	Library	Library	Library	Library	Library
Fire Life Safety System	City	Library	Library	City	City

SCHEDULE D – Tansley Woods Community Centre PROPERTY, FACILITY & COMMON AREAS



SCHEDULE E – Charge Backs and Shared Costs Summary

Tansley Woods

<u>Expense</u>	<u>Tax</u>	<u>Cost Share</u>
Bldg. Repairs & Mtce	Yes	Pay 13% of 10% of total cost
Building Materials	Yes	Pay 13% of 10% of total cost
Common Area Furniture	Yes	Pay 13% of 10% of total cost
Equip. Repairs & Mtce	Yes	Pay 13% of 10% of total cost
External Services/Contracts	Yes	Pay 13% of 10% of total cost
Gas	Yes	Pay 13% of total cost
Gas Common Area	Yes	Pay 13% of 10% of total cost
Hydro	Yes	Pay 13% of 10% of total cost
Janitorial Services	Yes	Pay 13% of 10% of total cost
Janitorial supplies	Yes	Pay 13% of 10% of total cost
Operating materials & supplies	Yes	Pay 13% of 10% of total cost
Security services	Yes	Pay 13% of 10% of total cost
Snow Removal	Yes	Pay 13% of 10% of total cost
Staffing	No	Pay 13% of 10% of total cost
Vandalism	Yes	Pay 13% of 10% of total cost
Water	No	Pay 13% of 10% of total cost
Wearing apparel	Yes	Pay 13% of 10% of total cost

Brant Hills

<u>Expense</u>	<u>Tax</u>	<u>Cost Share</u>
Bldg. Repairs & Mtce	Yes	Pay 25% of 14% of total cost
Building Materials	Yes	Pay 25% of 14% of total cost
Equip. Repairs & Mtce	Yes	Pay 25% of 14% of total cost
External Services/Contracts	Yes	Pay 25% of 14% of total cost
Gas	Yes	Pay 25% of 14% of total cost
Hydro	Yes	Pay 25% of 14% of total cost
Hydro	Yes	Pay another 25% of total cost
Operating materials & supplies	Yes	Pay 25% of 14% of total cost
Security services	Yes	Pay 25% of 14% of total cost
Snow Removal	Yes	Pay 25% of 14% of total cost
Staffing	No	Pay 25% of 14% of total cost
Vandalism	Yes	Pay 25% of 14% of total cost
Water	No	Pay 25% of 14% of total cost
Water	No	Pay another 25% of total cost
Wearing apparel	Yes	Pay 25% of 14% of total cost

