The Corporation of the City of Peterborough

By-Law Number 15-089

Being a By-law to authorize the execution of a Partnership Agreement and Land Lease Agreement between The Corporation of the City of Peterborough and Trent University for a new sport field development at Trent University

Now Therefore, The Corporation of the City of Peterborough by the Council thereof hereby enacts as follows:

That the Mayor and Clerk be authorized to execute a Partnership Agreement and Land Lease Agreement between The Corporation of the City of Peterborough and Trent University for a new sport field development at Trent University, in the form attached hereto as Schedule “A”, and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 19th day of May, 2015.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) John Kennedy, City Clerk
This agreement made in triplicate this 19th day of May 2015

Between:

Trent University
(the "University")

and

The Corporation of the City of Peterborough
(the "City")

Recitals

A. The City and the University entered into a Memorandum of Understanding dated June 15, 2005 which contemplated cooperation between the parties in connection with various matters of mutual interest, including, among other things, the development of sports fields and related facilities;

B. The Parties desire to enter into an agreement setting out the terms and conditions under which a new sports field facility will be funded, scheduled and maintained.

Now therefore the parties hereto agree as follows:

1.00 Definitions

1.01 Baseball Field – means one hardball diamond with permanent pitcher’s mound, irrigation and sports field lighting to be located on the Site.

1.02 Capital Improvement – means:

i. work not typically required to maintain the day-to-day usability of the Fields; or

ii. an expenditure of $20,000 or more, inclusive of HST, made in connection with the Field Project (excluding the initial cost of construction).

1.03 City Event – means a planned occasion or event, in which the City plays a significant role in delivering the event, examples of a City Event include but are not limited to: the Ontario Summer Games; the Special Olympics Games (as opposed to regular use of the Fields by Special Olympics); or a Drum and Bugle competition.

1.04 City User Group – means any person, local sport association, School Board or other organization, including, where applicable, Trent University, who has (1) booked the use of the field(s) through the City’s Recreation Division and (2) paid the requisite fee for its use of the field(s);

1.05 Field Project – means the Baseball Field and the Rectangular Sport Field, landscaped areas, walkways, irrigation systems, lights, parking areas, washrooms
and all other improvements located on the Site. Also referred to as "the Project" or "the Fields".

1.06 **Light Fee** – means the hourly light charge, levied for all users, including the University, for night time use of the fields. Also referred to as "light fees."

1.07 **Management Committee** – means a committee consisting of four persons, two being such representatives as the City may designate from time to time and two being such representatives as the University may designate from time to time.

1.08 **Rectangular Sport Field** – means a natural turf field with irrigation and field lighting that support soccer, rugby and field lacrosse to be located on the Site.

1.09 **The Site** – means the lands on which the Field Project is to be located, being lands owned by the University at Nassau Mills and Pioneer Road.

1.10 **Sports Partner** – means the City's community Baseball Field partner(s) who will be assisting the City with financing the City's capital contribution to the project.

1.11 **User Fee** – means the fee charged for use of a Field, determined on an hourly basis, but does not include the Light Fee.

1.12 **University Event** - A planned occasion or event, solely developed, organized and managed by the University, which occurs in a certain place during a particular interval of time, where the participants will primarily be students, faculty, alumni, employees or other persons associated with the University and their families.

2.00 **The City's Development of the Field Project**

2.01 The parties agree to enter into a land lease whereby, in consideration of the mutual agreements contained herein, the University will lease to the City the Site to construct the Field Project, as illustrated on Schedule "A", and to operate the Field Project for the period of the Term, as described in Clause 10.00, pursuant to the terms and conditions of this agreement. The parties agree to enter into a Land Lease incorporating the terms of this agreement prior to the commencement of construction of the Field Project.

2.02 The parties agree a reference plan depicting the Site shall be prepared by an Ontario Land Surveyor at such time as the planning of the Project is sufficiently complete to accurately identify the boundaries of the Site. At such time the said plan shall be appended to this agreement as Schedule "B" and the legal description of the Site shall be as described by such plan.

2.03 The Parties agree the Field Project consists of a 45 space parking lot, irrigation and lighting to support both the Baseball Field and a Rectangular Sports Field.
2.04 The Parties further agree the City shall lead the project development and have the responsibility to undertake the following tasks:

a. Secure all required property surveys (that must be attached as an appendix to this agreement);

b. Obtain geo-technical work for the site;

c. Undertake a Phase 1 Archeological Assessment, if none exist for this property;

d. Hire a consultant to design, tender and inspect construction for the project;

e. Hire a general contractor to construct the field;

f. Undertake project management services; and

g. Complete all other required assessments, reports and studies and obtain all required permits and approvals in order to construct the Project in accordance with all municipal laws.

2.05 Prior to commencing construction of the Project the City shall have obtained written approval of all plans and specifications (the "Approved Plans") from the University and all other competent governmental authorities having jurisdiction. The University agrees that it shall not unreasonably withhold or delay its approval of the proposed plans and specifications or any proposed amendments thereto, and shall provide either its approval or comments within a reasonable period of time after receipt from the City. It is agreed that 5 business days is the outside limit of a reasonable period of time for the University to provide its approval or comments and failing the University’s compliance with that time period, the City is free to proceed without further comment from the University.

2.06 The City shall take such precautions and remedial steps as would a prudent owner to ensure that no construction lien is registered against the Site. If a construction lien is registered, the City shall forthwith inform the University and, after consulting with the University, take commercially reasonable steps to remove such lien from the Site at no cost to the University. Failing which the University may discharge the lien by paying the amount claimed, together with the requisite amount for costs, into court and the amount so paid by the University, including its reasonable legal fees (on a partial indemnity scale) shall be paid by the City to the University.

2.07 To ensure compliance with the relevant provisions of the Occupational Health & Safety Act (Ontario) (the "OHSA"), the City shall ensure the General Contractor for the Project acts as the "constructor" within the meaning of the OHSA with respect to the completion of the Project and to comply with the constructor's obligations under the OHSA, including, without limitation, filing the requisite notice of project in respect of the completion of the Project. The City shall require the General Contractor to indemnify and save harmless the University and the City from any loss, costs, fines,
claims, penalties or damages arising out of any failure by the General Contractor to comply in all respects with the provisions of the OHSA.

2.08 The City shall ensure the General Contractor will have, and shall maintain and keep in force until the permanent insurance required under this Agreement shall have been effected, insurance against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Site and from any cause, including the risks occasioned by the construction and installation of the Project, and to an amount of not less than $5,000,000.00 per occurrence for any personal injury, death, property or other claim in respect of any one accident or occurrence.

3.00 Field Project Capital Costs

3.01 The Field Project design cost is estimated to cost $120,000 and the City agrees to finance this cost should the project be fully executed.

3.02 The Field Project construction cost is estimated at $1,975,550 and the Parties agree that the cost sharing will be on the following basis:

a. The University will provide $250,000 towards the cost of the project and the Site for the Term of this Agreement; and

b. The City and its Sports Partner will provide $1,725,550 towards the construction cost of the project.

3.03 Should the total capital construction costs, following the completion of construction, be under the estimate, the unused balance will be deducted from the City’s contribution.

3.04 Should the total capital construction costs, following the completion of construction, be over the estimate, the City shall be solely responsible for the additional expense.

3.05 The City shall have the right to cancel the Field Project at any time prior to commencement of construction should it not be satisfied in its sole discretion with the results of any studies contemplated by Section 2.04 or if the tender bids for the Project exceed the estimates referred to herein. Should the project be cancelled, the University will fund 34% of the project costs in Clause 3.01 and 3.02 expensed and the City will fund 66% of the costs expensed. Notwithstanding the foregoing, the University will not be responsible for any amount in excess of $40,800.

3.06 The City will manage the capital expenditures on behalf of the Parties and provide the University with monthly statements.
3.07 The University will, within 30 calendar days of being invoiced, provide its contribution of $250,000 to the City upon verification by the City that the construction project has reached 50% of completion.

3.08 The Parties agree to work collaboratively to seek additional funding such as provincial or federal grants or other similar programs, in order to reduce the City’s share of the project to an amount equivalent to the University’s capital contribution referred to in Article 3.02(a). The City acknowledges that such funding shall not include donations secured by the University, designated either by the University or the donor, to be used to fund the University’s capital contribution to the Project. Opportunities for field naming rights and/or field signage that can generate revenue for either capital or operating costs will be reviewed and considered by both the University and the City, through the Management Committee. A separate agreement shall be entered into by the parties to deal with the approval of naming rights and other sponsorship or advertising opportunities. All funds realized as a result of the sale of advertising and/or field naming rights at or on the Project shall be shared at the rate of 66% to the City and 34% to the University.

3.09 Any money received by the Peterborough Baseball Association (the “PBA”) from the Toronto Blue Jays’ “Jays Care Foundation” (the “Jays Care Foundation”) is not subject to the sharing provision set out in Article 3.08 provided that such money is not received in consideration for selling the naming rights to the Baseball Field. The University acknowledges that the PBA is a party to a contribution agreement with the City and that any money from the Jays Care Foundation will be used by the PBA to assist it in making its required contribution to the City.

4.00 Capital Project Coordination

4.01 The parties agree the City’s Manager of Facilities and Special Projects (or such other equivalent employee of the City that it may designate from time to time) (the “MFSP”) will undertake all project management activities on behalf of the parties. While the Project is being developed and constructed, meetings will be called by the MFSP, on a regularly scheduled basis, to seek direction from the University and the City. The University shall be part of any potential “value engineering exercise” that may be required during the construction or design process.

5.00 Management of the Field Project Following Construction

5.01 A Management Committee shall oversee the operations, maintenance and Capital Improvements of the Field Project for the duration of the agreement period. The Management Committee shall establish the frequency with which it shall meet and the procedures to be followed at such meetings. Decisions of the Management Committee shall be unanimous. Failing agreement by the Management Committee, any disputes shall be resolved first by the City-Trent Liaison Committee and if a resolution cannot be reached, and then in accordance with the provisions of Section 16 of this Agreement.
5.02 The City will be responsible for scheduling the Fields and collecting Fields User Fees on behalf of the Parties.

5.03 The City will determine the Fields User Fees, which shall be consistent with other user fees charged for similar facilities in the City.

5.04 The Light Fee will be separately administered by the City and the revenues for light fees will be used by the City to pay for all annual electrical charges assessed on the lights by Peterborough Utilities. The City will also determine the annual rates to charge sport field users, including the University, on an hourly basis, based upon the annual cost of the lights. Light Fees will be an extra charge for night time use, over and above the User Fee for field use.

5.05 The City shall retain 66% of the Fields User Fees and the University shall retain 34%. Prior to the commencement of Year 11, the Particulars shall meet to negotiate a new distribution of user fee income. If the parties cannot agree on a new percentage of distribution of the User Fee, the income from User Fees shall be shared 66/34 in favour of the City during Years 11 to the end of Year 25, unless both parties come to some other mutual agreement at any time during this agreement term. Notwithstanding the foregoing, either party may refer the issue of distribution of User Fees to the dispute resolution process referred to in Section 16.

5.06 The Site shall be maintained by the City, which includes maintenance of the Field Project, walkways, irrigation system, lights, parking lot, and two portable washrooms. The fields shall be maintained in accordance with this agreement to the satisfaction of the University and the City. If there is a dispute concerning the standard to which the Site is being maintained, that cannot be resolved between the Parties, that dispute shall be referred to the Management Committee for resolution.

5.07 The Parties agree that the City will develop a maintenance schedule for the Fields, which schedule shall be provided to the University. During the scheduled times of maintenance, no activities will be permitted on the Field(s). In inclement weather, the Parties recognize the maintenance schedule may change, from time to time, and the Parties agree that such changes will be accommodated.

5.08 The City will record all costs of the maintenance of the Fields and provide such records to the University.

5.09 The City will reconcile the revenues from field User Fees at the end of playing season and provide a report back to the University by November 30th annually.

5.10 The University agrees to pay for 34% of the total costs of the annual maintenance fees and the City agrees to pay for 66% of the total costs of the annual maintenance fees for the Fields. For greater certainty, Capital Improvements shall not be included in maintenance fees.
5.11 The University will reimburse the City its share of the maintenance costs no later than December 20th annually.

5.12 After ten years of operating the Fields, and before the 11th year commences, the University and the City agree to review the cost-sharing percentages for the maintenance operations. Failing agreement on a new cost sharing percentage, both parties agree that the matter shall be resolved in accordance with the provisions of Section 16 of this Agreement.

5.13 The Parties will share the cost of agreed upon Capital Improvements to the Rectangular Sport Field equally. The cost of Capital Improvements to the Baseball Field will be the sole responsibility of the City. Should there be a dispute as to the necessity of a proposed Capital Improvement by one of the parties, the other party may proceed with the full cost of the improvement. Notwithstanding the foregoing, the City shall not make any Capital Improvement which involves the erection of a building or other structure without having first obtained the consent of the University, which consent shall not be unreasonably delayed or withheld. Should the University consent to any such Capital Improvement, then the provisions contained in section 2.05 to 2.08 shall apply to such construction.

5.14 The Parties agree the City has the right to close the fields if the condition of a field represents a risk to the players or if the use of the fields during certain weather conditions may pose a reasonable risk of damage to the fields.

6.00 Field Use

6.01 Typically, the Fields will remain closed until May 1st in each year. However, the City will determine the official opening date in each year of the term for each Field. Prior to the official opening in each year neither party shall use either field.

6.02 The City and the University agree that the Baseball Field will be used by both parties and that requests for use will follow the normal sport field permitting deadlines as established by the City from time to time. In terms of allocations, the City's User Groups will have priority over use of the Baseball Field from May 1st to September 30th.

6.03 The Parties agree to work collaboratively to develop an annual shared sport schedule. This shared sport schedule shall be completed by January 31st annually. An addendum shall be developed to establish the shared sport schedule.

6.04 The City will book and manage both the Baseball Field and the Rectangular Sport Field.

6.05 The University will be provided with a complimentary block of time to use the Baseball Field provided such use ends on or before 5:30 p.m. on weekdays until August 31st (unless the University develops a baseball program in conjunction with the Peterborough Baseball Association) and the University has submitted their schedules
by the sport field permitting deadline. The University will pay the required user fee for all other times on the Baseball Field for their use.

6.06 The University will be provided with a complimentary block of time to use the Rectangular Field that forms part of the shared sport schedule and the University has submitted their schedules by the sport field permitting deadline (January 31st annually).

6.07 The University will send its requests for use of the Rectangular Sport Field and Baseball Field to the City by January 31st annually.

6.08 The City, on occasion, will host a City Event. The Parties agree that the City will be provided this use as part of the City’s complimentary use and the City will not be required to pay field user fees for the duration of the event.

6.09 Each user of a field, including the University and the City, shall be responsible for lining, as the case may be, the Baseball Field and/or the Rectangular Sport Field.

6.10 The Management Committee shall determine whether a sporting event that will draw teams from across Ontario, Canada or the world, shall have priority over any other previously booked event by the City, the University, or by a City User Group on either or both the fields.

6.11 The University and the City agree that each party will be responsible for all costs associated with managing the events it organizes.

7.00 The Parking Lot

7.01 The City will construct a gravel parking lot to contain 45 automobile parking spaces to support the Field Project. The University agrees that no parking user charges will be levied for players or spectators who use the lot, at any time, including the Fall Period. The Field Project will provide for the installation of manual gates to control access to the parking lot. Both the City and University will have keys to the gate. The University Security Office will unlock the gates daily at 5pm and re-lock the gates daily at 11:00pm.

7.02 Persons attending scheduled activities on the Fields, between May 1st and Labour Day, will be permitted to park, on a first-come, first-served basis, in the parking lot(s) at Gzowski College, at no charge, after 5:30 p.m. weekdays and all day and evening on weekends. Weekday parking before 5:30 p.m. in the parking lot(s) at Gzowski College is subject to current parking meter rates charged by the University. After ten years of operating the Fields, and before the 11th year commences, the University and the City agree to review the parking arrangements. The Project's scope shall include signage, providing instructions for parking, to be erected at the beginning of the new walkway to be constructed from the Gzowski College parking lot to the Fields.
8.00 Future Development and Construction of a Field-house

8.01 The construction of a field-house, containing permanent washrooms, change rooms and concession was originally intended to be part of the Project but such construction was removed because of capital funding limitations.

8.02 In the event the construction of a field-house is desired by one Party or by both Parties, negotiations concerning the design, use, construction and maintenance and, if any, cost sharing, of a field-house will be conducted by the Parties at that time.

8.03 In the event one Party desires to construct a field-house without any financial contribution from the other Party, the Party desiring the Field-house shall be free to design, construct, use and maintain the field-house at its own risk and expense. For greater clarity, if the City wished to construct a field-house at the Site, the University shall co-operate and support such construction subject to such reasonable conditions as it may impose, including, without limiting the foregoing, the right to approve the location and design of any such field-house, such approval not to be unreasonably withheld or delayed. The provisions of Section 2.05 to 2.08 shall apply to the construction of any such field-house.

9.00 Marketing Opportunities

9.01 In each year of the term, the University and the City shall work cooperatively to market the Fields and the University as a destination for sporting events. These plans shall be approved by the Management Committee. The use of the City and the University’s logo on all materials shall also be approved by the Management Committee.

10.00 Term of the Agreement

10.01 The term of this agreement is 26 years. The first year will be used to design and construct the Field Project. The 25 years, to be calculated following the completion of the Field Project, currently estimated to be on or about June 1st, 2016, shall conclude on or about September 30th, 2041. The purpose of this calculation is to ensure 25 full seasons of field use by the Parties. If the Field Project is not completed by June 1st 2016, then an additional year shall be added to the term of this agreement.

10.02 The City and University agree to meet no later than 12 months prior to the conclusion of the agreement to discuss whether they can agree to an extension of the agreement.

11.00 Insurance

11.01 The City and the University each acknowledge that it is responsible for certain events that occur at or upon the Fields from time to time as provided for in this Agreement, therefore:
a. Each of the University and the City has obtained and shall maintain commercial general liability insurance following construction completion during the entire term of this Agreement. Each party's general liability insurance shall provide coverage for general liability exposures on an occurrence basis for third party bodily injury, personal injury and property damage and blanket contractual liability, and this coverage shall protect each party and its employees from all claims, demands, actions, causes of action that may be taken or made against them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever that may arise through any act or omission or both including negligent acts or omissions of the party or any employee or employees of a party. This coverage is to include the following:

i. The University and the City shall add each other as an additional insured with respect to liability arising in the course of performance of their obligations under or otherwise in connection with this Agreement;

ii. A cross-liability severability of insured clause;

iii. Employers liability coverage; and

iv. If applicable, non-owned automobile coverage with blanket contractual coverage for hired automobile.

b. Each party shall bear the cost of obtaining its own general liability insurance in such amount as its insurer may reasonably suggest or require, but in no event shall the policy limit for general liability be less than Five Million Dollars per occurrence. Commencing in 2017, the amount of the policy limit for general liability shall be reviewed annually by the parties.

c. The University's general liability insurance shall be primary during University Events and the City's general liability insurance shall be primary at all other times.

d. Each of the University and the City shall add the other as an additional insured to its commercial general liability insurance policy to the extent that any liability arises out of the operation of the named insured.

e. The City agrees to protect, indemnify, keep indemnified and save harmless the University and its officers, servants and agents from and against all claims, demands, costs, actions, causes of action, expenses, legal fees whatsoever which may be taken or made against them or any of them incurred or become payable by them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever arising from or out of the use of or activities on the Site or the occupancy or use by the City or other permitted users of the Site or arising out of or in consequence of any act, neglect or omission of a party or any employee(s) or subcontractors of the City
in connection with the performance of this Agreement except to the extent caused or contributed to by the negligence or willful misconduct of the University.

f. The University agrees to protect, indemnify, keep indemnified and save harmless the City and its officers, servants and agents from and against all claims, demands, costs, actions, causes of action, expenses, legal fees whatsoever which may be taken or made against them or any of them incurred or become payable by them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever arising from or out of the use of or activities on the Site during a University Event or arising out of or in consequence of any act, neglect or omission of the University or any employee(s) or subcontractors of the University in connection with the performance of this Agreement, save to the extent caused or contributed to by the negligence or willful misconduct of the City.

11.02 During the term of the Operating Agreement, the University is solely responsible for obtaining and maintaining appropriate property insurance for the Field Project.

12.00 Time Is of the Essence

12.01 In relation to all obligations contained herein, time shall be of the essence.

13.00 Assignment

13.01 Neither party may assign this agreement, or change the operations of this agreement, in whole or in part, without the written consent of the other.

14.00 Whole Agreement

14.01 This agreement constitutes the entire agreement between the University and the City, and there is no representation, warranty, collateral agreement or condition affecting this agreement other than as expressed herein in writing.

15.00 Interpretation

15.01 In this agreement, the singular shall also mean the plural and vice versa.

16.00 Arbitration

16.01 The Parties agree to negotiate in good faith in an attempt to settle any dispute between the parties in connection with this Agreement in a timely manner. Should the Parties be unable to settle the dispute through negotiation it will first be referred to the Management Committee. Failing agreement by the Management Committee, any disputes shall be then be referred to the City-Trent Liaison Committee and if a resolution cannot be reached, then the determination of such dispute shall be resolved by arbitration by a single arbitrator, in Peterborough, pursuant to the
Arbitration Act (Ontario) as provided in this article. The decision of such arbitrator shall be final and binding as between the parties and shall not be subject to appeal.

16.02 The Arbitrator will have the jurisdiction to award costs. Any award of costs shall be determined by applying the same criteria that a judge in a civil court would use when awarding costs, including, but not limited to, the concept of proportionality.

17.00 Agreement Binding

17.01 This agreement shall be binding upon the Parties hereto and their respective successors and assigns.

In witness whereof the Parties hereto have hereunto set their respective hands and seals.

Signed, Sealed and Delivered in the presence of:

Trent University

Name: Leo Groarke
Title: President

Name: Steven Pillar
Title: VP, Finance & Administration

The Corporation of the City of Peterborough

Daryl Bennett, Mayor

John Kennedy, City Clerk

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Land Lease Agreement

Dated the __th day of December 2015.

Among:

Trent University
(the "Landlord")

and

The Corporation of the City of Peterborough
(the "Tenant")

Article 1 - Definitions, Interpretations, Schedules

1.1 Definitions

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

a. Applicable Laws – means all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction, and all amendments thereto, at any time from time to time in force;

b. Approved Plans – has the meaning set out in Sports Fields Agreement;

c. Commencement Date – means the date when this Lease is executed as shown on page 1 of this Lease;

d. Improvements – means the improvements of any kind whatsoever now or at any time and from time to time constructed, situated or laid-out upon the Site;

e. Field Project or Project – has the meaning set out in the Sports Fields Agreement;

f. Landlord – means Trent University and its successors and assigns;

g. Lease – means this lease as it may be amended from time to time in accordance with the provisions hereof;

h. Person – according to the context, includes any person, corporation, firm, partnership or other legal entity, any group of persons, corporations, firms, partnerships or other legal entities, or any combination thereof;
i. **Premises** – means the Site as such term is defined in the Sport Fields Agreement together with the Improvements made thereon by the Tenant during the Term;

j. **Sport Fields Agreement** – means the agreement made between the Landlord and the Tenant which is attached hereto as Schedule "A";

k. **Tenant** – means The Corporation of the City of Peterborough;

l. **Term** – means the period specified in Section 3.2;

m. **Transfer** – means an assignment of this Lease in whole or in part, a sublease of all or any part of the Premises, any transaction whereby the rights of the Tenant under this Lease or to the Premises are transferred to another Person;

n. **Transferee** – means the Person to whom a Transfer is or is to be made;

o. **University Event** – has the meaning set out in the Sport Fields Agreement.

1.2 **Number, Gender, Liability**

The grammatical changes required to make the provisions of this Lease apply in the plural sense where the Tenant comprises more than one Person and to corporations, firms, partnerships, or individuals, male or female, will be assumed as though each case fully expressed. If the Tenant consists of more than one Person, the covenants of the Tenant shall be deemed to be joint and several covenants of each such Person. If the Tenant is a partnership each person who is presently a member of such partnership, and each Person who becomes a member of any successor partnership, shall be and continue to be liable jointly and severally for the performance of this Lease, whether or not such Person ceases to be a member of such partnership or successor partnership.

1.3 **No Limitation**

Whenever a statement or provision in this Lease is followed by words denoting inclusion or example (such as "including" or "such as") and then a list of, or reference to, specific matters or items, such list or reference shall not be read so as to limit or restrict the generality of such statement or provision, even though such words as “without limitation” or “without limiting the generality of foregoing” do not precede such list or reference.

1.4 **Headings and Captions**
The table of contents, Article numbers, Article headings, Section numbers, and Section headings are inserted for convenience of reference only and are to be considered when interpreting this Lease.

1.5 Obligations as Covenants

Each obligation of the Landlord of the Tenant expressed in this Lease shall be a covenant for all purposes.

1.6 Amend in Writing

This Lease may be amended only by an agreement in writing signed by the Landlord and the Tenant.

1.7 Governing Law

This Lease shall be interpreted under and is governed by the laws of the Province of Ontario.

1.8 Currency

All amounts of money in this Lease are expressed and refer to Canadian dollars and shall be paid in lawful currency of Canada.

1.9 Severability

If any provision of this Lease is illegal or unenforceable it shall be considered severable from the remaining provisions of this Lease, which shall remain in force.

1.10 Successors and Assigns

This Lease and everything herein contained shall benefit and bind the successors and assigns of the Landlord and the permitted successors and assigns of the Tenant.

1.11 Schedules

The Schedules shall form part of this Lease and are as follows:

Schedule A – Sport Fields Agreement, dated 19 May 2015

1.12 Time of the Essence
Time is of the essence of this Lease and every part thereof.

Article 2 - Title

2.1 Acceptance of the Land

The Tenant acknowledges having inspected the Premises prior to the entering into of the Lease and accepts the same in an “as is” condition.

2.2 Acceptance of Title

The Tenant accepts the Landlord’s recorded title to the Land.

Article 3 – Demise and Term

3.1 Demise

In consideration of the covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord by these presents does hereby demise and lease, by way of a lease which, except as herein expressly provided, is absolutely net and carefree to the Landlord as landlord, the Land unto the Tenant.

3.2 Term

The term of this Lease shall commence on the Commencement Date and shall expire on September 30, 2041, subject to the provisions contained in Section 10.01 of the Sport Fields Agreement, unless sooner terminated pursuant to an express provision hereof or pursuant to Section 3.05 of the Sport Fields Agreement.

Article 4 – Development of the Land

4.1 Development of the Land

a. The Tenant covenants and agrees with the Landlord that forthwith after execution of this Lease, the Tenant, subject to and in compliance with the provisions of this Lease and the Sport Fields Agreement, proceed with planning, design and construction of the Field Project.

b. Prior to commencing construction on the Premises, the Tenant shall provide the Landlord with a complete set of the Approved Plans, prepared in CAD format as well as a hard copy and copies of all permits from all competent governmental authorities having jurisdiction.
c. Forthwith following completion of the Improvements and forthwith following the completion of any further improvements, the Tenant shall deliver to the Landlord complete sets of plans, including landscaping plans, specifications, and other drawings relating thereto, all of which shall be in the formats requested by the Landlord and in any event shall include (a) a set of “as built” drawings prepared in CAD format; and (b) a hard copy of “as built” drawings.

4.2 Construction of Field Project

The Improvements and all additions, changes, alterations and replacements shall be completed in accordance the Sport Fields Agreement and with the terms and conditions as set out below:

a. in a good and workmanlike manner;

b. strictly in accordance with the Approved Plans;

c. in a diligent manner as expeditiously as possible;

d. in accordance with all Applicable Laws;

e. the Tenant shall provide, prior to the commencement of construction, evidence of required workers' compensation coverage and proof of owner and contractors protective liability insurance coverage, with the Landlord and the Tenant to be named as additional insureds as provided for in the Sport Fields Agreement; and

f. the Tenant will deliver a list identifying its general contractor and any other contractor that it contracts with directly accompanied by an up-to-date valid clearance certificate from the Workplace Safety and Insurance Board for each of them.

4.3 Right to Inspect

The Landlord shall have the right, from time to time to inspect or to have its own architects or engineers, if any, inspect all construction and other work carried out by the Tenant upon the Premises and the Tenant shall make all changes required by the Landlord acting reasonably in order to make such construction and work conform to the Approved Plans.
4.4 No Liability

No approval of the plans and specifications for the Improvements shall make the Landlord or its Board of Governors, officers, servants or agents liable to the Tenant for the safety, adequacy, soundness or sufficiency of such design or construction, nor shall the giving of such approval constitute a waiver by the Landlord of any duty or liability owed by the Tenant to the Landlord, its officers, servants or agents by reason of this Lease or otherwise.

**Article 5 - Rent**

5.1 Minimum Rent

There is no rent payable hereunder as the consideration for this Lease is the mutual covenants and agreements referred to in the Sport Fields Agreement, the receipt and sufficiency of which is hereby acknowledged by the parties hereto.

**Article 6 – Net Lease– Taxes**

6.1 Net Lease

a. The Tenant acknowledges and agrees that this Lease shall be a completely carefree net lease for the Landlord and that the Landlord shall not be responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises whether foreseen or unforeseen and whether or not within the contemplation of the parties at the commencement of the Term, except as shall be otherwise expressly provided in this Lease and in the Sport Fields Agreement.

6.2 Payment of Taxes by Tenant

The Tenant shall, during the Term, promptly pay and discharge as and when the same become due and payable, subject to the provisions of this Article, all taxes, rates, levies, duties and assessments, general and special, ordinary or extraordinary, of every nature and kind whatsoever, including local improvement taxes, which shall during the Term be levied, rated, charged, assessed or imposed by any competent authority against the Premises. The Tenant further shall during the Term pay and discharge as and when the same become due and payable, subject to the provisions of this Article, all taxes, rates, duties, levies and assessments whatsoever, whether municipal, parliamentary or otherwise, levied, imposed or assessed in respect of operations at, occupancy of, or conduct of business in or from the Premises by the Tenant or any other permitted occupant. The Tenant will, from time to time as the same are paid, produce for inspection by the Landlord receipts or
other reasonable evidence of such taxes having been paid and furnish such other information in connection therewith as the Landlord may reasonably require. The Tenant shall have the right and privilege, if acting in good faith, of contesting or appealing any assessment or of applying for a reduction of the amount of any tax, rate, levy, duty or assessment and may postpone payment thereof to the extent permitted by law, if the Tenant is diligently proceeding with an appeal, provided that (i) such postponement does not render the Land or any part thereof, subject to sale or forfeiture and does not render the Landlord liable to prosecution, penalty, fine or other liability, (ii) the Tenant provides such security in respect of the amount postponed as the Landlord may require and (iii) upon final determination of such appeal, the Tenant promptly pays the amount determined to be payable.

6.3 Change in Tax Structure

a. In the event that there shall be any change in the basis upon which any of the taxes or other matters referred to in Section 6.2 above are calculated, levied or assessed, or in the event that any new taxes are created by any federal, provincial or municipal authority, parliamentary or otherwise, all such taxes shall be paid by the Tenant.

b. It is the intent of the parties that save and except for any taxes, income taxes, or any other taxes upon the income or capital of the Landlord, all taxes, levies, charges and rates assessed against or in connection with the Premises or the operations of the Tenant carried out thereupon and therein shall be paid by the Tenant.

6.4 H.S.T.

*Intentionally deleted.*

6.5 Development Charges

The Tenant shall be responsible for all development charges, education development charges, if any, or other fees, if any, imposed in connection with development of the Land.

6.6 Utility Payments

The Tenant is responsible for installing a separate electricity meter and it shall pay all charges for electricity relating to the Premises. Notwithstanding the foregoing, the Landlord shall pay:

a. the charges for its use of night-time sport field lights; and
b. subject to the cost sharing arrangements set out in the Sport Field Agreement, its portion of the charges for night-time pedestrian lights and night-time parking lot lights.

The Tenant shall make arrangements with Peterborough Utilities Group such that water charges attributable to the existing water meter shall be billed to the Tenant, who shall promptly pay all charges for water relating to the Premises.

Save and except for the utility charges referred to in 6.6(a), the utility charges referred to herein shall be subject to the cost sharing arrangements set out in the Sport Fields Agreement.

Article 7 – Use

7.1 Use

The Tenant will not use or permit any part of the Premises to be used for any purpose other than as provided for in the Sport Fields Agreement.

7.2 The Tenant Shall Comply With Laws and Operating Agreement

The Tenant shall comply with the Sport Fields Agreement and with all Applicable Laws during the Term pertaining to or affecting the Premises and all of the Improvements and to the making of any repairs, replacements, alterations, additions, changes or substitutions to or of same.

7.3 Remedial Action

If the Tenant is in breach of any of the provisions of this Article 7, the Landlord may, in addition to any other remedies that it may have hereunder, enter upon the Premises and take such remedial action as is necessary to remedy the breach and repair any damage caused thereby and the Tenant shall forthwith on demand pay to the Landlord the Landlord’s costs incurred in connection therewith. Except in the case of emergencies, the Landlord shall give the Tenant not less than thirty (30) days’ notice of any default before the Landlord enters upon the Premises to take remedial action. In case of emergencies, the Landlord, acting reasonably, is not required to give notice of any default before taking remedial action.

Article 8 – Insurance

8.1 Insurance During Construction
The Tenant shall effect prior to the commencement of construction of any improvements on the Premises, ensure that the insurance referred to in Section 2.08 of the Sport Fields Agreement is in force as provided for therein.

8.2 Landlord’s Insurance and Tenant’s Insurance

The parties shall maintain during the Term the policies of insurance referred to and in accordance with Sections 11.01 and 11.02 of the Sport Fields Agreement. Upon request of the other party, each party shall furnish to the other party copies of all policies required pursuant to the Sport Fields Agreement or certificates of such policies in a form satisfactory to the requesting party, acting reasonably, establishing the existence of all such policies and shall provide written evidence of the continuation of such policies not less than ten days prior to their respective expiry dates.

8.3 Primary Insurance

The University’s general liability insurance shall be primary during University Events and the City’s general liability insurance shall be primary at all other times.

Article 9 – Indemnity

9.1 Tenant’s Indemnity

The Tenant agrees to protect, indemnify, keep indemnified and save harmless the Landlord and its officers, servants and agents from and against all claims, demands, costs, actions, causes of action, expenses, legal fees whatsoever which may be taken or made against them or any of them incurred or become payable by them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever arising from or out of the use of or activities on the Premises or the occupancy or use by the Tenant or other permitted users of the Premises or arising out of or in consequence of any act, neglect or omission of a party or any employee(s) or subcontractors of the Tenant in connection with the performance of this Lease except to the extent caused or contributed to by the negligence or willful misconduct of the Landlord.

9.2 Landlord’s Indemnity

The Landlord agrees to protect, indemnify, keep indemnified and save harmless the Tenant and its officers, servants and agents from and against all claims, demands, costs, actions, causes of action, expenses, legal fees whatsoever which may be taken or made against them or any of them incurred or become payable by them or any of them for any loss, damage or
injury, including death, of any nature or kind whatsoever arising from or out of the use of or activities on the Premises during a University Event or arising out of or in consequence of any act, neglect or omission of the Landlord or any employee(s) or subcontractors of the Landlord in connection with the performance of this Lease, save to the extent caused or contributed to by the negligence or willful misconduct of the Tenant.

Article 10 - Maintenance and Repair

10.1 Maintenance of the Field Project

The Tenant covenants and agrees to maintain and keep in proper state of repair and operation the Premises subject to and in accordance with the provisions of the Sport Fields Agreement, and in compliance with all Applicable Laws.

10.2 Inspection

The Tenant covenants with the Landlord to permit the Landlord or its agents, at all reasonable times during the Term to view the state of repair of the Premises.

10.3 Workers’ Compensation

Following the completion of Field Project, the Tenant, at its own expense, also shall procure and carry or cause to be procured and carried and paid for, full worker’s compensation coverage in respect of all workers, employees, servants and others engaged in work required to be done by it.

10.4 Hazardous Materials

a. The term “hazardous substances,” as used in this Section shall include without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCEs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any Applicable Laws.

b. Neither the Landlord nor the Tenant shall cause or permit to occur:

   i. any violation of any Applicable Laws related to environmental conditions on, under, or about the Premises or arising from the that party’s use or occupancy of the Premises, including soil and ground water conditions; or
ii. the use, generation, release, manufacture, refining, production, processing, storage or disposal of any hazardous substance on, under, or about the Premises or the use of any hazardous substance in the construction of the Improvements or the transportation to or from the Premises of any hazardous substance.

c. Each of the Tenant and the Landlord shall, at its own expense, comply with all Applicable Laws regulating the use, generation, storage, transportation or disposal of hazardous substances. For greater certainty, this provision shall not require the Landlord to dispose of any hazardous substances found on the Premises during the construction of the Project.

d. Each party shall, as appropriate and at that party’s own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities under all Applicable Laws regulating the use, generation, storage, transportation or disposal of hazardous substances.

e. Should any governmental authority under the Applicable Laws or any third party lawfully demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge, or other release of hazardous substances that occurs during the Term, at or from the Land and Premises, or which arises at any time from the at-fault party’s use or occupancy of the Premises, then the at-fault party shall, at its own expense, prepare and submit the required plan and all related bonds and other financial assurances; and the at-fault shall forthwith carry out all such cleanup plan.

f. Each party shall promptly provide to the other all information regarding the use, generation, storage, transportation or disposal of hazardous substances that is requested by the other party. If a party fails to fulfil any duty imposed under this Section, the other party may do so; and in such case, the defaulting party shall cooperate with the other party in order to prepare all documents the non-defaulting party deems necessary or appropriate to determine the impact of the Applicable Laws upon the Land and Premises for compliance therewith, and the defaulting party shall execute all documents promptly upon the request of the other party. No such action by a party and no attempt made by a party to mitigate its damages under any Applicable Laws shall constitute a waiver of any party’s obligations under this Section.
g. The Tenant shall defend, indemnify and hold harmless the Landlord, its directors, officers, employees and agents and any successors and assigns from and against any and all losses, claims, damages, penalties and liabilities, including out-of-pocket litigation cost and the reasonable fees and expenses of the Landlord arising out of any breach by the Tenant of its obligations under Subsections (a) to (f).

h. The Landlord shall defend, indemnify and hold harmless the Tenant, its directors, officers, employees and agents and any successors and assigns from and against any and all losses, claims, damages, penalties and liabilities, including out-of-pocket litigation cost and the reasonable fees and expenses of the Tenant arising out of any breach by the Landlord of its obligations under Subsections (a) to (f).

10.5 Notice by Tenant

The Tenant shall promptly notify the Landlord of any accident, defect, damage or deficiency which occurs or exists in any part of the Premises which comes to the attention of the Tenant.

10.6 Landlord May Repair

If the Tenant fails to carry out any maintenance, repairs or work required to be carried out by it under this Lease to the reasonable satisfaction of the Landlord, the Landlord may at its option, upon thirty (30) days written notice to the Tenant, carry out such maintenance, repairs or work. The cost of such maintenance, repairs or work shall be paid forthwith by the Tenant to the Landlord as Additional Rent.

10.7 Management of Premises

The Tenant shall manage and operate the Premises in a manner consistent with similar facilities in the Province of Ontario.

Article 11 – Transfers

11.1 Transfers

The Tenant shall not enter into, consent to, or permit any Transfer without prior written consent of the Landlord, which consent may be withheld by the Landlord in its sole, unfettered and subjective discretion.

11.2 Conditions of Transfer
a. If there is a permitted Transfer, no such consent shall be deemed a waiver of the Tenant’s covenants or a release of the Tenant from the further performance by the Tenant of its obligations under this Lease. Any consent by the Landlord may at the Landlord’s option, be subject to the Tenant and Transferee executing, prior to the Transfer being made, an agreement with the Landlord agreeing that the Transferee will be bound by all of the terms of this Lease and that the Transferee will be so bound as if it had originally executed this Lease as tenant.

b. The consent by the Landlord to any Transfer is not a waiver of the requirement for consent to subsequent Transfers.

c. If the Transfer in respect of which consent has been given is not completed within sixty (60) days of the date of such consent, then such consent shall, at the Landlord’s option, become void.

d. The agreements referred to in this Section 11.2 and any document evidencing the Landlord’s consent to any Transfer shall, at the Landlord’s option, be prepared by the Landlord or its solicitors at the Tenant’s cost.

**Article 12 – Quiet Possession**

**12.1 Quiet Possession**

The Landlord hereby covenants with the Tenant that provided the Tenant performs the covenants on its part to be performed in this Lease, the Tenant shall peacefully possess and enjoy the Premises for the Term, without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming by, from or under the Landlord except as in this Lease provided.

**Article 13 – Remedies of Landlord**

**13.1 Events of Default**

Any of the following constitutes an Event of Default under this Lease:

a. the Tenant has breached any of its obligations under this Lease and, if such breach is capable of being remedied and is not otherwise listed in this section 13.1 and after notice in writing to the Tenant;

i. the Tenant fails to remedy such breach within thirty (30) days (or such shorter period as may be provided in this Lease); or
ii. if such breach cannot reasonably be remedied within thirty (30) days or such shorter period, the Tenant fails to commence to remedy such breach within such thirty (30) days or shorter period or, having commenced to remedy such breach, thereafter fails to proceed diligently with and does not complete the curing of such breach;

b. the Tenant makes a Transfer other than in compliance with the provisions of this Lease;

c. any insurance policy covering any part of the Premises is, or is threatened to be (unless Tenant remedies the condition giving rise to threatened cancellation within forty-eight (48) hours after notice thereof and before cancellation), cancelled or is changed to substantially increase the premium (with the Tenant being unwilling or unable to pay such increase on demand) or to reduce coverage as a result of any action or omission by the Tenant or any Person for whom its is legally responsible.

13.2 Default and Remedies

If and whenever an event of default occurs under Section 13.1, then without prejudice to any other rights which it has pursuant to this Lease or at law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative:

a. to terminate this Lease by notice to the Tenant or to re-enter the Land and repossess the Land and, in either case, enjoy it as of its former estate, and the Improvements shall thereupon be forfeited to and become the absolute property of the Landlord, without compensation therefor to the Tenant, and the Landlord may remove all Persons and property of the Tenant from the Premises and store such property at the expense and risk of the Tenant or sell or dispose of such property in such manner as the Landlord sees fit without notice to the Tenant;

b. to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant and to enter upon the Premises for such purposes; and no notice of the Landlord’s intention to remedy or attempt to remedy such default need to be given the Tenant unless expressly required by this Lease; and the Landlord shall not be liable to the Tenant for any loss, injury or damages caused by acts of the Landlord in remediying or attempting to remedy such default and the Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith; and
c. to recover from the Tenant all damages, costs and expenses incurred by the Landlord as a result of any default by the Tenant.

13.3 Costs

The Tenant shall pay to the Landlord all damages, costs and expenses (including, without limitation, all reasonable legal fees on a partial indemnity basis) incurred by the Landlord in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Tenant under this Lease, or in respect of which the Tenant has agreed to insure or to indemnify the Landlord.

13.4 Survival of Obligations

The indemnity provisions of this Lease and the Landlord's rights in respect of any failure by the Tenant to perform any of its obligations under this Lease shall remain in full force and effect notwithstanding the expiration or earlier termination of the Term.

13.5 Remedies Cumulative

Notwithstanding any other provision of this Lease, the Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease, by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative, and 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 Landlord by statute or the general law.

Article 14 – On Expiration of Term

14.1 Surrender

The Tenant shall, at the expiry of the Term of this Lease, surrender the Premises and all of its interest in the Premises to the Landlord in good order and repair, except for reasonable wear and tear.

14.2 Overholding

The Tenant and the Landlord agree to meet no later than 12 months prior to the conclusion of the Sport Field Agreement to discuss an extension to the Lease and to the Sport Field Agreement.
If the Tenant remains in possession of the Premises after the expiration of the Term, the Tenant shall be deemed to be a monthly Tenant, notwithstanding any statutory or legal assumption to the contrary, upon the same terms as are provided for in this Lease except that the Landlord shall have the right to terminate the monthly tenancy upon sixty (60) days written notice to the Tenant, which sixty (60) day period need not end on the last day of a calendar month.

Nothing in this section shall be interpreted as giving the Tenant the option to stay in possession of the Premises following the expiry of the Term and the Tenant shall surrender the Premises to the Landlord on the expiry of the Term.

**Article 15 – Miscellaneous**

**15.1 Notices**

Any notice, demand, statement or request (in this Section referred to as “notice”) herein required or permitted to be given under this Lease shall be in writing and shall be deemed to have been sufficiently and effectually given if signed by or on behalf of the party giving the notice and personally delivered or transmitted by telecopier:

a. in the case of notice to the Landlord, to it at:

   1600 West Bank Drive  
   Peterborough, Ontario K9J 7B8  
   Attention: Vice-President of Finance and Administration  
   Fax – 705-748-1105

b. in the case of notice to the Tenant, to it at:

   500 George St. North,  
   Peterborough, Ontario K9H 3R9  
   Attention: City Clerk  
   Fax: 705-742-3947

Any such notice given as aforesaid shall be deemed to have been given on the date of such delivery or transmittal by telecopier. The Landlord or the Tenant may from time to time by notice change the address to which notices to it are to be given.

**15.2 Registration of Lease**
Neither the Tenant nor anyone on the Tenant's behalf or claiming under the Tenant shall register this Lease or any other instrument pertaining to this Lease against title to the Premises.

15.3 Waiver

If either the Landlord or Tenant excuses or condones any default of the other of any obligation under this Lease, no waiver of such obligation shall be implied as a result of any continuing or subsequent default.

15.4 No Partnership

The Landlord and the Tenant expressly declare that it is neither their intention nor their agreement that this Lease shall constitute or be deemed to constitute the parties as partners, joint venturers or agents for each other.

15.5 Further Assurances

Each of the parties hereto shall execute and deliver all such further documents and do such other things as any other party may reasonably request, in order to effectively complete any matter provided for in this agreement.

15.7 Possessory Rights

The Tenant agrees at any time and from time to time, as requested by the Landlord or as the Tenant itself deems appropriate, that it shall close any part of the Land to the extent necessary, in the opinion of the Landlord's legal counsel or the Tenant's legal counsel, to prevent the public or any Person from obtaining rights therein other than the rights that would ordinarily accrue to tenants in respect of their leased premises under a lease.

15.8 Signs

The Tenant agrees not to erect any signs on the Premises without first obtaining approval from the Landlord as to the size, colour, wording and location of such signs, such approval not to be unreasonably withheld. Signs placed on the Premises shall comply with Applicable Laws in force respecting signs.

15.9 Disputes

The Landlord and Tenant agree to negotiate in good faith in an attempt to settle any dispute between the parties in connection with this Lease and the Sport Field Agreement in a timely manner. Should the Parties be unable to
settle the dispute through negotiation it will settled in accordance with the provisions contained in Article 16 of the Sport Fields Agreement.

Article 16 – Sport Fields Agreement

16.1 Entire Agreement

The Landlord and the Tenant agree that this Lease shall be read in conjunction with and interpreted in a manner that is consistent with the Sport Field Agreement. This Lease and the Sport Fields Agreement constitute the entire agreement and understanding between the parties hereto relating to the Premises and shall supersede all prior agreements and undertaking, oral and written.

In witness whereof the parties hereto have executed this Lease.

Trent University

Per: __________________________
Dr. Leo Groarke
President and Vice-Chancellor

Per: __________________________
Steven Pillar
Vice-President, Finance and Administration

We have authority to bind Trent

The Corporation of the City of Peterborough

Per: __________________________
Daryl Bennett
Mayor

Per: __________________________
John Kennedy
City Clerk

We have authority to bind the City
SCHEDULE A
Sport Fields Agreement
This agreement made in triplicate this 19th day of May 2015

Between:

Trent University
(the “University”)

and

The Corporation of the City of Peterborough
(the “City”)

Recitals

A. The City and the University entered into a Memorandum of Understanding dated June 15, 2005 which contemplated cooperation between the parties in connection with various matters of mutual interest, including, among other things, the development of sports fields and related facilities;

B. The Parties desire to enter into an agreement setting out the terms and conditions under which a new sports field facility will be funded, scheduled and maintained.

Now therefore the parties hereto agree as follows:

1.00 Definitions

1.01 Baseball Field – means one hardball diamond with permanent pitcher’s mound, irrigation and sports field lighting to be located on the Site.

1.02 Capital Improvement – means:

i. work not typically required to maintain the day-to-day usability of the Fields; or

ii. an expenditure of $20,000 or more, inclusive of HST, made in connection with the Field Project (excluding the initial cost of construction).

1.03 City Event – means a planned occasion or event, in which the City plays a significant role in delivering the event, examples of a City Event include but are not limited to: the Ontario Summer Games; the Special Olympics Games (as opposed to regular use of the Fields by Special Olympics); or a Drum and Bugle competition.

1.04 City User Group – means any person, local sport association, School Board or other organization, including, where applicable, Trent University, who has (1) booked the use of the field(s) through the City’s Recreation Division and (2) paid the requisite fee for its use of the field(s);

1.05 Field Project – means the Baseball Field and the Rectangular Sport Field, landscaped areas, walkways, irrigation systems, lights, parking areas, washrooms
and all other improvements located on the Site. Also referred to as "the Project" or "the Fields".

1.06 **Light Fee** – means the hourly light charge, levied for all users, including the University, for night time use of the fields. Also referred to as "light fees."

1.07 **Management Committee** – means a committee consisting of four persons, two being such representatives as the City may designate from time to time and two being such representatives as the University may designate from time to time.

1.08 **Rectangular Sport Field** – means a natural turf field with irrigation and field lighting that support soccer, rugby and field lacrosse to be located on the Site.

1.09 **The Site** – means the lands on which the Field Project is to be located, being lands owned by the University at Nassau Mills and Pioneer Road.

1.10 **Sports Partner** – means the City’s community Baseball Field partner(s) who will be assisting the City with financing the City’s capital contribution to the project.

1.11 **User Fee** – means the fee charged for use of a Field, determined on an hourly basis, but does not include the Light Fee.

1.12 **University Event** - A planned occasion or event, solely developed, organized and managed by the University, which occurs in a certain place during a particular interval of time, where the participants will primarily be students, faculty, alumni, employees or other persons associated with the University and their families.

2.00 **The City's Development of the Field Project**

2.01 The parties agree to enter into a land lease whereby, in consideration of the mutual agreements contained herein, the University will lease to the City the Site to construct the Field Project, as illustrated on Schedule "A", and to operate the Field Project for the period of the Term, as described in Clause 10.00, pursuant to the terms and conditions of this agreement. The parties agree to enter into a Land Lease incorporating the terms of this agreement prior to the commencement of construction of the Field Project.

2.02 The parties agree a reference plan depicting the Site shall be prepared by an Ontario Land Surveyor at such time as the planning of the Project is sufficiently complete to accurately identify the boundaries of the Site. At such time the said plan shall be appended to this agreement as Schedule "B" and the legal description of the Site shall be as described by such plan.

2.03 The Parties agree the Field Project consists of a 45 space parking lot, irrigation and lighting to support both the Baseball Field and a Rectangular Sports Field.
2.04 The Parties further agree the City shall lead the project development and have the responsibility to undertake the following tasks:

a. Secure all required property surveys (that must be attached as an appendix to this agreement);

b. Obtain geo-technical work for the site;

c. Undertake a Phase 1 Archeological Assessment, if none exist for this property;

d. Hire a consultant to design, tender and inspect construction for the project;

e. Hire a general contractor to construct the field;

f. Undertake project management services; and

g. Complete all other required assessments, reports and studies and obtain all required permits and approvals in order to construct the Project in accordance with all municipal laws.

2.05 Prior to commencing construction of the Project the City shall have obtained written approval of all plans and specifications (the "Approved Plans") from the University and all other competent governmental authorities having jurisdiction. The University agrees that it shall not unreasonably withhold or delay its approval of the proposed plans and specifications or any proposed amendments thereto, and shall provide either its approval or comments within a reasonable period of time after receipt from the City. It is agreed that 5 business days is the outside limit of a reasonable period of time for the University to provide its approval or comments and failing the University’s compliance with that time period, the City is free to proceed without further comment from the University.

2.06 The City shall take such precautions and remedial steps as would a prudent owner to ensure that no construction lien is registered against the Site. If a construction lien is registered, the City shall forthwith inform the University and, after consulting with the University, take commercially reasonable steps to remove such lien from the Site at no cost to the University. Failing which the University may discharge the lien by paying the amount claimed, together with the requisite amount for costs, into court and the amount so paid by the University, including its reasonable legal fees (on a partial indemnity scale) shall be paid by the City to the University.

2.07 To ensure compliance with the relevant provisions of the Occupational Health & Safety Act (Ontario) (the “OHSA”), the City shall ensure the General Contractor for the Project acts as the “constructor” within the meaning of the OHSA with respect to the completion of the Project and to comply with the constructor’s obligations under the OHSA, including, without limitation, filing the requisite notice of project in respect of the completion of the Project. The City shall require the General Contractor to indemnify and save harmless the University and the City from any loss, costs, fines,
claims, penalties or damages arising out of any failure by the General Contractor to comply in all respects with the provisions of the OHSA.

2.08 The City shall ensure the General Contractor will have, and shall maintain and keep in force until the permanent insurance required under this Agreement shall have been effected, insurance against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Site and from any cause, including the risks occasioned by the construction and installation of the Project, and to an amount of not less than $5,000,000.00 per occurrence for any personal injury, death, property or other claim in respect of any one accident or occurrence.

3.00 Field Project Capital Costs

3.01 The Field Project design cost is estimated to cost $120,000 and the City agrees to finance this cost should the project be fully executed.

3.02 The Field Project construction cost is estimated at $1,975,550 and the Parties agree that the cost sharing will be on the following basis:

a. The University will provide $250,000 towards the cost of the project and the Site for the Term of this Agreement; and

b. The City and its Sports Partner will provide $1,725,550 towards the construction cost of the project.

3.03 Should the total capital construction costs, following the completion of construction, be under the estimate, the unused balance will be deducted from the City’s contribution.

3.04 Should the total capital construction costs, following the completion of the construction, be over the estimate, the City shall be solely responsible for the additional expense.

3.05 The City shall have the right to cancel the Field Project at any time prior to commencement of construction should it not be satisfied in its sole discretion with the results of any studies contemplated by Section 2.04 or if the tender bids for the Project exceed the estimates referred to herein. Should the project be cancelled, the University will fund 34% of the project costs in Clause 3.01 and 3.02 expensed and the City will fund 66% of the costs expensed. Notwithstanding the foregoing, the University will not be responsible for any amount in excess of $40,800.

3.06 The City will manage the capital expenditures on behalf of the Parties and provide the University with monthly statements.
3.07 The University will, within 30 calendar days of being invoiced, provide its contribution of $250,000 to the City upon verification by the City that the construction project has reached 50% of completion.

3.08 The Parties agree to work collaboratively to seek additional funding such as provincial or federal grants or other similar programs, in order to reduce the City's share of the project to an amount equivalent to the University's capital contribution referred to in Article 3.02(a). The City acknowledges that such funding shall not include donations secured by the University, designated either by the University or the donor, to be used to fund the University's capital contribution to the Project. Opportunities for field naming rights and/or field signage that can generate revenue for either capital or operating costs will be reviewed and considered by both the University and the City, through the Management Committee. A separate agreement shall be entered into by the parties to deal with the approval of naming rights and other sponsorship or advertising opportunities. All funds realized as a result of the sale of advertising and/or field naming rights at or on the Project shall be shared at the rate of 66% to the City and 34% to the University.

3.09 Any money received by the Peterborough Baseball Association (the “PBA”) from the Toronto Blue Jays' “Jays Care Foundation” (the “Jays Care Foundation”) is not subject to the sharing provision set out in Article 3.08 provided that such money is not received in consideration for selling the naming rights to the Baseball Field. The University acknowledges that the PBA is a party to a contribution agreement with the City and that any money from the Jays Care Foundation will be used by the PBA to assist it in making its required contribution to the City.

4.00 Capital Project Coordination

4.01 The parties agree the City's Manager of Facilities and Special Projects (or such other equivalent employee of the City that it may designate from time to time) (the “MFSP”) will undertake all project management activities on behalf of the parties. While the Project is being developed and constructed, meetings will be called by the MFSP, on a regularly scheduled basis, to seek direction from the University and the City. The University shall be part of any potential "value engineering exercise" that may be required during the construction or design process.

5.00 Management of the Field Project Following Construction

5.01 A Management Committee shall oversee the operations, maintenance and Capital Improvements of the Field Project for the duration of the agreement period. The Management Committee shall establish the frequency with which it shall meet and the procedures to be followed at such meetings. Decisions of the Management Committee shall be unanimous. Failing agreement by the Management Committee, any disputes shall be resolved first by the City-Trent Liaison Committee and if a resolution cannot be reached, and then in accordance with the provisions of Section 16 of this Agreement.
5.02 The City will be responsible for scheduling the Fields and collecting Fields User Fees on behalf of the Parties.

5.03 The City will determine the Fields User Fees, which shall be consistent with other user fees charged for similar facilities in the City.

5.04 The Light Fee will be separately administered by the City and the revenues for light fees will be used by the City to pay for all annual electrical charges assessed on the lights by Peterborough Utilities. The City will also determine the annual rates to charge sport field users, including the University, on an hourly basis, based upon the annual cost of the lights. Light Fees will be an extra charge for night time use, over and above the User Fee for field use.

5.05 The City shall retain 66% of the Fields User Fees and the University shall retain 34%. Prior to the commencement of Year 11, the Parties shall meet to negotiate a new distribution of user fee income. If the parties cannot agree on a new percentage of distribution of the User Fee, the income from User Fees shall be shared 66/34 in favour of the City during Years 11 to the end of Year 25, unless both parties come to some other mutual agreement at any time during this agreement term. Notwithstanding the foregoing, either party may refer the issue of distribution of User Fees to the dispute resolution process referred to in Section 16.

5.06 The Site shall be maintained by the City, which includes maintenance of the Field Project, walkways, irrigation system, lights, parking lot, and two portable washrooms. The fields shall be maintained in accordance with this agreement to the satisfaction of the University and the City. If there is a dispute concerning the standard to which the Site is being maintained, that cannot be resolved between the Parties, that dispute shall be referred to the Management Committee for resolution.

5.07 The Parties agree that the City will develop a maintenance schedule for the Fields, which schedule shall be provided to the University. During the scheduled times of maintenance, no activities will be permitted on the Field(s). In inclement weather, the Parties recognize the maintenance schedule may change, from time to time, and the Parties agree that such changes will be accommodated.

5.08 The City will record all costs of the maintenance of the Fields and provide such records to the University.

5.09 The City will reconcile the revenues from field User Fees at the end of playing season and provide a report back to the University by November 30th annually.

5.10 The University agrees to pay for 34% of the total costs of the annual maintenance fees and the City agrees to pay for 66% of the total costs of the annual maintenance fees for the Fields. For greater certainty, Capital Improvements shall not be included in maintenance fees.
5.11 The University will reimburse the City its share of the maintenance costs no later than December 20th annually.

5.12 After ten years of operating the Fields, and before the 11th year commences, the University and the City agree to review the cost-sharing percentages for the maintenance operations. Failing agreement on a new cost sharing percentage, both parties agree that the matter shall be resolved in accordance with the provisions of Section 16 of this Agreement.

5.13 The Parties will share the cost of agreed upon Capital Improvements to the Rectangular Sport Field equally. The cost of Capital Improvements to the Baseball Field will be the sole responsibility of the City. Should there be a dispute as to the necessity of a proposed Capital Improvement by one of the parties, the other party may proceed with the full cost of the improvement. Notwithstanding the foregoing, the City shall not make any Capital Improvement which involves the erection of a building or other structure without having first obtained the consent of the University, which consent shall not be unreasonably delayed or withheld. Should the University consent to any such Capital Improvement, then the provisions contained in section 2.05 to 2.08 shall apply to such construction.

5.14 The Parties agree the City has the right to close the fields if the condition of a field represents a risk to the players or if the use of the fields during certain weather conditions may pose a reasonable risk of damage to the fields.

6.00 Field Use

6.01 Typically, the Fields will remain closed until May 1st in each year. However, the City will determine the official opening date in each year of the term for each Field. Prior to the official opening in each year neither party shall use either field.

6.02 The City and the University agree that the Baseball Field will be used by both parties and that requests for use will follow the normal sport field permitting deadlines as established by the City from time to time. In terms of allocations, the City's User Groups will have priority over use of the Baseball Field from May 1st to September 30th.

6.03 The Parties agree to work collaboratively to develop an annual shared sport schedule. This shared sport schedule shall be completed by January 31st annually. An addendum shall be developed to establish the shared sport schedule.

6.04 The City will book and manage both the Baseball Field and the Rectangular Sport Field.

6.05 The University will be provided with a complimentary block of time to use the Baseball Field provided such use ends on or before 5:30 p.m. on weekdays until August 31st (unless the University develops a baseball program in conjunction with the Peterborough Baseball Association) and the University has submitted their schedules
by the sport field permitting deadline. The University will pay the required user fee for all other times on the Baseball Field for their use.

6.06 The University will be provided with a complimentary block of time to use the Rectangular Field that forms part of the shared sport schedule and the University has submitted their schedules by the sport field permitting deadline (January 31st annually).

6.07 The University will send its requests for use of the Rectangular Sport Field and Baseball Field to the City by January 31st annually.

6.08 The City, on occasion, will host a City Event. The Parties agree that the City will be provided this use as part of the City’s complimentary use and the City will not be required to pay field user fees for the duration of the event.

6.09 Each user of a field, including the University and the City, shall be responsible for lining, as the case may be, the Baseball Field and/or the Rectangular Sport Field.

6.10 The Management Committee shall determine whether a sporting event that will draw teams from across Ontario, Canada or the world, shall have priority over any other previously booked event by the City, the University, or by a City User Group on either or both the fields.

6.11 The University and the City agree that each party will be responsible for all costs associated with managing the events it organizes.

7.00 The Parking Lot

7.01 The City will construct a gravel parking lot to contain 45 automobile parking spaces to support the Field Project. The University agrees that no parking user charges will be levied for players or spectators who use the lot, at any time, including the Fall Period. The Field Project will provide for the installation of manual gates to control access to the parking lot. Both the City and University will have keys to the gate. The University Security Office will unlock the gates daily at 5pm and re-lock the gates daily at 11:00pm.

7.02 Persons attending scheduled activities on the Fields, between May 1st and Labour Day, will be permitted to park, on a first-come, first-served basis, in the parking lot(s) at Gzowski College, at no charge, after 5:30 p.m. weekdays and all day and evening on weekends. Weekday parking before 5:30 p.m. in the parking lot(s) at Gzowski College is subject to current parking meter rates charged by the University. After ten years of operating the Fields, and before the 11th year commences, the University and the City agree to review the parking arrangements. The Project’s scope shall include signage, providing instructions for parking, to be erected at the beginning of the new walkway to be constructed from the Gzowski College parking lot to the Fields.
8.00 Future Development and Construction of a Field-house

8.01 The construction of a field-house, containing permanent washrooms, change rooms and concession was originally intended to be part of the Project but such construction was removed because of capital funding limitations.

8.02 In the event the construction of a field-house is desired by one Party or by both Parties, negotiations concerning the design, use, construction and maintenance and, if any, cost sharing, of a field-house will be conducted by the Parties at that time.

8.03 In the event one Party desires to construct a field-house without any financial contribution from the other Party, the Party desiring the Field-house shall be free to design, construct, use and maintain the field-house at its own risk and expense. For greater clarity, if the City wished to construct a field-house at the Site, the University shall co-operate and support such construction subject to such reasonable conditions as it may impose, including, without limiting the foregoing, the right to approve the location and design of any such field-house, such approval not to be unreasonably withheld or delayed. The provisions of Section 2.05 to 2.08 shall apply to the construction of any such field-house.

9.00 Marketing Opportunities

9.01 In each year of the term, the University and the City shall work cooperatively to market the Fields and the University as a destination for sporting events. These plans shall be approved by the Management Committee. The use of the City and the University’s logo on all materials shall also be approved by the Management Committee.

10.00 Term of the Agreement

10.01 The term of this agreement is 26 years. The first year will be used to design and construct the Field Project. The 25 years, to be calculated following the completion of the Field Project, currently estimated to be on or about June 1st, 2016, shall conclude on or about September 30th, 2041. The purpose of this calculation is to ensure 25 full seasons of field use by the Parties. If the Field Project is not completed by June 1st 2016, then an additional year shall be added to the term of this agreement.

10.02 The City and University agree to meet no later than 12 months prior to the conclusion of the agreement to discuss whether they can agree to an extension of the agreement.

11.00 Insurance

11.01 The City and the University each acknowledge that it is responsible for certain events that occur at or upon the Fields from time to time as provided for in this Agreement, therefore:
a. Each of the University and the City has obtained and shall maintain commercial general liability insurance following construction completion during the entire term of this Agreement. Each party’s general liability insurance shall provide coverage for general liability exposures on an occurrence basis for third party bodily injury, personal injury and property damage and blanket contractual liability, and this coverage shall protect each party and its employees from all claims, demands, actions, causes of action that may be taken or made against them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever that may arise through any act or omission or both including negligent acts or omissions of the party or any employee or employees of a party. This coverage is to include the following:

i. The University and the City shall add each other as an additional insured with respect to liability arising in the course of performance of their obligations under or otherwise in connection with this Agreement;

ii. A cross-liability severability of insured clause;

iii. Employers liability coverage; and

iv. If applicable, non-owned automobile coverage with blanket contractual coverage for hired automobile.

b. Each party shall bear the cost of obtaining its own general liability insurance in such amount as its insurer may reasonably suggest or require, but in no event shall the policy limit for general liability be less than Five Million Dollars per occurrence. Commencing in 2017, the amount of the policy limit for general liability shall be reviewed annually by the parties.

c. The University’s general liability insurance shall be primary during University Events and the City’s general liability insurance shall be primary at all other times.

d. Each of the University and the City shall add the other as an additional insured to its commercial general liability insurance policy to the extent that any liability arises out of the operation of the named insured.

e. The City agrees to protect, indemnify, keep indemnified and save harmless the University and its officers, servants and agents from and against all claims, demands, costs, actions, causes of action, expenses, legal fees whatsoever which may be taken or made against them or any of them incurred or become payable by them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever arising from or out of the use of or activities on the Site or the occupancy or use by the City or other permitted users of the Site or arising out of or in consequence of any act, neglect or omission of a party or any employee(s) or subcontractors of the City...
in connection with the performance of this Agreement except to the extent
casted or contributed to by the negligence or willful misconduct of the
University.

f. The University agrees to protect, indemnify, keep indemnified and save
harmless the City and its officers, servants and agents from and against all
claims, demands, costs, actions, causes of action, expenses, legal fees
whatsoever which may be taken or made against them or any of them
incurred or become payable by them or any of them for any loss, damage or
injury, including death, of any nature or kind whatsoever arising from or out of
the use of or activities on the Site during a University Event or arising out of or
in consequence of any act, neglect or omission of the University or any
employee(s) or subcontractors of the University in connection with the
performance of this Agreement, save to the extent caused or contributed to by
the negligence or willful misconduct of the City.

11.02 During the term of the Operating Agreement, the University is solely responsible for
obtaining and maintaining appropriate property insurance for the Field Project.

12.00 Time Is of the Essence

12.01 In relation to all obligations contained herein, time shall be of the essence.

13.00 Assignment

13.01 Neither party may assign this agreement, or change the operations of this agreement,
in whole or in part, without the written consent of the other.

14.00 Whole Agreement

14.01 This agreement constitutes the entire agreement between the University and the City,
and there is no representation, warranty, collateral agreement or condition affecting
this agreement other than as expressed herein in writing.

15.00 Interpretation

15.01 In this agreement, the singular shall also mean the plural and vice versa.

16.00 Arbitration

16.01 The Parties agree to negotiate in good faith in an attempt to settle any dispute
between the parties in connection with this Agreement in a timely manner. Should the
Parties be unable to settle the dispute through negotiation it will first be referred to the
Management Committee. Failing agreement by the Management Committee, any
disputes shall be then be referred to the City-Trent Liaison Committee and if a
resolution cannot be reached, then the determination of such dispute shall be
resolved by arbitration by a single arbitrator, in Peterborough, pursuant to the
Arbitration Act (Ontario) as provided in this article. The decision of such arbitrator shall be final and binding as between the parties and shall not be subject to appeal.

16.02 The Arbitrator will have the jurisdiction to award costs. Any award of costs shall be determined by applying the same criteria that a judge in a civil court would use when awarding costs, including, but not limited to, the concept of proportionality.

17.00 Agreement Binding

17.01 This agreement shall be binding upon the Parties hereto and their respective successors and assigns.

In witness whereof the Parties hereto have hereunto set their respective hands and seals.

Signed, Sealed and Delivered in the presence of:

Trent University

Name: Leo Groenke
Title: President

Name: Steven Pillar
Title: VP, Finance & Administration

The Corporation of the City of Peterborough

Daryl Bennett, Mayor

John Kennedy, City Clerk