

September 25, 2012

**LANSDOWNE REDEVELOPMENT PLAN
PROJECT AGREEMENT**

CITY OF OTTAWA

- and -

**OTTAWA SPORTS AND ENTERTAINMENT GROUP, a general partnership established
under the laws of the Province of Ontario**

- and -

**LANGGREEN INVESTMENTS INC., SHENKMAN LANSDOWNE LTD.,
TRINITY LANSDOWNE LTD., KELJAY LTD. AND FRIARMERE HOLDINGS INC.**

October [●], 2012

TABLE OF CONTENTS

ARTICLE I INTERPRETATION	1
1.1 Defined Terms	1
1.2 Construction and Interpretation	52
1.3 Severability	54
1.4 Governing Law	54
1.5 Review, Approval, Inspection or Audit by the City	54
1.6 Time of Essence.....	55
1.7 Entire Agreement.....	55
1.8 Paramountcy	55
1.9 Schedules	56
ARTICLE II OVERVIEW OF PROJECT	57
2.1 The Project.....	57
2.2 Master Site Plan.....	57
2.3 Urban Park	57
2.4 The Stadium.....	57
2.5 Sports Teams	58
2.6 Retail Component	58
2.7 Office Component	58
2.8 Residential Component.....	59
2.9 Staging of Construction and Construction Procedures	59
2.10 Inter-relationship of Components and Related Matters.....	60
2.11 Transportation Matters.....	62
2.12 Environmental and Archaeological Liabilities	62
2.13 Description and Boundary Adjustments	63
2.14 Naming	64
2.15 Heritage Easement	65
ARTICLE III DESIGN GUIDING PRINCIPLES AND MASTER SITE PLAN	66
3.1 Design Guiding Principles	66
3.2 Master Site Plan.....	66
3.3 Implementation Stages.....	68
ARTICLE IV URBAN PARK	68
4.1 Ownership.....	68
4.2 Design Competition	68
4.3 Aberdeen Pavilion	69
4.4 Horticulture Building.....	69
4.5 Urban Park Improvements	70
4.6 Operation of Urban Park.....	71
4.7 Infrastructure Upgrades	72
4.8 Additional Urban Park Matters.....	73
ARTICLE V THE STADIUM AND THE SPORTS TEAMS	73
5.1 Basic Nature of Improvements	73

5.2	Cost of Stadium and City's Share of Costs of Parking.....	74
5.3	Plans and Specifications	76
5.4	Development of Stadium Plans and Specifications	77
5.5	Project Management Agreement	77
5.6	Stadium Lease.....	78
5.7	City Covenant Regarding Stadium	81
5.8	Membership Conditions.....	81
5.9	Right of First Offer for each of the CFL Team and the Ottawa 67's	85
5.10	Soccer Team	87
5.11	Transportation Matters.....	88
5.12	Cultural Events	89
5.13	Relationship with Retail Lease	89
5.14	Non-Arm's Length Contracts	90
ARTICLE VI RETAIL COMPONENT		90
6.1	Retail Component Uses	90
6.2	Retail Design Strategy	91
6.3	Development of Retail Plans and Specifications.....	91
6.4	Retail Lease	93
6.5	Transportation Matters.....	93
6.6	Construction of the Retail Component	94
6.7	OMB Minutes of Settlement.....	94
ARTICLE VII OFFICE COMPONENT.....		95
7.1	Office Developer	95
7.2	OSEG as Possible Developer.....	95
7.3	Plans and Specifications	95
7.4	Construction.....	96
7.5	Transportation Matters.....	96
7.6	Reciprocal Agreement(s)	96
ARTICLE VIII RESIDENTIAL COMPONENT.....		97
8.1	Relationship With Retail and Parking Structure.....	97
8.2	Condominium Residential	97
8.3	Residential Parking	97
8.4	Net Proceeds	97
8.5	Residential Developer.....	98
8.6	OSEG as Residential Developer.....	98
8.7	Reciprocal Agreements.....	98
ARTICLE IX PARKING STRUCTURE		99
9.1	Parking Plans and Specifications.....	99
9.2	Construction of Parking Structure	99
9.3	Project Management Agreement	99
9.4	Parking Management Agreement	100
9.5	Parking Structure Reciprocal Agreement	101

ARTICLE X COMPREHENSIVE CONSTRUCTION CONTRACT	101
10.1 Comprehensive Construction Contract.....	101
10.2 Assignment of Comprehensive Construction Contract	104
10.3 Completion and Completion Guarantee	104
10.4 Total Cost Allocation and Payments	106
10.5 Funding of Construction Components.....	107
10.6 Financing of Retail and Retail Parking.....	110
10.7 Required Funding of Retail and Retail Parking.....	111
10.8 Pre-Contract Work.....	112
10.9 Incorporation of Provisions in Other Agreements.....	112
ARTICLE XI LEGAL STRUCTURE	113
11.1 Components	113
11.2 Master Partnership	114
11.3 Master GP Shareholder’s Agreement and Limited Partnership Agreements	114
ARTICLE XII EQUITY CONTRIBUTIONS, THE CLOSED SYSTEM AND THE WATERFALL.....	115
12.1 Fundamental Business Concept – the “Closed System”.....	115
12.2 Minimum Equity Requirement.....	115
12.3 Return of and on Equity.....	118
12.4 Return to the City on Deemed Equity.....	119
12.5 Determination of City Funding Equity	120
12.6 Return to the City on City Funding Equity.....	122
12.7 Reserve Established and Covenant to Effect Repairs.....	123
12.8 Amount of Reserve	123
12.9 Reserve Payment Obligation	123
ARTICLE XIII WATERFALL OF DISTRIBUTIONS.....	124
13.1 Overall Project	124
13.2 Concept of Waterfall.....	124
13.3 Net Cash Flow	124
13.4 Waterfall	125
13.5 Limits on Mortgaging	128
13.6 Waterfall Expiry Provisions	129
ARTICLE XIV OBLIGATIONS OF OSEG PRIOR TO CLOSING.....	134
14.1 Pre-Closing Obligations.....	134
ARTICLE XV CONDITIONS PRECEDENT	135
15.1 Conditions Precedent for City	135
15.2 Conditions Precedent for OSEG.....	138
15.3 Mutual Conditions	141
15.4 Termination of Agreement	143
ARTICLE XVI REPRESENTATIONS AND WARRANTIES	143
16.1 Representations and Warranties of OSEG and the Members.....	143

16.2	Representations and Warranties of the City	146
16.3	Survival of Representations and Warranties.....	147
16.4	Change in Representations	147
16.5	Liability for Disclosed Data.....	147
16.6	As Is Where Is	149
ARTICLE XVII REPRESENTATIVES.....		149
17.1	City’s Representatives	149
17.2	Member Representatives	150
17.3	OSEG’s Representative	153
ARTICLE XVIII THE CLOSING.....		154
18.1	The Closing.....	154
18.2	OSEG Closing Documents	154
18.3	City Closing Documents.....	156
ARTICLE XIX LIMITS ON LIABILITY		157
19.1	Limitations on Liability	157
19.2	No Indirect Losses	158
19.3	OSEG’s Remedies Against the City	158
19.4	City’s Remedies Against OSEG.....	159
ARTICLE XX OSEG DEFAULT		159
20.1	OSEG Events of Default.....	159
20.2	Notification	161
20.3	Rights of City.....	162
20.4	City Termination Right.....	163
20.5	Alternative Remedies.....	164
20.6	City Costs.....	164
20.7	Non-Derogation of Rights	165
ARTICLE XXI DEFAULT BY THE CITY.....		165
21.1	City Events of Default	165
21.2	OSEG Costs	165
21.3	Effect of Dispute Resolution Procedure	166
ARTICLE XXII TERMINATION.....		166
22.1	Post Closing Termination Rights.....	166
ARTICLE XXIII CONFIDENTIALITY.....		168
23.1	Use and Disclosure of Confidential Information.....	168
23.2	Exceptions.....	168
23.3	Press Releases	169
ARTICLE XXIV DISPUTE RESOLUTION		169
24.1	Procedure	169

ARTICLE XXV DISPOSITIONS AND ENCUMBRANCES	170
25.1 Restrictions on Dispositions	170
25.2 Disposition of Securities of an OSEG Member, of OSEG or of the Master Partnership	170
25.3 Transferee of Securities of OSEG or of the Master Partnership	178
25.4 Disposition of Securities of a Component Partnership.....	180
25.5 Disposition of Securities of the Master GP or of the General Partner of a Component Partnership	181
25.6 Dispositions of Assets.....	184
25.7 Other Disposition Provisions	187
25.8 Encumbrances.....	187
ARTICLE XXVI GENERAL	190
26.1 Approvals.....	190
26.2 Relief Event	191
26.3 Construction Liens.....	191
26.4 Land Transfer Taxes, Retail Sales Taxes, GST/HST and Other Taxes.....	192
26.5 No Registration.....	192
26.6 No Partnership or Agency	193
26.7 City as Planning Authority	193
26.8 Assignment by the City	193
26.9 Notices	194
26.10 Waivers	195
26.11 Further Assurances	196
26.12 Non-Merger	196
26.13 Remedies Cumulative.....	196
26.14 Counterparts.....	196
26.15 Delivery by Fax or Electronic Mail	197
26.16 Amendments	197
26.17 Submission to Jurisdiction.....	197
26.18 Enurement.....	197
26.19 No Assumption of Contracts	198
26.20 Use of Lansdowne Name.....	198
Schedule A Site and Urban Park.....	1
Schedule B Stadium Retail Pods Parcel (Cross Section Diagrams)	1
Schedule C Stadium Retail Salons Parcel (Cross Section Diagrams)	1
Schedule D New OHT Easement Sketch.....	1
Schedule E Retail Lease.....	1
Schedule F Stadium Lease	1
Schedule G Cost Sharing Principles	1

Schedule H Completion Guarantee.....	1
Schedule I Off-Site Parking Memoranda of Understanding.....	1
Schedule J Methodology for Calculating Retail Value.....	1
Schedule K Dispute Resolution Procedure	1
Schedule L Horticulture Building Leasing Guidelines	1
Schedule M Termination Compensation Principles	1

**LANSDOWNE REDEVELOPMENT PLAN
PROJECT AGREEMENT**

THIS AGREEMENT made the [●] day of October, 2012

AMONG:

CITY OF OTTAWA
(the “City”)

- and -

**OTTAWA SPORTS AND ENTERTAINMENT GROUP, a general partnership established
under the laws of the Province of Ontario
(“OSEG”)**

- and -

**LANSGREEN INVESTMENTS INC., SHENKMAN LANSDOWNE LTD.,
TRINITY LANSDOWNE LTD., KELJAY LTD. AND FRIARMERE HOLDINGS INC.**
(individually, a “Member” and collectively, the “Members”)

IN CONSIDERATION of the respective covenants and agreements hereinafter contained,
the Parties have covenanted and agree as follows:

ARTICLE I
INTERPRETATION

1.1 Defined Terms

In this Agreement, including the recitals and Schedules hereto (excluding Schedule E and Schedule F);

“30-Day Period” means the thirty (30) day period following receipt by OSEG of Notice from the City of the occurrence of an OSEG Event of Default;

“Aberdeen Pavilion” means the building known as the “Aberdeen Pavilion” located on the Project Lands and forming part of the Urban Park;

“Aberdeen Square” means the square to the north of the Aberdeen Pavilion known as “Aberdeen Square” on the Project Lands and forming part of the Urban Park;

“Acceptance” has the meaning given to such term in Section 5.9(b);

“Acceptance Period” has the meaning given to such term in Section 5.9(b);

“Action” means a dispute, claim, suit, action or other proceeding of any nature or kind arising out of or in connection with this Agreement, whether at law or in equity, including specific performance, injunction, declaration of damages or otherwise;

“Additional Equity” means Equity in excess of the Minimum Equity Requirement from time to time, except as provided in Section 12.2(c);

“Adjusted for Inflation” means, for any amount at any time, that amount multiplied by the Inflation Index for the month in which the event for which such amount is to be “Adjusted for Inflation” under this Agreement occurs, divided by the Inflation Index for the month in which the Execution Date occurs;

“Adjustments” has the meaning given to such term in Section 2.13(b);

“Affiliate”:

- (a) has the meaning given to the term **“affiliate”** in the *Business Corporations Act* (Ontario);

- (b) with respect to the City, means a Municipal Services Corporation or a wholly owned subsidiary of a Municipal Services Corporation;
- (c) with respect to a general partnership, means an affiliate (as defined in subparagraph (a), above) of a partner of the partnership; and
- (d) with respect to a limited partnership, means an affiliate (as defined in subparagraph (a), above) of the general partner of the partnership;

“Agreed Avoided Costs” means three million eight hundred thousand dollars (\$3,800,000) per annum, which the Parties irrevocably agree is the amount of the annual expenses (including capital expenditures) that would otherwise be payable by the City with respect to the Stadium for the Initial Term (as defined in the Stadium Lease) of the Stadium Lease if the Stadium Improvements were not made and the Stadium Lease was not entered into;

“Agreement” means this project agreement, including any recitals and schedules to this agreement;

“Allocation” has the meaning given to such term in Section 10.5(a);

“Approved” means approved in writing by the relevant Party in accordance with Section 26.1 unless expressly provided in an alternative manner in this Agreement and **“Approval”** has a corresponding meaning;

“Approved Selection Process” means the competitive process established by the City to select the Office Developer and the Residential Developer;

“Arm’s Length” has the meaning given to such term in the *Income Tax Act* (Canada);

“Base Cost” means the cost agreed by the Parties of the work with respect to which such base cost is required to be determined prior to any cost increase arising from the Design Solutions;

“**Bilingualism Policy**” means the City’s By-law 2001 170 and *Bilingualism Policy (2001)*;

“**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in Ontario;

“**Business Entity**” means a partnership, limited partnership, co-owners arrangement or other business entity, other than a corporation with share capital;

“**Calculation Date**” has the meaning given to such term in Section 12.5(a);

“**CFL**” means the Canadian Football League and its successors;

“**CFL Agreement**” means the agreement between the CFL and the City referred in Section 5.8(b)(v);

“**CFL Interest**” means all of the right, title and interest of OSEG in the CFL Partnership;

“**CFL Membership**” means the membership in the CFL granted by the CFL to the CFL Partnership pursuant to the agreement described in Section 5.8(b)(i);

“**CFL Partnership**” has the meaning given to such term in Section 11.1(b)(ii);

“**CFL Team**” means the CFL football team for which the CFL Membership is granted;

“**Change of Control**” means:

- (e) in the case of a corporation:
 - (i) the Disposition of Securities of the corporation or of a holding body corporate (as that term is used in the *Business Corporations Act* (Ontario)) of the corporation; or

- (ii) the entering into of an agreement or arrangement,

in each case which results in a change in the Person or Related Persons who Control the corporation in fact or in law; or

- (iii) the amalgamation or merger of the corporation or of a holding body corporate (as that term is used in the *Business Corporations Act* (Ontario)) of the corporation with any other corporate entity, if the Person or Related Persons who Control the amalgamated or merged corporation in fact or in law are different from the Person or Related Persons who Control the corporation in fact or in law prior to the amalgamation or merger;

- (f) in the case of a Business Entity that is not a limited partnership:

- (i) the Disposition of Securities of the Business Entity; or

- (ii) the entering into of an agreement or arrangement,

in each case which results in a change in the Person or Related Persons who Control the Business Entity in fact or in law; or

- (iii) a Change of Control (as defined in subparagraph (e), above) of any corporation comprising the Business Entity, if such corporation Controls the Business Entity; or

- (g) in the case of a Business Entity that is a limited partnership, the Change of Control (as defined in subparagraph (e), above) of a general partner of the limited partnership or the occurrence of a circumstance set out in any of subparagraphs (f)(i), (ii) or (iii) above,

provided that no Change of Control shall be deemed to have occurred under subparagraph (e), (f) or (g), above, if the Person or Related Persons who Control after any such event are Permitted

Transferees of the Person or Related Persons who Control prior to any such event and the provisions of this Agreement respecting transfers to Permitted Transferees have been complied with. For greater certainty, a Change of Control may arise from a single transaction, a series of related transactions or more than one transaction in which the transactions are unrelated and/or occur at different times;

“City Certificate” means a certificate of the City signed by a senior officer of the City without personal liability, having knowledge of the matters certified therein;

“City Change Orders” means in respect of the Comprehensive Construction Contract, change orders to the Final Plans and Specifications that are initiated by the City as an “extra” and not included in or reasonably inferred from the Final Plans and Specifications, and excluding any change order initiated by the City, whether in its capacity as a landowner or landlord or in its capacity as a Relevant Authority, to ensure the Stadium Improvements comply:

- (a) with applicable Law; and/or
- (b) with any element of the Stadium Improvements included in or reasonably inferred from the Final Plans and Specifications for the Stadium,

all as evidenced by Notice in writing from the City;

“City Closing Documents” has the meaning given to such term in Section 18.3;

“City Deemed Equity” has the meaning given to such term in Section 12.4(a);

“City Event of Default” has the meaning given to such term in Section 21.1;

“City Funding Equity” has the meaning given to such term in Section 12.5(b);

“City Indemnified Parties” means the City and any director, officer, employee, independent contractor, agent or advisor of the City, including the City’s Representative and any delegate of the City’s Representative;

“City’s Portion of the Construction Components” means all of the Construction Components, other than the Retail Component’s Portion of the Parking Structure;

“City’s Portion of the Parking Structure” means the six hundred forty (640) parking spaces to be contained within the Parking Structure for use by the Stadium and to be contained within the portion of the demise of the Stadium Lease within the Parking Structure, the location of which within the Parking Structure shall be as agreed between the City and OSEG, each acting reasonably, together with an easement with respect to common areas within the Parking Structure such as common ramps, driveways and doors for ingress to and egress from the Parking Structure;

“City’s Representative” means the Person appointed by the City under Section 17.1(a);

“City’s Share of Cost of Parking” means the aggregate of the Hard Costs and Soft Costs attributable to constructing the City’s Portion of the Parking Structure based on the Parking Structure Cost Allocation Principles and Section 10.4;

“Civic Centre” means the arena currently known as the Ottawa Civic Centre;

“Closed System” has the meaning given to such term in Section 12.1;

“Closing” means the execution and delivery of the City Closing Documents and the OSEG Closing Documents by the Parties, the Component Partnerships, the Office Developer and the Residential Developer, as applicable, pursuant to the provisions hereof, at 3:00 p.m. on the Closing Date at the offices of Borden Ladner Gervais LLP located at 100 Queen Street, Ottawa, Ontario;

“Closing Date” means October [●], 2012;

“Commencement of Construction” means the date on which the general contractor commences, in a *bona fide* manner, construction pursuant to the Comprehensive Construction Contract, or if there is no Comprehensive Construction Contract, the date on which the general contractor commences, in a *bona fide* manner, construction of the Parking Structure and/or the Stadium Improvements; for greater certainty, to the extent that the City conducts remediation with respect to environmental matters, such remediation shall not be relevant to the determination of “Commencement of Construction”;

“Community Association Minutes of Settlement” means the Minutes of Settlements in Ontario Municipal Board file number PL101256 dated April 11, 2011 among the Glebe Community Association, the Old Ottawa South Community Association, the City and OSEG;

“Completion Funds” has the meaning given to such term in Section 10.3(b);

“Completion Guarantee” has the meaning given to such term in Section 10.3(b);

“Completion of the Slab” means the completion of the roof structure and waterproof membrane of the Parking Structure, as certified by the applicable prime consultant as set out in the Comprehensive Construction Contract, in a manner sufficient for the construction of the Retail Buildings to be commenced in a *bona fide* manner;

“Component Partnership” has the meaning given to such term in Section 11.1(a);

“Components” means the Stadium, the Retail Component, the Office Component and the Residential Component, and **“Component”** means any one of the Components;

“Component Site Plan Conditions” has the meaning given to such term in Section 3.2(c);

“Comprehensive Construction Contract” has the meaning given to such term in Section 10.1(a);

“Confidential Information” means all information relating to a Party which is supplied by or on behalf of that Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with or on behalf of that Party or which is obtained through observations made by the receiving Party, and includes all analyses, compilations, studies and other documents, whether prepared by or on behalf of the receiving Party, which contain or otherwise reflect or are derived from such information;

“Construction” means the construction of an Improvement with respect to any of the Components;

“Construction Components” means the Stadium Improvements, the Infrastructure Upgrades, the City’s Portion of the Parking Structure, the Office Component’s Portion of the Parking Structure, the Residential Component’s Portion of the Parking Structure and the Retail Component’s Portion of the Parking Structure;

“Construction Contract Price Allocation” means the allocation of the total costs under the Comprehensive Construction Contract (including the cost of change orders) amongst each of the Construction Components as provided for in this Agreement or as otherwise agreed between the City and OSEG, each acting reasonably, provided that with respect to the Construction Components within the Parking Structure, the allocation shall be based on the Parking Structure Cost Allocation Principles;

“Construction Procedures Agreement” has the meaning given to such term in Section 2.9(e);

“Control” means:

- (a) in the case of a corporation:
 - (i) control as determined in accordance with subsection 1(5) of the *Business Corporations Act* (Ontario);

- (ii) the beneficial ownership of Securities having more than fifty percent (50%) of all of the votes attached to all issued and outstanding Securities of the corporation; or
 - (iii) having a vote or other right required for making material decisions or approving material decisions on behalf of a corporation pursuant to a unanimous shareholder agreement (as that term is defined in the *Business Corporations Act* (Ontario)) or otherwise, but excluding a vote or other right required for making decisions or approving decisions on behalf of a corporation: (1) that is granted to all shareholders under applicable Law; or (2) that is granted to all shareholders, other than a defaulting shareholder, pursuant to a unanimous shareholder agreement or other agreement;
- (b) in the case of a Business Entity that is not a limited partnership,
 - (i) the right to appoint a majority of the members of the management committee (however designated) of the Business Entity or, if the Business Entity has no such management committee, the ownership or control of more than fifty percent (50%) of the Securities of the Business Entity; or
 - (ii) having a vote or other right required for making material decisions or approving material decisions on behalf of the Business Entity pursuant to a written agreement among the members of the Business Entity, but excluding a vote or other right required for making decisions or approving decisions on behalf of a Business Entity: (1) that is granted under applicable Law; or (2) that is granted to all members of the Business Entity, other than a defaulting member, pursuant to an agreement among the members of the Business Entity; or

- (c) in the case of a Business Entity that is a limited partnership, Control (as defined in subparagraph (a), above) of a general partner of the limited partnership or having the attributes set out in subparagraph (f) above,

and “**Controlled**” has a corresponding meaning;

“**Cost to Complete**” has the meaning given to such term in Section 10.5(b)(v);

“**Council**” means the Council of the City;

“**Council Conditional Approval Date**” means November 16, 2009, the date on which the Project was conditionally approved by Council;

“**CSW Landscape Cost Analysis**” means Revision 4 dated January 27, 2012 of the O.S.E.G. Landscape Cost Analysis dated August 23, 2011 prepared by Corush Sunderland Wright;

“**Current Cost Overrun**” has the meaning given to such term in Section 10.5(b)(vi);

“**Current Hard Costs**” has the meaning given to such term in Section 10.5(b)(i);

“**Current Holdback**” has the meaning given to such term in Section 10.5(b)(vii);

“**Current Soft Costs**” has the meaning given to such term in Section 10.5(b)(iii);

“**Deemed Debenture Financing**” has the meaning given to such term in Section 12.5(a);

“**Delay Costs**” has the meaning given to such term in Section 2.9(f);

“**Design and Plan Requirements**” means the Design Guiding Principles, the Master Site Plan and the Design Solutions (in the case of the Components, to the extent that the Design Solutions relate to the relevant Component);

“**Design Competition**” has the meaning given to such term in Section 4.2(a);

“Design Guiding Principles” means the design guiding principles for the Project Lands as are agreed by the Parties, currently being the design guiding principles established by the Design Review and Advisory Panel as contained in a document headed “Guiding Principles for the Lansdowne Transformation” dated January 2010;

“Design Review and Advisory Panel” means the design review and advisory panel established by Motion 77/5 approved by Council at its meeting on the Council Conditional Approval Date;

“Design Solutions” has the meaning given to such term in Section 4.2(a);

“DESL Cost Sharing Rationale” means the letter to OSEG dated May 31, 2011 from David Schaeffer Engineering Ltd. on the subject of a cost sharing rationale for Lansdowne Park and its attachments;

“Disclosed Data” means the information, data, documents or instruments made available or issued to OSEG in connection with the Project by the City or by any Person on behalf of the City, including a consultant, independent contractor or agent of the City, whether:

- (a) before the Execution Date, which, for the purposes of identification, has been included on a list dated October 21, 2011 and initialled by the Parties; or
- (b) after the Execution Date;

“Discretion” means, with respect to any consent, approval or decision required to be made by a Party, that such approval, consent or decision may be made in the sole and absolute discretion of the relevant Party;

“Disposition” means:

- (a) the issuance of any Securities of a corporation or other Business Entity or the sale, transfer, assignment, transmission on death or other disposition of any Securities of a corporation or other Business Entity; or

- (b) the sale, transfer, assignment or other disposition of all or any portion of an interest in any of the Leases or all or a material portion of any of the other assets of a corporation or other Business Entity, other than as security pursuant to an Encumbrance permitted by this Agreement or a Material Agreement,

as the context requires, or the grant of an option or the entering into of an agreement to effect any of the foregoing and “**Dispose**” and “**Disposed**” shall have corresponding meanings;

“**Disposition Approval Guidelines**” means consideration by the City of the following factors:

- (a) financial capacity of the proposed acquirer/its principal(s);
- (b) whether the proposed acquirer/its principal(s) is/are principally located/resident in the City of Ottawa;
- (c) whether the proposed acquirer/its principal(s) has a successful business record;
- (d) general public reputation of the proposed acquirer/its principal(s);
- (e) development or real estate industry experience and knowledge of the proposed acquirer/its principal(s); and
- (f) history of litigation/disputes with the City of Ottawa or its Affiliates by the proposed acquirer/its principal(s);

“**Disposition Consideration**” means:

- (a) in the case of a Disposition of Securities of an OSEG Member by a holder of Securities of the OSEG Member, the aggregate proceeds received or to be received by or on behalf of the transferor of the Disposed Securities in connection with the Disposition;

- (b) in the case of a Disposition of Securities by an OSEG Member that is the issuance of Securities by the OSEG Member, the aggregate proceeds received or to be received by or on behalf of the OSEG Member in connection with the Disposition;
- (c) in the case of a Disposition of Securities of OSEG by an OSEG Member, the aggregate proceeds received or to be received by or on behalf of the OSEG Member in connection with the Disposition;
- (d) in the case of a Disposition of Securities by OSEG that is the issuance of Securities by OSEG, the aggregate proceeds received or to be received by or on behalf of OSEG in connection with the Disposition;
- (e) in the case of a Disposition of Securities of the Master Partnership, of the Master GP or of a general partner of a Component Partnership by OSEG, the aggregate proceeds received or to be received by or on behalf of OSEG in connection with the Disposition; and
- (f) in the case of a direct or indirect Disposition of Securities of a general partner of a Component Partnership by an OSEG Member (other than a Disposition by OSEG), the aggregate proceeds received or to be received in connection with the Disposition,

in each case above:

- (i) minus reasonable Arm's Length third party direct costs incurred in connection with the Disposition;
- (ii) including all consideration received directly or indirectly in connection with the Disposition calculated in money or money's worth, but excluding any amount reasonably payable as salary under a *bona fide* employment

contract based on market rates and usual employment benefits based on market rates; and

- (iii) where the Disposition is part of a transaction involving other matters, a reasonable allocation of such consideration shall be attributable to the relevant Disposition herein;

“Dispute” means any disagreement, failure to agree or other dispute between the City and OSEG or the City and a Member arising out of or in connection with this Agreement, including in respect of the interpretation, breach, performance, validity or termination hereof, whether in the law of contract or any other area of law, other than an Excluded Dispute;

“Dispute Resolution Procedure” means the procedure set out in Schedule K (Dispute Resolution Procedure);

“Distinctive Uses” means, with respect to the uses within the Retail Component, uses that are consistent with the Retail Design Strategy which was approved by Council at its meeting of June 28, 2010 or such other uses as may be agreed between the City and OSEG from time to time;

“Emergency” means any condition which exists that may or has the potential to affect the safety of a Person or has the potential to adversely and materially affect or interfere with property;

“Encumber” means to mortgage, charge, pledge, hypothecate, create or grant a security interest in or otherwise encumber:

- (a) Securities of a corporation or other Business Entity or to grant a power of attorney, proxy or otherwise grant a right to vote any of the Securities of a corporation or other Business Entity; or
- (b) all or any portion of any of the assets of a corporation or other Business Entity;

or to enter into an agreement granting a present or future right or entitlement to any of the foregoing and “**Encumbrance**” has a corresponding meaning;

“**Environmental Laws**” means all applicable Laws relating to the protection of the environment or the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling or remediation of any Hazardous Substance;

“**Equity**” means the aggregate, without duplication (which duplication shall take into account an expenditure in one entity, including an Affiliate or Permitted Transferee, and loans or other payments made to other entities, including an Affiliate or Permitted Transferee), of (i) all costs included within the First Cost Sharing Agreement or the Second Cost Sharing Agreement, excluding Internal Costs, paid by an OSEG Company or a Permitted Transferee of an OSEG Company with respect to any part of the Total Project, (ii) the lesser of the face amount and the amount then outstanding of each outstanding letter of credit posted from time to time by an OSEG Company or a Permitted Transferee of an OSEG Company with respect to any part of the Total Project, (iii) the lesser of the face amount and the amount then outstanding of each outstanding letter of credit posted from time to time by a Component Partnership with respect to any part of the Total Project, if the security granted to the issuer of such letter of credit is granted by an OSEG Company or a Permitted Transferee of an OSEG Company or if an OSEG Company or a Permitted Transferee of an OSEG Company guarantees the payment to the issuer of such letter of credit of any amounts drawn under such letter of credit, (iv) the amount drawn under a letter of credit described in subparagraph (ii) or (iii); (v) the amount of cash contributed from time to time by OSEG to the Master Partnership which is not secured by a mortgage or charge by any Component Partnership, (vi) the amount of any Completion Funds, (vii) all cash contributed by a Member to OSEG to the extent required to fund the Initial Capital Contributed, (viii) the amount, which the Parties agree is five million dollars (\$5,000,000) of that part of the Ottawa 67’s Purchase Price that is not satisfied by the Promissory Note (and, for greater certainty, Equity excludes the amount of the part of the Ottawa 67’s Purchase Price that is satisfied by the Promissory Note), and (ix) all other costs and expenses actually and properly incurred and paid by an OSEG Company or a Permitted Transferee of an OSEG Company (including pre-incorporation expenses) with respect to any part of the Total Project, whether prior to, on or after Closing, excluding Internal Costs;

“**Equitable Principles**” has the meaning given to such term in Section 13.6(d)(iii);

“**Event**” means an event or performance at the Stadium or the Urban Park including a sporting event, with an actual or anticipated attendance of five thousand (5,000) persons or more;

“**Excess Stadium/Parking Costs**” means the amount, if any:

- (a) by which the aggregate of:
 - (i) the Hard Costs and Soft Costs of the Construction of the Stadium Improvements (which for clarity shall include any additional costs attributable to the Stadium Improvements resulting from proceeding with construction of the Parking Structure and Stadium Improvements by way of sequential building permits (the “**Sequential Permit Additional Cost**”)); and
 - (ii) the City’s Share of Cost of Parking;
- (b) exceeds the Maximum City Cost,

provided that the aggregate amount of subparagraphs (a)(i) and (a)(ii) shall be determined using the same inclusions and exclusions of costs as are used in this Agreement for the determination of Maximum City Cost, *mutatis mutandis*, including the inclusions and exclusions described in Sections 5.2(b) and 5.2(c);

“**Excluded Dispute**” means a matter which shall not be subject to the Dispute Resolution Procedure;

“**Execution Date**” means the date of execution and delivery of this Agreement by the Parties hereto;

“Existing and Anticipated Project Activities” means all activities or undertaking of a Component Partnership which, as of the date of any termination pursuant to Section 22.1:

- (a) are existing; or
- (b) could reasonably be performed or undertaken by or on behalf of such Component Partnership with a reasonable probability of success and are then *bona fide* contemplated to be engaged in by the Component Partnership as evidenced by written records that show that the Component Partnership (i) is then engaged in good faith negotiations with an Arm’s Length third Person, (ii) has issued or is in the process of preparing a request for proposals or expressions of interest or another similar solicitation to Arm’s Length third Persons, (iii) has issued or is in the process of preparing a response to a request for proposals or expressions of interest or another similar solicitation from an Arm’s Length third Person, (iv) has a written binding agreement with an Arm’s Length third Person, or (v) has made a public announcement or is in the process of undertaking internal arrangements required to make a public announcement,

and are or would be included in the calculation of Net Cash Flow;

“Fair Market Value” means:

- (a) except in the case of a Team, the most probable price estimated in terms of money which land, or land and building and other improvements thereon, as the case may be, would bring if exposed for sale in the open market by a willing seller, allowing for a reasonable period of time to find a buyer, neither seller nor buyer acting under compulsion, both having knowledge of all the uses and purposes to which the land and/or building and other improvement thereon are adapted and for which they are capable of being used in accordance with applicable Laws or agreements and the physical premises constructed, and both exercising intelligent judgement, but taking into account all leases, subleases, and the rights and

obligations contained therein, including the net rental amounts payable under them and the variance, if any, from prevailing market rent; and

- (b) in the case of a Team, the most probable price estimated in terms of money which the assets of the Team, on a going concern basis, would bring if exposed for sale in the open market by a willing seller, allowing for a reasonable period of time to find a buyer, neither seller nor buyer acting under compulsion, both exercising intelligent judgement, but taking into account all liabilities to be assumed by the purchaser of those assets, all agreements to which the Team is entitled or by which it is bound and all other rights and obligations relating to the Team;

“Fee Limitations” has the meaning given to such term in Section 6.6(b);

“Final Plans and Specifications” means the detailed plans and specifications commonly referred to as the construction drawings, pursuant to which Improvements for each of the Components shall be constructed;

“Final Pro Forma” has the meaning given to such term in Section 15.1(e);

“Financing” has the meaning given to such term in Section 12.5(a);

“First Cost Sharing Agreement” means the agreement entered into between the City and OSEG Inc. dated May 14, 2010, respecting the sharing of certain costs relating to the Project incurred between the Council Conditional Approval Date and June 28, 2010;

“Force Majeure” means:

- (a) war, civil war, armed conflict, terrorism, epidemic or quarantine;
- (b) nuclear, chemical (including Hazardous Substance) or biological contamination unless the source or cause of the contamination is the result of actions of the Party delayed in the performance of an obligation under this Agreement;

- (c) earthquake, tidal wave or flood;
- (d) pressure waves caused by devices travelling at supersonic speeds;
- (e) fire, explosion, lightning, storm, tempest or bursting or overflowing of water tanks, apparatus or pipes;
- (f) any failure or shortage of power, fuel or transport, provided such failure or shortage has not occurred as a direct consequence of a failure of any part of the Construction;
- (g) any blockade or embargo;
- (h) any official or unofficial strike, lockout, work-to-rule or other dispute generally affecting the construction industry or the delivery of transit services (or a significant sector of either) whether or not specific to the Party delayed in the performance of an obligation under this Agreement;
- (i) the shortage of materials or inability to procure materials, where (i) in circumstances related to the initial Construction of the Stadium Improvements, the Parking Structure or the Retail Buildings, alternative materials cannot be obtained (the non-delayed Party agreeing to act reasonably in approving any alternative materials when its approval is required), or (ii) in all other circumstances, alternative materials cannot be obtained on commercially reasonable terms;
- (j) the inability to obtain a Permit solely due to delays of the Permit issuer; or

- (k) any other matters beyond the reasonable control of the Party delayed in the performance of an obligation under this Agreement, provided that:
 - (i) such Party has exercised commercially reasonable efforts and has diligently attempted to avoid, anticipate and to mitigate the cause(s) of delay, including, where possible, establishing a contingency plan on commercially reasonable terms which will permit such Party's normal operations to be resumed within a reasonable time thereafter; and
 - (ii) it does not arise by reason of:
 - (A) the negligence or wilful misconduct of such Party or those for whom it is responsible at law;
 - (B) any act or omission by such Party (or those for whom it is responsible at law) in breach of the provisions of this Agreement that is not itself caused by Force Majeure; or
 - (C) a lack of funds;

“Frank Clair Stadium” means the stadium currently known as Frank Clair Stadium in the City of Ottawa;

“GAAP” means Canadian generally accepted accounting principles for private enterprises in effect from time to time, or any successor standard thereto adopted by the Canadian Institute of Chartered Accountants, consistently applied;

“Gain” means:

- (a) in the case of the Disposition of Securities of an OSEG Member by a holder of Securities of the OSEG Member, the difference (if a positive number) between:

- (i) the total aggregate Disposition Consideration; minus
 - (ii) an amount equal to the product of:
 - (A) the outstanding Equity immediately prior to the Disposition;
 - (B) the Proportionate Share of such OSEG Member; and
 - (C) the percentage of all issued Securities of the OSEG Member immediately prior to completion of the Disposition that is represented by the Disposed Securities;
 - (b) in the case of a Disposition of Securities of an OSEG Member that is the issuance of Securities by the OSEG Member, the difference (if a positive number) between:
 - (i) the total aggregate Disposition Consideration; minus
 - (ii) the aggregate of:
 - (A) that portion of the Disposition Consideration, if any, paid by the OSEG Member to OSEG:
 - (1) as a contribution of capital; or
 - (2) to purchase additional Securities of OSEG,
- and then paid by OSEG to the Master Partnership as a contribution of capital, provided that additional Equity in such amount is then required or is reasonably expected to be required for the Total Project; and

- (B) an amount equal to the product of:
 - (1) the outstanding Equity immediately following the Disposition and the payments described in subparagraph (b)(ii)(A);
 - (2) the Proportionate Share of such OSEG Member; and
 - (3) the percentage of all issued Securities of the OSEG Member that is represented by the Disposed Securities immediately following the issue of such Disposed Securities;
- (c) in the case of a Disposition of Securities of OSEG by an OSEG Member, the difference (if a positive number) between:
 - (i) the total aggregate Disposition Consideration; minus
 - (ii) an amount equal to the product of:
 - (A) the outstanding Equity immediately prior to the Disposition;
 - (B) the Proportionate Share of the OSEG Member immediately prior to the completion of the Disposition; and
 - (C) the percentage of all issued Securities of OSEG held by the OSEG Member immediately prior to the completion of the Disposition that is represented by the Disposed Securities;
- (d) in the case of a Disposition of Securities of OSEG that is the issuance of Securities by OSEG, the difference (if a positive number) between:
 - (i) the total aggregate Disposition Consideration; minus

- (ii) the aggregate of:
 - (A) that portion of the Disposition Consideration, if any, paid by OSEG to the Master Partnership as a contribution of capital, provided that additional Equity in such amount is then required or is reasonably expected to be required for the Total Project; and
 - (B) an amount equal to the product of:
 - (1) the outstanding Equity immediately following the Disposition and the payment described in subparagraph (d)(ii)(A); and
 - (2) the percentage of all issued Securities of OSEG that is represented by the Disposed Securities immediately following the issue of such Disposed Securities; and
- (e) in the case of a Disposition of Securities of the Master Partnership by OSEG, the difference (if a positive number) between:
 - (i) the total aggregate Disposition Consideration; minus
 - (ii) an amount equal to the product of:
 - (A) the outstanding Equity immediately prior to the Disposition; and
 - (B) the percentage of all issued Securities of the Master Partnership held by OSEG immediately prior to the completion of the Disposition that is represented by the Disposed Securities;

“Great Porch” means the area to the south of the Aberdeen Pavilion known as “Great Porch” on the Project Lands and forming part of the Urban Park;

“GST/HST” means the goods and services and harmonized sales taxes levied pursuant to Part IX of the *Excise Tax Act* (Canada);

“Hard Costs” means costs and expenditures required to construct and create an improvement that are generally considered by the construction industry as “hard costs”, including:

- (a) costs respecting site preparation, site improvements and servicing costs of lands, grading, soil removal and environmental costs, if any, but excluding archaeological and environmental remediation costs on the Site for which the City is responsible, as more fully described in Section 2.12;
- (b) costs incurred with respect to contractors, subcontractors, workers and suppliers of material and the costs of labour, services, materials and supplies (including duties and Taxes on such items) relating to the construction of an improvement; and
- (c) costs incurred with respect to machinery, plant, equipment and apparatus required for or used in connection with the construction of an improvement, including rental charges for machinery and equipment;

“Hazardous Substance” means any contaminant, chemical, toxic substance, deleterious substance, special waste, dangerous good, pollutant, waste, reportable substance and any other substance the storage, manufacture, handling, disposal, treatment, generation, use, transport or remediation of which, or the release into or presence in the environment of which, is now or hereafter prohibited, controlled or regulated under Environmental Laws;

“Heritage Approvals” means:

- (a) the approval of the Ontario Heritage Trust with respect to the encroachment upon or amendment to any easements granted to the Ontario Heritage Trust relating to view corridors respecting the Aberdeen Pavilion, as may be required in accordance with the Master Site Plan;

- (b) consultation by the City with the Ontario Heritage Trust in connection with the relocation of the Horticulture Building and the Horticulture Building Plan, as required under the existing easement agreement between the City and the Ontario Heritage Trust;
- (c) in addition to the approvals or consultations in subparagraphs (a) and (b) above, any other approval required by Ontario Heritage Trust respecting any easements granted or agreements entered into in order to implement the provisions of the Master Site Plan or the final plans and specifications for the Aberdeen Pavilion;
- (d) such approval of Parks Canada (the Minister of Communications) respecting the alterations to the Aberdeen Pavilion or the relocation of the Horticulture Building as the City shall determine is necessary under the cost sharing agreement between predecessors of the City and Parks Canada dated November 19, 1993;
- (e) approval by Council of such alterations to the Aberdeen Pavilion and the Horticulture Building and/or the relocation of the Horticulture Building as Council shall determine, if and to the extent required pursuant to Section 3 of the *Planning Act* (Ontario) and Provincial Policy Statement 2005, and approval by Council of the conservation plan and/or heritage impact assessment provided to Council in connection therewith; and
- (f) any other necessary approvals pursuant to the *Ontario Heritage Act* (Ontario) and all other relevant Laws;

“Holmwood Group Minutes of Settlement” means the Minutes of Settlements in Ontario Municipal Board file number PL101256 dated April 10, 2011 among Donald Byrne, Jackie Byrne, Dennis Brock, Darlene Brock, Carol MacLeod, Robert Martin, Danica Robertson, Richard Lamothe, John Lawford, the City and OSEG;

“Horticulture Building” means the building known as the “Horticulture Building” located on the Project Lands and forming part of the Urban Park;

“Horticulture Building Plan” has the meaning given to such term in Section 4.4(a);

“Improvement” or **“Improvements”** means a building or buildings constructed on a Component or alterations or renovations to an existing building on a Component;

“Indirect Losses” means exemplary or punitive damages or any consequential loss or indirect loss of any nature, including loss of goodwill;

“In Final Form” means with respect to the Planning Approvals, the obtaining of all approvals required in accordance with the *Planning Act* (Ontario), the *Municipal Act, 2001* (Ontario) or the *Ontario Heritage Act* (Ontario), as the case may be, and the expiry of all appeal periods with respect thereto, or if there is an appeal or appeals, the ultimate disposition of the final appeal and the expiry of the appeal period with respect thereto;

“Inflation Index” means the Consumer Price Index, for All-items in Ontario, as published by Statistics Canada or, if such Consumer Price Index in its present form becomes unavailable, such similar index as may be agreed by the Parties, acting reasonably, and if such agreement cannot be reached, as determined pursuant to the Dispute Resolution Procedure;

“Infrastructure Upgrades” means infrastructure upgrades to all services and utilities, including water, sewer, storm sewer, gas services and, if necessary, hydro electricity supplies, within the Project Lands, required by the City as part of the Planning Approvals or otherwise required by the City to be constructed as part of the Project;

“Initial Capital Contributed” has the meaning given to such term in Section 12.2(b);

“Initial Investment Income” has the meaning given to such term in Section 12.2(b)(i);

“Initial Retail Value” has the meaning given to such term in Section 12.4(a)(i);

“Internal Costs” means:

- (a) costs of OSEG and/or OSEG Inc. that:
 - (i) do not relate to any part of the Total Project; provided that costs that have elements that both relate to the Total Project and do not relate to the Total Project shall be equitably allocated between the two as agreed by the City and OSEG, each acting reasonably; or
 - (ii) may relate to the Total Project, but for which there is no material benefit to the Master Partnership or any of the Component Partnerships; and
- (b) overhead costs and any other direct or indirect operating or administrative costs of the City, any Members or any Permitted Transferees of Members, as the case may be, including amounts payable for salary and other benefits of any employees, officers or directors of the City, any Members or any Permitted Transferees of Members, as the case may be, other than employees of the City who are exclusively devoted to one or more parts of the Total Project,

but Internal Costs do not include any part of any fee that is properly payable to an OSEG Company, the City or a Permitted Transferee of a Member for services rendered in connection with any part of the Total Project. By way of example, the Parties agree that (i) salary and rental costs incurred by OSEG do relate to the Total Project and are not Internal Costs since these costs are incurred in order that OSEG may perform obligations related to the Total Project (including its obligations under the Material Agreements), but subject to the allocation of those costs under subparagraph (a)(i), as required, and (ii) the third party cost of the preparation of OSEG’s own financial statements does not benefit the Master Partnership or any of the Component Partnerships and is an Internal Cost;

“Knowledge” means:

- (a) with respect to OSEG, when knowledge or information in writing has been received or comes to the attention of a director or officer of an OSEG Company or a senior employee of an OSEG Company with responsibility for matters to which the knowledge or information relates; and
- (b) with respect to the City, when knowledge or information in writing has been received or has come to the attention of the City Manager,

in each case under circumstances in which a reasonable person would take cognisance of it;

“Lansdowne Design Review Panel” means the design review panel established and approved by Council at its meeting on November 22, 2010;

“Law” means all present and future laws, statutes, regulations, treaties, decrees having the force of law, binding judgments of relevant courts of law and all present and future official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Relevant Authority having the force of law;

“Leases” means the Stadium Lease, the Retail Lease and the Office Lease;

“Limited Partnership Agreements” means, collectively, the limited partnership agreements for each of the Component Partnerships and the Master Partnership;

“LPP Implementation Report” means the Lansdowne Partnership Plan (LPP) Implementation Report presented to Council on November 12, 2009;

“Manager” has the meaning given to such term in Section 6.6(b);

“Market Terms and Conditions” has the meaning given to such term in Section 5.14;

“Master Construction Schedule” has the meaning given to such term in the Construction Procedures Agreement.

“Master GP” means Lansdowne Master GP Inc., the general partner of the Master Partnership;

“Master GP Shareholder’s Agreement” has the meaning given to such term in Section 11.3(a);

“Master Partnership” has the meaning given to such term in Section 11.2(a);

“Master Site Plan” has the meaning given to such term in Section 3.2(d);

“Material Agreements” means the Comprehensive Construction Contract, the Project Management Agreement, the Stadium Lease, the Membership Agreements, the OSEG RFOs, the Ottawa 67’s Guarantee, Ottawa 67’s Acquisition Agreement, the Transfer Agreement, the Parking Management Agreement, the Retail Lease, the Shareholder’s Agreements, the Limited Partnership Agreements, the Construction Procedures Agreement(s) and the Reciprocal Agreement(s);

“Maximum City Cost” means one hundred thirty five million eight hundred thousand dollars (\$135,800,000) (exclusive of any applicable GST/HST) or such higher amount as may be approved by Council;

“Member Representative” has the meaning given to such term in Section 17.2;

“Membership Agreements” means the agreements and membership certificate and arrangements respecting the CFL Team and the Ottawa 67’s referred to in Section 5.8(b);

“Membership Conditions” has the meaning given to such term in Section 5.8(b);

“Minimum Equity Requirement” has the meaning given to such term in Section 12.2(a);

“Minimum Use Requirements” means the range of uses and minimum gross floor areas with respect to each of the Retail Component and the Office Component;

“**Misrepresentation**” has the meaning given to such term in Section 16.5(d);

“**Municipal Services Corporation**” means a corporation established by the City pursuant to Section 203 of the *Municipal Act, 2001* (Ontario) and O. Reg. 599/06;

“**Name**” has the meaning given to such term in Section 5.6(d);

“**Naming Agreement**” has the meaning given to such term in Section 5.6(d)(i);

“**NCC**” means National Capital Commission;

“**Net Cash Flow**” has the meaning given to such term in Section 13.1;

“**New OHT Easement**” has the meaning given to such term in Section 2.15(a);

“**New OHT Easement Lands**” means the lands legally described and illustrated in the sketch attached hereto as Schedule D, against which lands the New OHT Easement shall be registered;

“**Non-Conflict Procedure**” means the additional provisos that were required by the City as part of the Approved Selection Process in order to ensure a competitive process, without conflicts of interest or any additional knowledge or other advantage to OSEG, any OSEG Member or an Affiliate of OSEG or any OSEG Member, and that encouraged third party bidders at the time of the Approved Selection Process;

“**Notice**” means any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Agreement;

“**Offered Terms**” has the meaning given to such term in Section 5.9(a);

“**Office Component**” has the meaning given to such term in Section 2.7(a);

“Office Component’s Portion of the Parking Structure” means the ninety (90) parking spaces to be contained within the Parking Structure for use by the Office Component and to be contained within the portion of the demise of the Office Lease within the Parking Structure, the location of which within the Parking Structure shall be as agreed between the City and OSEG, each acting reasonably, together with an easement with respect to common areas within the Parking Structure such as common ramps, driveways and doors for ingress to and egress from the Parking Structure;

“Office Developer” has the meaning given to such term in Section 7.1;

“Office Fee Portion” has the meaning given to such term in Section 9.3(c);

“Office Lease” means the lease of the lands for the Office Component between the City, as landlord, and the Office Developer, as tenant;

“Office Retail Parcel” means the ground floor retail component to be included within the building containing the Office Component above such retail component;

“OHL” means the Ontario Hockey League and its successors;

“OHL Constitution” means the then-current constitution of the OHL setting out the rights and obligations of all persons holding a membership granted by the OHL to operate an OHL hockey team, which constitution is applicable to and constitutes a contract amongst all OHL members, including the Ottawa 67’s;

“OHT Easement” has the meaning given to such term in Section 2.15(a);

“OMB Minutes of Settlement” means, collectively, (i) the Holmwood Group Minutes of Settlement; (ii) the Community Association Minutes of Settlement, and (iii) the Minutes of Settlements in Ontario Municipal Board file number PL101256 dated March 11, 2011 among Glebe BIA, the City and OSEG;

“OSEG Certificate” means a certificate of OSEG signed by a senior officer of OSEG or of an OSEG Member without personal liability, having knowledge of the matters certified therein;

“OSEG Closing Documents” has the meaning given to such term in Section 18.2;

“OSEG Company” means each of OSEG, OSEG Inc. and the OSEG Members;

“OSEG Documents” has the meaning given to such term in Section 14.1(f);

“OSEG Event of Default” has the meaning given to such term in Section 20.1;

“OSEG Inc.” means Ottawa Sports and Entertainment Group Inc., a corporation incorporated under the laws of the Province of Ontario;

“OSEG Indemnified Parties” means each OSEG Company and any director, office, employee, independent contractor, agent or advisor of an OSEG Company, including OSEG’s Representative and any delegate of OSEG’s Representative;

“OSEG Member” means a partner of OSEG or, if OSEG shall then be a corporation, a shareholder of such corporation or, if OSEG shall be another form of Business Entity, a Person owning an interest in such Business Entity, and includes the Members;

“OSEG RFO” has the meaning given to such term in Section 5.9;

“OSEG’s Registration” has the meaning given to such term in Section 26.5;

“OSEG’s Representative” has the meaning given to such term in Section 17.3(a);

“Ottawa 67’s” means the Ottawa 67’s, a member of the Ontario Hockey League;

“Ottawa 67’s Acquisition Agreement” has the meaning given to such term in Section 14.1(f);

“Ottawa 67’s Guarantee” means the guarantee of the Promissory Note by the Members as provided in Section 5.8(b)(iv);

“Ottawa 67’s Interest” means all of the right, title and interest of OSEG in the Ottawa 67’s Partnership;

“Ottawa 67’s Partnership” has the meaning given to such term in Section 11.1(b)(iii);

“Ottawa 67’s Purchase Price” means the purchase price of ten million dollars (\$10,000,000) payable by the Master Partnership to OSEG for the Ottawa 67’s Interest;

“Parking Contingency” means a contingency in the amount of \$3,600,000 in respect of the Parking Structure;

“Parking Funding Agreement” has the meaning given to such term in Section 10.6(d);

“Parking Management Agreement” has the meaning given to such term in Section 9.4;

“Parking NOI” has the meaning given to such term in Section 13.6(d)(i);

“Parking Operator” has the meaning given to such term in Section 9.4;

“Parking Participants” has the meaning given to such term in Section 13.6(d)(i);

“Parking Plans and Specifications” means the Plans and Specifications for the Parking Structure;

“Parking Project Management Fee” has the meaning given to such term in Section 9.3(b);

“Parking Structure” has the meaning given to such term in Section 9.2;

“Parking Structure Cost” means the Hard Costs and the Soft Costs of construction of the Parking Structure;

“Parking Structure Cost Allocation Principles” means the principles respecting allocation of Parking Structure Cost amongst each of the Stadium, Retail Component, Residential Component and Office Component, as enumerated in Schedule G annexed hereto;

“Parking Structure Reciprocal Agreement” means the reciprocal agreement to be entered into amongst OSEG, the City, the Stadium Partnership, the Retail Partnership, the Residential Developer and the Office Developer respecting the sharing of costs for the operation, maintenance and repair of the Parking Structure and other matters of mutual concern and interest involving the Parking Structure, including the sharing of the pool of the parking spaces within the Parking Structure (excluding the Residential Component’s Portion of the Parking Structure), the use of the Parking Structure on days that Events and Major Events (as shall be defined in the Parking Structure Reciprocal Agreement) are being held and the use of the Parking Structure by the public and the invitees of each of the relevant Components;

“Party” means any of the City, OSEG or the Members and **“Parties”** means all of the City, OSEG and the Members;

“Payment Certificate” has the meaning given to such term in Section 10.5(b);

“Payment Certifier” has the meaning given to such term in Section 10.5(a);

“Permits” means all permissions, consents, approvals, certificates, permits, licenses, statutory agreements and authorizations required from any Relevant Authority and all necessary consents and agreements required from any third parties or otherwise to construct the Project and otherwise to carry out the Project in accordance with this Agreement and/or any of the Leases;

“Permitted Interim Investments” means all:

- (a) direct obligations of Canada or any province thereof, or any agency thereof, provided however that such obligations mature within ninety (90) days from the date of investment; or

- (b) term deposits or demand accounts with, or certificates of deposit issued by, any Canadian Chartered Bank, provided however, that such deposits or certificates mature within ninety (90) days from the date of investment;

“Permitted Transferee” means:

- (a) for Lansgreen Investments Inc., any one or more of (i) a lineal descendant (whether by blood or adoption) of Irving Greenberg or Gilbert Greenberg; (ii) the spouse of a lineal descendant (whether by blood or adoption) of Irving Greenberg or Gilbert Greenberg; (iii) a trust for one or more of the Persons described in subparagraphs (i), (ii) and (iv), but only such Persons; and (iv) a corporation or Business Entity directly or indirectly Controlled by one or more of the foregoing (where indirect Control means that a corporation or Business Entity is Controlled by one or more other corporations or Business Entities, each of which is itself Controlled (whether directly or indirectly through one or more other such corporations or Business Entities) by one or more of the foregoing);
- (b) for Shenkman Lansdowne Ltd., any one or more of (i) a lineal descendant (whether by blood or adoption) of Harold Shenkman; (ii) the spouse of a lineal descendant (whether by blood or adoption) of Harold Shenkman; (iii) a trust for one or more of the Persons described in subparagraphs (i), (ii) and (iv), but only such Persons; and (iv) a corporation or Business Entity directly or indirectly Controlled by one or more of the foregoing (where indirect Control means that a corporation or Business Entity is Controlled by one or more other corporations or Business Entities, each of which is itself Controlled (whether directly or indirectly through one or more other such corporations or Business Entities) by one or more of the foregoing);
- (c) for Trinity Lansdowne Ltd., any one or more of (i) John Ruddy; (ii) the spouse of John Ruddy; (iii) a lineal descendant (whether by blood or adoption) of John Ruddy; (iv) the spouse of a lineal descendant (whether by blood or adoption) of John Ruddy; (v) a trust for one or more of the Persons described in

subparagraphs (i), (ii), (iii), (iv) and (vi), but only such Persons; and (vi) a corporation or Business Entity directly or indirectly Controlled by one or more of the foregoing (where indirect Control means that a corporation or Business Entity is Controlled by one or more other corporations or Business Entities, each of which is itself Controlled (whether directly or indirectly through one or more other such corporations or Business Entities) by one or more of the foregoing);

- (d) for Keljay Ltd., any one or more of (i) Jeff Hunt; (ii) the spouse of Jeff Hunt; (iii) a lineal descendant (whether by blood or adoption) of Jeff Hunt; (iv) the spouse of a lineal descendant (whether by blood or adoption) of Jeff Hunt; (v) a trust for one or more of the Persons described in subparagraphs (i), (ii), (iii), (iv) and (vi), but only such Persons; and (vi) a corporation or Business Entity directly or indirectly Controlled by one or more of the foregoing (where indirect Control means that a corporation or Business Entity is Controlled by one or more other corporations or Business Entities, each of which is itself Controlled (whether directly or indirectly through one or more other such corporations or Business Entities) by one or more of the foregoing); and
- (e) for Friarmere Holdings Inc., any one or more of (i) John Pugh; (ii) the spouse of John Pugh; (iii) a lineal descendant (whether by blood or adoption) of John Pugh; (iv) the spouse of a lineal descendant (whether by blood or adoption) of John Pugh; (v) a trust for one or more of the Persons described in subparagraphs (i), (ii), (iii), (iv) and (vi), but only such Persons; and (vi) a corporation or Business Entity directly or indirectly Controlled by one or more of the foregoing (where indirect Control means that a corporation or Business Entity is Controlled by one or more other corporations or Business Entities, each of which is itself Controlled (whether directly or indirectly through one or more other such corporations or Business Entities) by one or more of the foregoing);

“Person” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization, other Business Entity or Relevant Authority;

“Plan Approval Procedure” means the provision by OSEG or a Component Partnership of draft Plans and Specifications to the City at least at those stages of draft Plans and Specifications commonly referred to as the “schematic”, “design development” and “construction drawing” stages for the Approval of the City as required in accordance with this Agreement and applicable Material Agreements and, if so Approved by the City, each subsequent stage of Plans and Specifications shall then be in conformity with the immediately preceding Approved Plans and Specifications, except as otherwise Approved by the City;

“Planning Approvals” means:

- (a) the Rezoning;
- (b) a by-law enacted pursuant to Section 41 of the *Planning Act* (Ontario) with respect to the Master Site Plan and the agreement entered into pursuant to Section 41 of the *Planning Act* (Ontario);
- (c) all necessary approvals from all Relevant Authorities with respect to a stormwater management plan, including a stormwater management facility located within the Urban Park; and
- (d) any other approvals of Relevant Authorities that are required to obtain building permits for the Retail Component, the Stadium Component, relocated Horticulture Building and the Parking Structure;

“Plans and Specifications” means, generally, any relevant stage of the plans and specifications of any of the Components;

“Pre-Contract Work” has the meaning given to such term in Section 10.8;

“Present Value” means the value on a given date of a series of future payments, discounted to reflect the time value of money, using a discount rate that reflects the appropriate risk factor

associated with such series of future payments and its relationship to the risk factor associated with other forms of investments providing for a series of future payments;

“Price” has the meaning given to such term in Section 5.9(a)(i);

“Professional Soccer League” has the meaning given to such term in Section 5.10(a);

“Project” means the redevelopment of the Project Lands contemplated by and pursuant to this Agreement;

“Project Lands” means the Site and the Urban Park;

“Project Management Agreement” means the project management agreement relating to the construction of the Stadium Improvements, the Parking Structure, certain of the Urban Park Improvements and the Infrastructure Upgrades between the City, as owner, and OSEG, as project manager, in form mutually agreed upon between those Parties, each acting reasonably;

“Promissory Note” means the promissory note to be delivered on Closing in the principal amount of five million dollars (\$5,000,000) issued by the Master Partnership in favour of OSEG, or as OSEG may direct in writing in favour of Keljay Ltd. (respecting the prior acquisition by OSEG of the Ottawa 67’s Interest from Keljay Ltd.), in partial satisfaction of the Ottawa 67’s Purchase Price;

“Proportionate Share” means, for each OSEG Member, the percentage of all issued Securities of OSEG that is represented by the issued Securities of OSEG held by that OSEG Member;

“Purchased Assets” means all of OSEG’s rights, title and interest with respect to the Total Project, including its CFL Interest and its Ottawa 67’s Interest, but excluding its rights under the Material Agreements (other than the Ottawa 67’s Acquisition Agreement) to which it is a party;

“Reciprocal Agreement” means one or more reciprocal agreements among one or more of the City, OSEG, applicable Component Partnerships, the Residential Developer, the Office

Developer and the City to deal with shared facilities, costs, easements and other matters of mutual interest or requirements and includes the Parking Structure Reciprocal Agreement;

“Related Persons” means two or more Persons, each of whom is a Permitted Transferee under one (but only one) of subparagraphs (a), (b), (c), (d) or (e) of the definition of Permitted Transferee;

“Relevant Authority” means any Canadian government, including any federal, provincial or municipal government (including the City), and any Canadian government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

“Relevant Payment Date” has the meaning given to such term in Section 10.5(b);

“Relief Event” means an event of Force Majeure which adversely affects the time required for the performance of a Party’s obligations under this Agreement;

“Required Equity” has the meaning given to such term in Section 10.7(a)(i);

“Reserve” has the meaning given to such term in Section 12.7(a);

“Residential Air Parcels” has the meaning given to such term in Section 8.2;

“Residential Component” has the meaning given to such term in Section 2.8(a);

“Residential Component’s Portion of the Parking Structure” means the two hundred eighty (280) parking spaces to be contained within the Parking Structure for use by the Residential Component and to be contained within the portion of the freehold of the Residential Component within the Parking Structure, the location of which within the Parking Structure shall be as agreed between the City and OSEG, each acting reasonably, together with an easement with respect to common areas within the Parking Structure such as common ramps, driveways and doors for ingress and egress to and from the Parking Structure;

“Residential Developer” has the meaning given to such term in Section 8.5;

“Residential Fee Portion” has the meaning given to such term in Section 9.3(c);

“Residential Project” has the meaning given to such term in Section 8.1;

“Retail Buildings” means the buildings and other improvements constructed or to be constructed within the Retail Component;

“Retail Component” has the meaning given to such term in Section 2.6(a);

“Retail Component’s Portion of the Parking Structure” means the three hundred sixty (360) parking spaces to be contained within the Parking Structure for use by the Retail Component and to be contained within the portion of the demise of the Retail Component within the Parking Structure, the location of which within the Parking Structure shall be as agreed between the City and OSEG, each acting reasonably, together with an easement with respect to common areas within the Parking Structure such as common ramps, driveways and doors for ingress and egress to and from the Parking Structure;

“Retail Component’s Share of the Cost of Parking” means the aggregate of the Hard Costs and Soft Costs attributable to constructing the Retail Component’s Portion of the Parking Structure based on the Parking Structure Cost Allocation Principles;

“Retail Condition” has the meaning given to such term in Section 6.4(b);

“Retail Design Strategy” means the design strategies for the Retail Component set out in the report prepared by J.C. Williams Group entitled the “Strategic Retail Planning Report – Lansdowne Park Project” and approved by Council at its meeting on June 28, 2010, as they may be amended and modified by the agreement of the City and OSEG during the term of the Retail Lease;

“Retail Fees” has the meaning given to such term in Section 6.6(b);

“Retail Lands” has the meaning given to such term in the Retail Lease;

“Retail Lease” means the lease of the lands for the Retail Component between the City, as landlord, and the Retail Partnership, as tenant, substantially in the form of the lease annexed hereto as Schedule E;

“Retail Mortgagee” has the meaning given to such term in Section 10.6(d);

“Retail Mortgages” has the meaning given to such term in Section 10.6(b);

“Retail Partnership” has the meaning given to such term in Section 11.1(b)(iv);

“Retail Plans and Specifications” means the Plans and Specifications for the Retail Component (excluding plans and specifications for tenant improvements);

“Retail Value” has the meaning given to such term in Section 12.4(a);

“Rezoning” means the rezoning of the Site, *inter alia*, to permit the Minimum Use Requirements, enacted by Council on September 22, 2010;

“Sale Notice” has the meaning given to such term in Section 5.9(a);

“Second Cost Sharing Agreement” means the agreement entered into between the City and OSEG Inc. dated September 3, 2010, as amended and restated from time to time, respecting the sharing of certain costs relating to the Project;

“Securities” means any document constituting evidence of title to or interest in (other than by way of security only) the capital, assets, property, profits, earnings, royalties or voting rights of any corporation or Business Entity or any document including within its entitlements, provisions constituting evidence of a conversion privilege into, an option or right to acquire or subscription for any of the foregoing and includes a share, stock, unit, unit certificate, participation certificate,

certificate of share or interest, certificate or other entitlement to a convertible debenture, preorganization certificate or subscription;

“Sequential Permit Additional Cost” has the meaning given to such term in subparagraph (a) of the definition of Excess Stadium/Parking Costs;

“Setting Lands”, the “Views” and the “Framing Lands” means the Lands as indicated in the legend in the sketch attached hereto as Schedule D.

“Shared Office Costs” has the meaning given to such term in Section 7.6(b);

“Shared Residential Costs” has the meaning given to such term in Section 8.7(b);

“Shareholder’s Agreements” means the Master GP Shareholder’s Agreement and the shareholder’s agreements respecting each of the general partners of each of the Component Partnerships;

“Site” means that area outlined in red on Schedule A annexed hereto, being the area included within Lansdowne Park, but for greater certainty does not include the Urban Park or the Lansdowne Community Park;

“Site Plan” has the meaning given to such term in Section 3.2(a) and shall include any Site Plan Amendment upon its enactment;

“Site Plan Agreement” means an agreement entered into pursuant to section 41 of the *Planning Act* (Ontario) amongst the City, the Retail Partnership, the Stadium Partnership and OSEG (as guarantor), setting out requirements and obligations for the redevelopment of the Project Lands, including ongoing obligations such as the implementation of the Transportation Plan;

“Site Plan Amendment” has the meaning given to such term in Section 3.2(f);

“Site Plan Conditions” has the meaning given to such term in Section 3.2(b);

“Soccer Team” has the meaning given to such term in Section 5.10(a);

“Soft Cost Allocation” has the meaning given to such term in Section 10.4(a);

“Soft Costs” means costs and expenditures required to construct and create an improvement, other than Hard Costs, and shall include costs and expenditures generally considered by the construction industry as “soft costs”, including:

- (a) costs incurred in connection with planning matters and municipal fees;
- (b) the cost of obtaining Permits and all personal property necessary for the operation of construction;
- (c) the cost of all fees and disbursements payable to third parties, including project management fees, planning, architectural, engineering, consulting, legal and audit fees;
- (d) the cost of insurance;
- (e) the cost of printing and other similar out-of-pocket costs and expenses;
- (f) the cost of property taxes and assessments;
- (g) the cost of advertising, promotion and public relations;
- (h) the cost of leasing space necessary for the construction of an improvement;
- (i) the cost of project signage;
- (j) the cost of interest on financing, financing fees and brokerage fees in relation to such improvement; and
- (k) the cost of construction bonding;

“Special Purpose Vehicle” means:

- (a) except as provided in subparagraph (b), a corporation with no assets or liabilities other than those related directly to the Total Project (which, for greater certainty, includes being a partner in OSEG) or the Soccer Team, and carrying on no activities of any nature or kind, except as contemplated in this Agreement or the Material Agreements; and
- (b) notwithstanding subparagraph (a), a corporation may have S.P.V. Assets;

“Sports Partnerships” means the CFL Partnership and the Ottawa 67’s Partnership;

“S.P.V. Assets” means:

- (a) bonds and other similar passive investments that are permitted investments in which a municipality may invest pursuant to the *Municipal Act, 2001* (Ontario);
- (b) assets providing or generating income on a non-recourse basis against the Special Purpose Vehicle; and
- (c) cash or its equivalent, or letters of credit;

“Stadium” means the stadium currently known as Frank Clair Stadium in the City of Ottawa together with the arena currently known as the Ottawa Civic Centre;

“Stadium Completion Funds” means:

- (a) if the calculation in subparagraph (a)(i) is a positive number, the lesser of:
 - (i) the difference between:

- (A) the aggregate of the Hard Costs and Soft Costs of the Construction of the Stadium Improvements (which for clarity shall include the Sequential Permit Additional Cost); minus
- (B) the aggregate of the Construction Contract Price Allocation and Soft Cost Allocation for the Stadium Improvements and the Stadium Contingency,

in each case determined using the same inclusions and exclusions of costs as are used in this Agreement for the determination of Maximum City Cost, *mutatis mutandis*, including the inclusions and exclusions described in Sections 5.2(b) and 5.2(c); or

- (ii) Excess Stadium/Parking Costs; or
- (b) if the calculation in subparagraph (b)(i) is a positive number, the lesser of:
- (i) the difference between:
 - (A) the aggregate of the Construction Contract Price Allocation and Soft Cost Allocation for the Stadium Improvements and the Stadium Contingency; minus
 - (B) the aggregate of the Hard Costs and Soft Costs of the Construction of the Stadium Improvements (which for clarity shall include the Sequential Permit Additional Cost);
 - (ii) the Excess/Stadium/Parking Costs; or
 - (iii) the Stadium Contingency;

“Stadium Construction Licence” has the meaning given to such term in Section 5.6(a);

“Stadium Contingency” means a contingency in the amount of \$6,400,000 respecting the Stadium Improvements;

“Stadium Design Consultants” has the meaning given to such term in Section 5.3(b);

“Stadium Improvements” means the Improvements to be made to the Stadium;

“Stadium Lands” has the meaning given to such term in the Stadium Lease;

“Stadium Lease” means the lease for the Stadium between the City, as landlord, and the Stadium Partnership, as tenant, substantially in the form of the lease annexed hereto as Schedule F;

“Stadium Partnership” has the meaning given to such term in Section 11.1(b)(i);

“Stadium Plans and Specifications” means the Plans and Specifications for the Stadium Improvements;

“Stadium Retail Parcels” means the Stadium Retail Pods Parcel and the Stadium Retail Salons Parcel;

“Stadium Retail Pods Parcel” means the retail component within the Stadium, generally as marked in red in Schedule B and more particularly described in the Stadium Lease;

“Stadium Retail Salons Parcel” means the retail component within the Stadium, generally as marked in blue in Schedule C and more particularly described in the Stadium Lease;

“Stadium Security” means the renovation and redevelopment security that the Stadium Partnership provides to the City in accordance with the Stadium Lease respecting any Redevelopment or Renovation (as such terms are defined in the Stadium Lease), in each case being fifty percent (50%) labour and materials bonds and a fifty percent (50%) performance bond, each providing for the City as a joint obligee;

“Stage II Reference Plans” has the meaning given to such term in Section 2.13(b);

“Substantial Completion” means completed to the same extent as a “contract” being “substantially performed” in accordance with the *Construction Lien Act* (Ontario), and **“Substantially Complete”** and **“Substantially Completed”** have a corresponding meaning;

“Tax” or **“Taxes”** includes all present and future taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Relevant Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, GST/HST or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges), together with all fines, interest and penalties on or in respect of, in lieu of or for non-collection of those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

“TDM Coordinator” means the individual retained by the Stadium Partnership to serve as a site transportation demand management co-ordinator for all Components in accordance with the Appendix A of the Transportation Demand Management Plan prepared by McCormick Rankin Corporation dated October 2011, whose responsibilities will include:

- (a) promoting the use of sustainable modes of transportation and reducing the use of automobiles for access to the Site for both day-to-day operations and for special events;
- (b) providing information and be a point of contact for residents, employees, visitors and others on transportation and travel options in respect of the Site; and
- (c) advancing the various operational and program focused initiatives as set out in the Transportation Plan;

“**TDM Office**” means a centrally located and publically accessible office established by the Stadium Partnership at the Site to support the role of the TDM Coordinator, where materials and various information will be prepared and disseminated in support of advancing the various operational and program focused initiatives as set out in the Transpiration Plan;

“**Team**” means each of the CFL Team and the Ottawa 67’s;

“**Terms and Conditions**” has the meaning given to such term in Section 5.9(a)(ii);

“**Third Party Agreements**” means the following:

- (a) an agreement to be entered into by the City with NCC and Parks Canada respecting the Urban Park design;
- (b) an agreement to be entered into by the City with Parks Canada relating to storm water management; and
- (c) the agreements to be entered into by OSEG or the Stadium Partnership to secure off-site parking, the memoranda of understanding for which were entered into by the City and are enumerated in Schedule I annexed hereto;

“**Third Party Rentals**” has the meaning given to such term in Section 25.6(e)(i);

“**TMA**” means the transportation management association that is established and led by the TDM Coordinator and of which the Stadium Partnership, Retail Partnership, the Office Developer and all subtenants at each of the Retail Component and the Office Component are members;

“**Total Agreed Upon Cost**” has the meaning given to such term in Section 10.4(a);

“**Total Completion**” has the same meaning as the “total completion” of a “contract”, as determined in accordance with the provisions of the *Construction Lien Act* (Ontario);

“Total Excess Costs” means the aggregate of:

- (a) the Excess Stadium/Parking Costs; and
- (b) the difference between:
 - (i) the amount by which the Hard Costs and Soft Costs of the design and construction of the Office Component’s Portion of the Parking Structure, the Residential Component’s Portion of the Parking Structure and the Retail Component’s Portion of the Parking Structure exceed the amount allocated therefor as provided in the Total Agreed Upon Cost except to the extent that increases in Hard Costs and Soft Costs used to determine Total Agreed Upon Costs are attributable to matters relating to the Urban Park; minus
 - (ii) the lesser of:
 - (A) difference, if a positive number, between:
 - (1) Maximum City Cost; minus
 - (2) the aggregate of (i) the Hard Costs and Soft Costs of the Construction of the Stadium Improvements (which for clarity shall include the Sequential Permit Additional Cost), and (ii) the City’s Share of Cost of Parking; or
 - (B) the aggregate of the Stadium Contingency and the Parking Contingency;

“Total Project” means the Project, the CFL Team and the Ottawa 67’s;

“Transfer Agreement” means the agreement pursuant to which OSEG shall transfer all of its right, title and interest in the Purchased Assets to the Master Partnership as contemplated in section 4.1 of the Limited Partnership Agreement for the Master Partnership and on terms and conditions mutually agreed between OSEG and the City;

“Transportation Impact Matters” means transportation demand management measures and operational plans for transit and shuttles that are geared to reducing single occupant vehicle uses and increasing use of sustainable transportation modes for both day-to-day activity at the Site and for events at the Stadium under the direction and supervision of the TDM Coordinator, as more particularly described in the Transportation Plan and set out as ongoing obligations in the Site Plan Agreement;

“Transportation Management Agreement” means an agreement or sublease entered into between the Stadium Partnership, the Retail Partnership or the Office Developer, as the case may be, and a subtenant implementing matters provided for in the Transportation Plan relevant to the applicable Component and set out as ongoing obligations in the Site Plan Agreement, which agreement or sublease shall have the City as a party for the purpose of the City’s ability to enforce the provisions thereof;

“Transportation Plan” means the comprehensive transportation study and demand management plan approved by Council on June 28, 2010, and the three (3) follow-up plans required by Council through its Stage 1 approval of the Site Plan entitled, respectively, “Transit Service and Shuttle Services and Off-Site Parking Plan”, “Transportation and Parking Operations Plan” and “Transportation Demand Management Plan” describing how the Project will be serviced by vehicular and non-vehicular modes of transportation, details of the operational measures to be implemented and details of the transportation demand management measures to be advanced and implemented and that are set out in the Site Plan Agreement as ongoing obligations;

“Urban Park” means the public open space to be created in the area as approximately outlined in blue on Schedule A;

“Urban Park Improvements” has the meaning given to such term in Section 4.2(b);

“Urban Park Plans” means the plans and specifications for the Urban Park Improvements;

“Urban Park Property Management Agreement” means the property management agreement for the Urban Park, including the Aberdeen Pavilion and the Horticulture Building, between the City, as owner, and OSEG, as property manager, to be entered into at the election of the City, in its Discretion, in form mutually agreed upon between the Parties, each acting reasonably;

“Waterfall” has the meaning given to such term in Section 13.2; and

“Waterfall Expiry” means December 31, 2044.

1.2 Construction and Interpretation

In this Agreement, including the recitals, Schedules and appendices to this Agreement, except where expressly stated to the contrary or the context otherwise requires:

- (a) the headings to Sections and Schedules are for convenience only and will not affect the interpretation of this Agreement;
- (b) each reference in this Agreement to **“Section”**, **“Article”** or **“Schedule”** is to a Section or Article of, or a Schedule to, this Agreement;
- (c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria having the force of law made under that statute and any successor statute, each as amended or re-enacted from time to time;
- (d) each reference to a ministry, office, agency or similar body of any Relevant Authority is deemed to be a reference to any successor or replacement of such ministry, office, agency or similar body;

- (e) words importing the singular include the plural and vice versa and words importing gender includes all genders;
- (f) in the event that any date or time period referred to in this Agreement shall fall or expire upon a day which is not a Business Day, such date or time period shall be deemed to fall or expire on the first Business Day thereafter;
- (g) references to time of day or date means the local time or date in Ottawa, Ontario;
- (h) all references to amounts of money mean lawful currency of Canada;
- (i) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP;
- (j) the word “written” includes printed, typewritten, faxed, emailed or otherwise capable of being visibly reproduced at the point of reception and “in writing” has a corresponding meaning;
- (k) the words “include” and “including” are to be construed as meaning “including, without limitation”;
- (l) the division of this Agreement into separate Articles, Sections and subparagraphs and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (m) all references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.

1.3 Severability

Subject to Sections 1.3(a) and 1.3(b) below, each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction, except that if:

- (a) on the reasonable construction of this Agreement as a whole, the applicability of another provision presumes the legality, validity and enforceability of the particular provision that is or becomes illegal, invalid or unenforceable, the other provision will be deemed also to be invalid and unenforceable; and
- (b) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is illegal, unenforceable or invalid, the basic intentions of the Parties in this Agreement are substantially frustrated, the Parties will use reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

1.4 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario, which will be deemed to be the proper law of this Agreement.

1.5 Review, Approval, Inspection or Audit by the City

No review, approval, inspection, examination, audit, determination or acceptance provided, performed or made by or on behalf of the City under, pursuant to or in respect of this Agreement shall constitute an approval by the City as a municipality under the *Planning Act* (Ontario) or the *Municipal Act, 2001* (Ontario), except when the City is expressly performing its functions as a

municipality under the *Planning Act* (Ontario) or the *Municipal Act, 2001* (Ontario), and any review, approval, inspection, examination, audit, determination or acceptance of any Plans and Specifications provided, performed or made by or on behalf of the City under, pursuant to or in respect of this Agreement will be for general compliance only and the City shall not be liable or responsible for the contents of any Plans and Specifications.

1.6 Time of Essence

Time shall be of the essence of this Agreement.

1.7 Entire Agreement

This Agreement, the Material Agreements and any other agreements herein contemplated to be entered into among, by or with the Parties hereto constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties hereto and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof, other than in this Agreement, the Material Agreements and any other agreements herein contemplated to be entered into among, by or with the Parties hereto.

1.8 Paramountcy

- (a) In the event of a conflict, discrepancy or inconsistency between this Agreement (including the Schedules hereto, other than any Material Agreement attached as a Schedule) and a Material Agreement, the Material Agreement shall prevail.
- (b) In the event of a conflict, discrepancy or inconsistency between this Agreement (which for the purposes of this Section 1.8(b) only, means this Agreement excluding the Schedules hereto, other than any Material Agreement attached as a Schedule) and the Schedules (other than any Material Agreements attached as a Schedule), this Agreement and the intent of the Parties contained in this Agreement shall prevail.

- (c) In the event of any conflict, discrepancy or inconsistency between the provisions of any Schedules hereto, other than any Material Agreement attached as a Schedule, the provisions contained in such Schedule which are more detailed, combined with the other provisions of this Agreement (excluding any other Schedules) shall govern.
- (d) In the event of any conflict, discrepancy or inconsistency between the provisions of any Material Agreements, the provisions contained in the Material Agreement which are more detailed, combined with the provisions of this Agreement (excluding any other Schedules) shall govern.
- (e) Notwithstanding Section 1.8(a), in the event of any conflict between the provisions of Article XIX and any Material Agreement, the provisions of Article XIX shall govern.

1.9 Schedules

The following schedules are attached to this Agreement and form an integral part hereof:

SCHEDULE	SCHED. #	SECTION REF.
Site and Urban Park	A	1.1
Stadium Retail Pods Parcel (Cross Section Diagrams)	B	1.1
Stadium Retail Salons Parcel (Cross Section Diagrams)	C	1.1
New OHT Easement Sketch	D	1.1
Retail Lease	E	1.1
Stadium Lease	F	1.1
Cost Sharing Principles	G	2.10(d)
Completion Guarantee	H	10.3(b)
Off-Site Parking Memoranda of Understanding	I	1.1
Methodology for Calculating Retail Value	J	12.4(a)(ii)
Dispute Resolution Procedure	K	1.1; 24.1

SCHEDULE	SCHED. #	SECTION REF.
Horticulture Building Leasing Guidelines	L	4.4(c)
Termination Compensation Principles	M	21.2; 22.1(b)(i)

ARTICLE II

OVERVIEW OF PROJECT

2.1 The Project

The Project shall involve the redevelopment of:

- (a) the whole of the Site; and
- (b) the Urban Park.

2.2 Master Site Plan

The details respecting each of the Components, as contained in this Article II and in Article V, Article VI, Article VII, Article VIII and Article IX respecting the Components, shall be subject to such additions and amendments respecting the details thereof as shall be finally determined in the Master Site Plan.

2.3 Urban Park

- (a) The creation of a significant public open space referred to as the Urban Park is a primary objective of the Project.
- (b) Details respecting the Urban Park are set out in Article IV.

2.4 The Stadium

- (a) Frank Clair Stadium and the Civic Centre will be entirely renovated and/or refurbished (as contemplated in Article V below).

- (b) Renovations to Frank Clair Stadium will permit it to act as “home-field” for the CFL Team, as well as to host a wide array of sporting and other events and attractions.
- (c) Refurbishment of the Civic Centre will permit it to act as the “home-ice” location of the Ottawa 67’s, as well as providing a venue appropriate for sporting and other events and attractions.
- (d) Detailed provisions respecting the Stadium are set out in Article V.

2.5 Sports Teams

- (a) The CFL Partnership shall bring the CFL Team to Frank Clair Stadium following the redevelopment of Frank Clair Stadium as provided in Article V.
- (b) The Ottawa 67’s Partnership shall acquire (through one or more transactions) the Ottawa 67’s from its current owner and maintain the Civic Centre as the “home-ice” location of the Ottawa 67’s.

2.6 Retail Component

- (a) The Site will contain a component for retail uses, which component will include the Retail Component Building (as defined in the Retail Lease), the Retail Component’s Portion of the Parking Structure, the Stadium Retail Parcels and the Office Retail Parcel (collectively, the “**Retail Component**”).
- (b) The details of the Retail Component are set out in Article VI.

2.7 Office Component

- (a) The Site will contain a component for office space (the “**Office Component**”).
- (b) Details respecting the Office Component are set out in Article VII.

2.8 Residential Component

- (a) The Site will contain a component for residential use (the “**Residential Component**”). The Residential Component is anticipated to be composed of townhouses and residential units on Holmwood Avenue and Bank Street.
- (b) Details respecting the Residential Component are set out in Article VIII.

2.9 Staging of Construction and Construction Procedures

- (a) Construction of all Components and construction of the Urban Park Improvements will not occur simultaneously.
- (b) The Retail Component and the Stadium shall be subject to requirements regarding their initial construction, renovation and/or redevelopment as set out in (i) the Retail Lease, and (ii) Project Management Agreement, the Stadium Construction Licence and the Stadium Lease, respectively.
- (c) OSEG shall cause Commencement of Construction to occur within sixty (60) days from the Closing Date.
- (d) Upon Commencement of Construction, OSEG shall use commercially reasonable efforts to cause the contractors to diligently and continually construct and to cause the Substantial Completion of the Stadium, the Parking Structure, the Retail Component and the Infrastructure Upgrades.
- (e) As a result of the proximity and inter relationship of the Components of the Site and the Urban Park, both physically and functionally, temporary easements and/or licences and potential reasonable rules and regulations may be required to be resolved between the City, OSEG, the Retail Partnership, the Stadium Partnership, the Residential Developer and the Office Developer, each acting reasonably, to permit certain activities related to initial Construction of

Improvements in each of the Components, the construction of the Urban Park Improvements, to occur on or about various areas of the Project Lands. The City, OSEG, the Retail Partnership, the Stadium Partnership, the Residential Developer, the Office Developer and Trinity Development Group Inc. (as the Retail Partnership's development and construction manager) shall enter into, and each of them shall require all general contractors retained by it to be bound by, one or more construction procedures agreements (the number and required parties to each such agreement to be agreed between the City and OSEG, each acting reasonably) respecting the matters referred to in this subparagraph (e) on or before Closing (individually, a "**Construction Procedures Agreement**") and granting the temporary easements or licences contemplated therein on Closing.

- (f) In addition, the Construction Procedures Agreement shall provide for appropriate and reasonable compensation payable by a party thereto to the other party or parties thereto respecting direct and reasonable additional amounts payable by the other party or parties to third parties resulting from actions or omissions by the compensating party which cause a delay in the commencement or completion of such other party's or parties' construction project (the "**Delay Costs**"), except as otherwise provided in Section 3.1(b) of the Construction Procedures Agreement.

2.10 Inter-relationship of Components and Related Matters

- (a) The Parties acknowledge and agree that as a result of the inter relationship of the various Components and the Urban Park, both physically and functionally, various easements and licences, potential reasonable rules and regulations, and cost sharing will be required to be resolved amongst the various Components and the Urban Park, as mutually agreed between the City and OSEG.
- (b) Subject to subparagraph (a), the Parties, each of the tenants under each of the Leases and the Residential Developer shall cooperate and act reasonably to effect the necessary integration of, and the sharing of costs among, the various Components and the Urban Park, subject to the Approval of the City and OSEG.

Without limiting the generality of the foregoing, each of the Leases shall contain a covenant similar to this Section 2.10.

- (c) In order to effect the integration of various Components and the Urban Park, one or more Reciprocal Agreements shall be entered into amongst relevant parties prior to Closing, in each case in accordance with the principles relating thereto to be agreed between the City and OSEG and on such other terms as shall be mutually agreed between the parties to the Reciprocal Agreement, each acting reasonably, or failing agreement, as determined in accordance with the Dispute Resolution Procedure or a similar dispute resolution procedure to be contained in agreements between the City and the other required parties. The number of Reciprocal Agreements and the required parties to each Reciprocal Agreement shall be as agreed between the City and OSEG, each acting reasonably.
- (d) The principles to be used for the sharing of costs among the various Components and the Urban Park are set out in Schedule G and shall be incorporated into one or more Reciprocal Agreements, as the City and OSEG may agree, acting reasonably, but including the agreements described in Sections 5.13(c), 7.6 and 8.7.
- (e) The Parties further acknowledge and agree that as a result of the inter-relationship of the various Components and the Urban Park, both physically and functionally, co-operation respecting programming being carried on at the Stadium, the Retail Component and the Urban Park will be required. The Stadium Partnership, the Retail Partnership and the City shall cooperate and act reasonably respecting the programming being carried on at the Stadium, the Retail Component and the Urban Park, in accordance with programming principles to be Approved by the City and OSEG.

2.11 Transportation Matters

- (a) OSEG shall retain a TDM Coordinator for the Site to promote the use of sustainable modes of transportation and reducing the use of automobiles for access to the Site for both day-to-day operations and for special events pursuant to and in accordance with the Transportation Plan and obligations as set out in the Site Plan Agreement.
- (b) OSEG shall set up a TDM Office in support of advancing the various transportation measures and programs pursuant to and in accordance with the Transportation Plan and obligations set out in the Site Plan Agreement.

2.12 Environmental and Archaeological Liabilities

- (a) The City shall be responsible for all remediation costs relating to environmental conditions on the Site (including within improvements on the Site) in existence prior to Commencement of Construction, whether discovered before or after the Commencement of Construction, together with any Delay Costs resulting therefrom. Except as provided in this Section or as otherwise provided in this Agreement or in a Material Agreement, the City shall have no responsibility or liability for environmental matters or Hazardous Substances on the Site.
- (b) In addition, during the Initial Term of the Stadium Lease (as defined therein), the City shall be responsible for:
 - (i) monitoring costs relating to the containment of Hazardous Substances on the Stadium Lands, including within improvements on the Stadium Lands;
 - (ii) maintenance costs within the Stadium respecting environmental matters due to the containment rather than the removal, in accordance with the Stadium Plans and Specifications, of Hazardous Substances that are within

the Stadium prior to the Commencement of Construction of the Stadium Improvements; and

- (iii) without limiting the generality of subparagraph (a), any future remediation required at Law as a result of the City's decision to contain, rather than remove, Hazardous Substances on the Site (including within improvements on the Site).
- (c) The City shall be responsible for all costs relating to archaeological conditions on the Site in existence prior to Commencement of Construction, whether discovered before or after the Commencement of Construction, together with any Delay Costs resulting therefrom. Except as provided in this Section or as otherwise provided in this Agreement or in a Material Agreement, the City shall have no responsibility or liability for archaeological matters on the Site.

2.13 Description and Boundary Adjustments

- (a) The City shall arrange at its expense for the preparation and registration of all reference plans required to obtain registrable legal descriptions of lands included in the demise of each of the Leases (and the physical structures of the boundaries of the Stadium Retail Parcels) for Closing.
- (b) The Parties acknowledge and agree that the boundaries for the Components as contemplated in Site Plan and those provided in the Leases and the agreements of purchase and sale with the Residential Developer may require adjustment upon final resolution of the boundaries and subsequently on an "as built" basis (the "**Adjustments**"). The Parties agree that provision shall be made in each of the Leases and the agreements of purchase and sale with the Residential Developer for Adjustments and the Parties shall cooperate and act reasonably in agreeing upon the Adjustments. The preparation and registration of all reference plans as required to reflect the Adjustments ("**Stage II Reference Plans**") shall be subject to the review and Approval of the City and OSEG, each acting reasonably.

- (c) The costs of the Stage II Reference Plans shall be reasonably allocated amongst the Components and the Urban Park benefiting from the Stage II Reference Plans, as mutually agreed upon between the City and OSEG, each acting reasonably. The City shall be responsible for such costs as they relate to those portions of the Parking Structure included within the Stadium Lease, the Residential Component and the Office Component (subject to any reimbursement that the City may agree upon with the Residential Developer and the Office Developer).

2.14 Naming

- (a) OSEG shall not name, or permit or cause to name, any of the Components, the Urban Park and/or any part of the Project Lands in any manner other than as expressly provided for in this Agreement, the Stadium Lease or the Retail Lease.
- (b) Any name used in conjunction with any of the Components and/or any part of the Project Lands (other than the Urban Park) is not required to contain the words “Lansdowne” or “Lansdowne Park”, provided that the gateway signage on the Site shall indicate the name “Lansdowne Park” as a reference to the Urban Park.
- (c) Subject to Section 5.6 of this Agreement, each of the Components and/or any part of the Project Lands (other than the Urban Park) shall be permitted to have its own name or names. In addition, two or more of such Components shall be permitted to be identified by a joint name.
- (d) The name “Lansdowne Park” will be used for the area comprising the Urban Park, including the Aberdeen Square, the Horticulture Building, and the Great Porch.
- (e) Notwithstanding Section 2.14(a), OSEG shall have the right to name the Retail Component and the Stadium Component (as that term is defined in the Stadium Lease) in accordance with this Agreement and, respectively, the Retail Lease and the Stadium Lease. The naming of private roads within the Retail Component shall be in compliance with the City’s relevant by-law.

2.15 Heritage Easement

- (a) OSEG acknowledges the registration of a Heritage Easement Agreement under the *Ontario Heritage Act* (Ontario) on April 22, 1996 as Instrument Number N739843 (the "**OHT Easement**") against part of the Project Lands. As a condition of the Heritage Approvals, the Ontario Heritage Trust (formerly the Ontario Heritage Foundation) has requested that a new and enhanced heritage conservation easement agreement (the "**New OHT Easement**") be executed, which shall supersede and replace the OHT Easement and the OHT Easement shall be released upon registration of the New OHT Easement.
- (b) OSEG further acknowledges receipt of a copy of the New OHT Easement and the terms respecting regulated activities within the "Setting Lands", the "Views" and the "Framing Lands", which form part of the New OHT Easement Lands.
- (c) OSEG hereby agrees that it shall cause each of the Retail Partnership and the Stadium Partnership, at its own expense:
 - (i) to obtain and register any postponement agreements or other agreements that the Ontario Heritage Trust or the City may require to ensure that the New OHT Easement is a first encumbrance on title to the New OHT Easement Lands in priority to the Retail Lease or the Stadium Lease, as the case may be, and to all mortgages, charges, subleases and other encumbrances or agreements related to, derived from or affecting the Retail Lease or the Stadium Lease, as the case may be; and
 - (ii) to comply with the requirements of the New OHT Easement within the Setting Lands, the Views and Framing Lands, and in this regard, it shall not, nor shall it permit its subtenants to, undertake any of the regulated activities within the Setting Lands, the Views and Framing Lands without the prior written approval of the City in its Discretion and the Ontario Heritage Trust.

ARTICLE III
DESIGN GUIDING PRINCIPLES AND MASTER SITE PLAN

3.1 Design Guiding Principles

The Master Site Plan, the Design Solutions, the Plans and Specifications and the Urban Park Plans shall be in conformity with the Design Guiding Principles.

3.2 Master Site Plan

- (a) A master site plan integrating the Site with the Urban Park (collectively constituting the Project Lands) was implemented by virtue of a two-stage site plan approval process as contemplated in the LPP Implementation Report. The stage-one approval, which considered the overall site plan (the “**Site Plan**”), was approved by Council on November 22, 2010. The stage-two approval, being the final Site Plan approval, was delegated to the City’s General Manager, Planning and Growth Management, and was approved by the Lansdowne Design Review Panel.
- (b) The Site Plan reflects key plan refinements to achieve integration of the Site with the Urban Park, contemplates phasing of the various elements of the Project Lands, and includes design details related to landscaping elements and architecture and engineering details required to be satisfied and is subject to conditions imposed pursuant to section 41 of the *Planning Act* (Ontario) (the “**Site Plan Conditions**”). OSEG acknowledges and agrees that while some Site Plan Conditions were satisfied prior to the stage-two approval being obtained, other Site Plan Conditions are part of the stage-two approval and remain ongoing obligations of the Retail Partnership, the Stadium Partnership and OSEG, as guarantor, as set out in the stage-two approval and the Site Plan Agreement as provided for subparagraph (e) below.

- (c) Following the stage-one approval, separate subsequent plans and other matters were prepared and approved by the City with respect to the various Components and the Urban Park in order to satisfy the Site Plan Conditions established by the stage-one approval relating to such Component and the Urban Park, as well as other usual technical and other requirements respecting site plan approval (for each Component and the Urban Park, its “**Component Site Plan Conditions**”). OSEG acknowledges and agrees that the approval of any Component Site Plan Conditions relating to a Component may contain supplementary conditions requiring subsequent satisfaction.
- (d) For the purposes of this Agreement, the expression “**Master Site Plan**” means the Site Plan, together with the Site Plan Conditions, as shall have received approval of the City from time to time.
- (e) OSEG acknowledges and agrees that the Project shall be planned through the Master Site Plan process provided for in this Section 3.2 and as provided in the LPP Implementation Report. Without limiting the generality of the foregoing, OSEG, as guarantor, shall enter into the Site Plan Agreement pursuant to section 41 of the *Planning Act* (Ontario) with the Retail Partnership, the Stadium Partnership and the City. The Retail Partnership, the Stadium Partnership (as it relates to obligations intended to be fulfilled following Substantial Completion of the Stadium Improvements), the Residential Developer and the Office Developer shall be subject to such Site Plan Agreement with respect to the Site Plan and the Component Site Plan Conditions relevant to its Component. Neither OSEG nor any Component Partnership shall be required to post any security in favour of the City for any of its obligations under the Site Plan Agreement with respect to the Site Plan, the Site Plan Conditions and the Component Site Plan Conditions.
- (f) The Master Site Plan shall be binding on the Retail Partnership, the Stadium Partnership (as it relates to obligations intended to be fulfilled following Substantial Completion of the Stadium Improvements), the Residential Developer and the Office Developer, and their respective successors and permitted assigns.

The Master Site Plan may only be amended subject to the approval of the City in its Discretion in accordance with the City's approval process (a "**Site Plan Amendment**").

3.3 Implementation Stages

The requirements to establish the Project have been and shall be proceeded with in accordance with the following implementation stages, being the stages of implementation of the requirements for the Project as contemplated in the Report to Council dated November 12, 2009:

- (a) Stage One – the period commencing on the Council Conditional Approval Date to the subsequent Council approval of the Project on June 28, 2010;
- (b) Stage Two – June 28, 2010 following the Council approval of the Project to the Closing Date; and
- (c) Stage Three – the period from the Closing Date to the Total Completion of construction of the Project.

ARTICLE IV

URBAN PARK

4.1 Ownership

The Parties acknowledge that the Urban Park lands are owned by the City.

4.2 Design Competition

- (a) The City has proceeded with a design competition (the "**Design Competition**") to produce design solutions for the Urban Park, which design solutions shall be:
 - (i) in conformity with and incorporate the Design Guiding Principles; and

(ii) as approved by Lansdowne Design Review Panel,

(the “**Design Solutions**”).

- (b) Improvements shall be made to the Urban Park in accordance with the Design Solutions to the extent determined by the City, or as otherwise be determined by the City, in its Discretion (the “**Urban Park Improvements**”). The Urban Park Plans for the Urban Park Improvements shall be in conformity with and implement the concepts contained in the Design Guiding Principles.

4.3 Aberdeen Pavilion

- (a) The ultimate use and potential improvements to the Aberdeen Pavilion shall be considered within the Design Competition, the Design Solutions and the Urban Park Plans.
- (b) The improvements to the Aberdeen Pavilion and its uses and sight easements shall be subject to applicable Heritage Approvals.
- (c) The improvements to the Aberdeen Pavilion shall:
- (i) subject to subparagraph (b) above, be determined by the City in its Discretion; and
 - (ii) be at the expense of the City.

4.4 Horticulture Building

- (a) The extent to which the Horticulture Building shall be partially preserved and relocated, and the use and location of the façade as part of the potential continued usage of the Horticulture Building:

- (i) shall be determined by the City in its Discretion, subject to Heritage Approvals; and
- (ii) shall be included in the Design Competition and the Design Solutions as may be approved and/or amended by Council, and thereupon included in the Master Site Plan and the Urban Park Plans,

(collectively, the “**Horticulture Building Plan**”).

- (b) The cost of moving the Horticulture Building or its façade, as applicable, Delay Costs, if any, resulting from the relocation of, or requirement to relocate, the Horticulture Building and the cost of any improvements to the Horticulture Building shall be at the City’s expense.
- (c) In the leasing of the space within the Horticulture Building, the City shall comply with the leasing guidelines set out in Schedule L.

4.5 Urban Park Improvements

- (a) (i) Subject to subparagraph (ii), the cost of improving the Urban Park (including the cost of Infrastructure Upgrades to the Urban Park) shall be borne by the City. For greater certainty, the cost of improving the Urban Park for the purpose of this subparagraph (i) shall include the amount of any increase in the cost of Infrastructure Upgrades for, and in the cost of Construction of, each of the Components (including the Parking Structure forming part of each of the Components) that directly results from the Design Solutions for the Urban Park. For the purpose of determining the amount of such cost increases, the Parties agree that with respect to the work described in the CSW Landscape Cost Analysis and the DESL Cost Sharing Rationale, the Base Cost of such work (and the allocation of such Base Cost among the Components and the Urban Park) is as set out in the CSW Landscape Cost Analysis and the DESL Cost Sharing Rationale.

- (ii) Notwithstanding subparagraph (i), OSEG shall provide sufficient funds to the Master Partnership such that it shall provide such funds to the Retail Partnership in order that the Retail Partnership shall contribute an amount equal to one-half of the Hard Costs of improving the Urban Park as such costs are incurred, up to a maximum total contribution of two million five hundred thousand dollars (\$2,500,000), which amount shall be in satisfaction of any cash in lieu of a park dedication fee in respect of the Site and/or the Urban Park.
- (b) Pursuant to the Project Management Agreement, OSEG shall act as project manager for the construction of certain portions of the Urban Park Improvements as agreed by the City and OSEG. The Project Management Agreement shall provide compensation to OSEG in an amount of three percent (3%) of the Soft Costs (excluding design costs other than design costs incurred during construction) and Hard Costs of construction of such portions of the Urban Park Improvements managed by OSEG as agreed on between the City and OSEG, which Soft Costs and Hard Costs are estimated to be thirteen million two hundred thousand dollars (\$13,200,000).

4.6 Operation of Urban Park

Upon the Substantial Completion of the Urban Park:

- (a) at the City's option, exercisable at any time during the six (6) month period prior to the Substantial Completion of the Urban Park, the Urban Park shall be maintained and managed by OSEG under the Urban Park Property Management Agreement. If the City exercises that option, OSEG shall manage day-to-day matters respecting the Urban Park, but the principles pursuant to which programming shall be conducted and overall control of the Urban Park will be provided by the City, in consultation with OSEG and NCC;

- (b) if OSEG manages the Urban Park, OSEG shall adhere to the Bilingualism Policy, particularly with respect to recognizing the equality of both official language groups, and this spirit shall govern the management of the Urban Park; and
- (c) the City shall maintain the Urban Park to a reasonable standard.

4.7 Infrastructure Upgrades

- (a) OSEG shall be responsible for the construction of the Infrastructure Upgrades for which it shall be paid a fee, as part of the Project Management Agreement, equal to three percent (3%) of the Hard Costs and Soft Costs of the Infrastructure Upgrades. The funding obligations respecting such Infrastructure Upgrades and the details regarding same shall be contained in each Lease as it relates to a particular Component other than the Stadium, and with respect to the Stadium, shall be contained in the Stadium Construction Licence. The City shall pay the proportionate amount of the fee as provided for in this Section 4.7(a) applicable to the Residential Developer and subsequently collect the amount on account thereof from the Residential Developer. The City shall pay the proportionate amount of the fee as provided for in this Section 4.7(a) applicable to the Office Developer and subsequently collect the amount on account thereof from the Office Developer.
- (b) Notwithstanding subparagraph (a), the City shall be responsible for:
 - (i) alleviating downstream capacity issues in its water management system that result from the construction of the Infrastructure Upgrades pursuant to this Section 4.7, and the costs incurred in connection therewith;
 - (ii) the incremental cost of enhancements proposed by Phillips Farevaag Smallerberg and approved by Council to the stormwater management system over the Base Cost of four hundred forty-two thousand two

hundred fifty dollars (\$442,250) for the originally accepted design of David Shaeffer Engineering Ltd.; and

- (iii) any increase of the cost of Infrastructure Upgrades that directly results from and is required by the Design Solutions for the Urban Park as provided for in Section 4.5(a)(i).

4.8 Additional Urban Park Matters

- (a) The Aberdeen Pavilion and the Horticulture Building shall be included within the Urban Park.
- (b) OSEG shall, at the option of the City, manage the Aberdeen Pavilion and/or the Horticulture Building in accordance with the Urban Park Property Management Agreement.
- (c) The Urban Park Property Management Agreement shall provide that revenues received and expenses incurred in connection with the Aberdeen Pavilion and the Horticulture Building shall be for the benefit and expense, respectively, of the City.

ARTICLE V

THE STADIUM AND THE SPORTS TEAMS

5.1 Basic Nature of Improvements

The basic nature of the intended Improvements to the Stadium is contained in the Design Guiding Principles.

5.2 Cost of Stadium and City's Share of Costs of Parking

- (a) Except as otherwise provided in this Article V and in Article X, the cost of the Stadium Improvements and of the City's Share of Costs of Parking shall be borne by the City up to the Maximum City Cost.
- (b) Notwithstanding anything to the contrary in this Agreement, the Maximum City Cost shall include:
 - (i) amounts paid by the City in respect of improving the Urban Park (including Infrastructure Upgrades to the Urban Park), the Aberdeen Pavilion and improving and/or moving the Horticulture Building, up to a maximum amount of two million five hundred thousand dollars (\$2,500,000) on account of Hard Costs;
 - (ii) Soft Costs incurred directly by the City with respect to the Stadium Improvements commencing on the Council Conditional Approval Date until the Total Completion of the Stadium up to a maximum amount of two million two hundred thousand dollars (\$2,200,000), but subject to subparagraph (vii), below;
 - (iii) the amount payable by the City on account of the Pre-Contract Work as agreed by OSEG and the City under Section 10.8;
 - (iv) if applicable, an allocation to the Stadium of the cost of the Infrastructure Upgrades, excluding any Infrastructure Upgrades in respect of the Urban Park, as shall be provided for in the Stadium Construction Licence;
 - (v) design costs allocated to the Stadium or the City's Portion of the Parking Structure pursuant to Section 5.3(d);

- (vi) that portion of the Hard Costs and Soft Costs of construction of a combined maintenance facility for the Stadium, Retail Component and Urban Park that is allocated to the Stadium as agreed by the City and OSEG, each acting reasonably; and
 - (vii) thirty thousand dollars (\$30,000) of the design fee of Phillips Farevaag Smallerberg payable by the City, for landscaping design work for the south and east berms of the Stadium.
- (c) Notwithstanding anything to the contrary in this Agreement except as may otherwise be provided in Section 5.2(b), the Maximum City Cost shall exclude:
 - (i) Internal Costs of the City and OSEG, with respect to which each Party shall be responsible for its own costs;
 - (ii) Hard Costs for the Stadium Improvements and the Parking Structure incurred directly by the City prior to Council approval of the Project on June 28, 2010, which Hard Costs shall be paid by the City in addition to the Maximum City Cost;
 - (iii) Soft Costs incurred directly by the City for the Stadium Improvements prior to the Council Conditional Approval Date, Soft Costs incurred directly by the City for the Stadium Improvements after the Council Conditional Approval Date to the extent they exceed the maximum amounts stipulated in Sections 5.2(b)(ii) and (vii) and Soft Costs incurred directly by the City for the Parking Structure, all of which shall be paid by the City in addition to the Maximum City Cost;
 - (iv) costs relating to the Stadium Design Consultants, or any other costs respecting the design and creation of the Stadium, allocated to another Component or the Urban Park under Section 5.3(d);

- (v) the Hard Cost and Soft Cost of City Change Orders, which costs shall be paid by the City in addition to the Maximum City Cost;
 - (vi) remediation costs relating to environmental conditions and archaeological conditions payable by the City under Section 2.12;
 - (vii) Hard Costs or Soft Costs with respect to the Urban Park or any Component other than the Stadium, except as specifically provided in Section 5.2(b); and
 - (viii) the incremental cost (if any) of implementing Design Solutions in respect of the Stadium Improvements or the Parking Structure as provided for in Section 4.5(a)(i).
- (d) For the purposes of Sections 5.2(b) and (c), Hard Costs and Soft Costs that are incurred pursuant to contracts or other obligations entered into by OSEG on behalf of or as the agent of the City shall not be deemed to be Hard Costs or Soft Costs incurred directly by the City, notwithstanding that the City is responsible for the payment of the costs pursuant to such contracts.
- (e) Soft Costs proposed to be included by the City or OSEG in accordance with this Section 5.2 shall be subject to inspection by the other Party and, at the request of such other Party, subject to a confirmatory audit in whole or in part by an accounting firm mutually agreed upon between the Parties, each acting reasonably.

5.3 Plans and Specifications

- (a) OSEG shall have carriage of the Stadium Plans and Specifications, subject to Section 5.4.

- (b) The architect and engineers for the Stadium Improvements and the preparation of the Stadium Plans and Specifications shall be such firms as mutually agreed upon between the City and OSEG, each acting reasonably (collectively, the “**Stadium Design Consultants**”).
- (c) The costs incurred from and after April 22, 2009 for the Stadium Design Consultants for the creation of the Stadium Plans and Specifications shall be borne by the City and included as part of the Maximum City Cost.
- (d) To the extent that costs incurred pursuant to contracts or other agreements entered into by OSEG on behalf or as agent of the City, are costs:
 - (i) respecting the design and creation of the Stadium (including costs of the Stadium Design Consultants) which are incurred in respect of or for the benefit of another Component or the Urban Park; or
 - (ii) respecting the design and creation of another Component or the Urban Park which are incurred in respect of or for the benefit of the Stadium,

such costs shall be apportioned amongst the Components and the Urban Park by the Parties in an equitable manner, each acting reasonably.

5.4 Development of Stadium Plans and Specifications

The Stadium Plans and Specifications shall be in accordance with the Design and Plan Requirements, shall require the approval of the City, in its sole Discretion, and shall be developed by OSEG in accordance with the Plan Approval Procedure.

5.5 Project Management Agreement

- (a) OSEG and the City shall enter into the Project Management Agreement. The Project Management Agreement shall be entered into on Closing.

- (b) The Project Management Agreement shall contain, amongst other matters, the following basic principles:
 - (i) OSEG shall have an obligation to take carriage of the development of the Stadium Plans and Specifications subject to the terms contemplated in Section 5.4;
 - (ii) OSEG shall have the obligation to cause the Construction of the Stadium Improvements to be completed in a good and workmanlike manner pursuant to the Comprehensive Construction Contract in accordance with the Final Plans and Specifications for the Stadium developed in accordance with the Plan Approval Procedure; and
 - (iii) OSEG shall provide day-to-day supervision of the Construction of the Stadium Improvements on behalf of the City, for which it shall receive compensation for its actual and direct costs and expenses (such as a project manager and/or engagement of a third party project management firm, provided that costs and expenses in respect thereof do not exceed three percent (3%) of the Soft Costs and Hard Costs of the Stadium Improvements), but not in any other respect (such as Internal Costs). Costs and expenses incurred by OSEG that relate to more than one part of the Total Project may be allocated by OSEG to the Stadium Improvements, as mutually agreed by the City and OSEG.

5.6 Stadium Lease

- (a) On Closing, the City and OSEG shall enter into a licence (the “**Stadium Construction Licence**”) permitting OSEG and the contractor pursuant to the Comprehensive Construction Contract to enter upon the lands to be demised pursuant to the Stadium Lease for the purpose of construction of the Stadium Improvements and which shall provide OSEG and the contractor, *inter alia*, with the benefits and obligations respecting the Construction Procedures Agreement.

- (b) Although the Stadium Lease shall be executed by the City and the Stadium Partnership on Closing, the term thereof shall commence on “Substantial Completion” (as defined in the Stadium Lease) of the Stadium Improvements.
- (c) The obligation of the City to grant the Stadium Lease to the Stadium Partnership shall be conditional (which condition has been inserted for the sole benefit of the City and may be waived by the City alone) upon the Membership Conditions having been satisfied.
- (d) With effect as of the Closing Date, the Stadium Partnership may establish a name to be used in conjunction with the Stadium (the “**Name**”), which Name shall be subject to the Approval of the City. In addition, names and types of names shall be subject to any restrictions in applicable City policies in effect at the time of the execution of the Naming Agreement and to applicable Law.
 - (i) The agreement with the Person having the benefit of the Name (the “**Naming Agreement**”) shall be subject to the Approval of the City; notwithstanding the foregoing, no Naming Agreement shall have a term that exceeds the Initial Term (as such term is defined in the Stadium Lease) of the Stadium Lease, unless the Stadium Lease is extended for an extension term pursuant to the terms of the Stadium Lease and the extension agreement made in accordance with the Stadium Lease expressly provides the terms and conditions pursuant to which the Stadium Partnership may enter into a Naming Agreement for the extension term, in which event no Naming Agreement shall have a term that extends beyond the expiry of that extension term.
 - (ii) All revenues attributable to the Name and the Naming Agreement shall be included in the calculation of Net Cash Flow.
 - (iii) All intellectual property rights associated with the Name other than those of the Person providing its name for the Naming Agreement, shall remain

in the ownership of the City and the use thereof as provided for in this Agreement shall be by way of license for the limited uses contemplated herein and in the Stadium Lease, if applicable.

- (iv) For greater certainty, the provisions in this Section 5.6(d) shall not apply to any other Components than the Stadium Component. Any name to be used in conjunction with any of the other Components shall be on the terms described in Section 2.14 and as otherwise expressly provided for in the Retail Lease and the Office Lease.
- (e) The Stadium Lease shall contain a provision to the effect that the Bilingualism Policy shall be adhered to, particularly with respect to recognizing the equality of both official language groups, and this spirit shall govern the management of the Stadium. In recognition of the City's Bilingualism Policy, the Stadium Partnership will ensure the following in respect of the Stadium, during such period as the Stadium Lease is in force and effect:
 - (i) all activities (other than media advertising) to promote services, programs and events are in both official languages;
 - (ii) all documents published in respect thereof that are addressed to the public are in both official languages; and
 - (iii) all internal and external signs and way-finding signage therein are bilingual or make use of international symbols.
- (f) The Stadium Lease shall contain a restriction providing that no trade and consumer shows shall be held in the Stadium that would be in competition with those that are typically carried out at the Exposition Hall Facility referred to in Section 15.1(k), the terms of which shall be more fully set out in the Stadium Lease.

5.7 City Covenant Regarding Stadium

During the term of the Stadium Lease, the City shall use reasonable efforts to maintain in force and effect a by-law designating the Stadium (other than the Stadium Retail Parcels) and the City's Portion of the Parking Structure as a municipal capital facility pursuant to Section 110 of the *Municipal Act, 2001* (Ontario). In the event such by-law is challenged or it is determined by a Relevant Authority that the by-law is not fully applicable, the City shall oppose the challenge or determination in good faith, and shall exhaust all reasonable legal processes available to it in doing so.

5.8 Membership Conditions

- (a) OSEG shall use commercially reasonable efforts to satisfy or cause to be satisfied the Membership Conditions on or before Closing.
- (b) For the purposes of this Agreement, "**Membership Conditions**" shall mean:
 - (i) the CFL Partnership shall have a valid, binding, unconditional agreement with the CFL granting a membership in the CFL to the CFL Partnership to operate a professional football club in a membership area that includes the City of Ottawa as set out in the CFL Constitution, the Frank Clair Stadium shall have been approved by the CFL as the "home field" for the CFL Team and OSEG or the CFL Partnership shall have provided a letter from the Commissioner of the CFL addressed to the CFL Partnership and the City confirming all of the foregoing;
 - (ii) the Ottawa 67's Partnership shall have certificate of membership from the OHL confirming it has a valid membership in the OHL for the operation of a hockey team in the City of Ottawa and a letter from the OHL that the Civic Centre is approved by the OHL as the "home ice" for the Ottawa 67's, subject to compliance with all applicable rules, regulations and bylaws of the OHL with respect to "home ice" and "home venue";

- (iii) the CFL Partnership and the Ottawa 67's Partnership shall have entered into an agreement with the City and the Stadium Partnership to maintain the Frank Clair Stadium and the Civic Centre, respectively, as the "home field" and the "home ice" location of the CFL Team and the Ottawa 67's, respectively, during the Initial Term (as that term is defined in the Stadium Lease) of the Stadium Lease, subject to the continued existence and operation of the CFL Team and the Ottawa 67's, as applicable;
- (iv) OSEG shall have provided evidence satisfactory to the City that the Ottawa 67's Partnership has completed the acquisition of the ownership of the Ottawa 67's with a financial effective date of June 1, 2012 (provided that it shall not be necessary for all consideration in respect of such acquisition to have been remitted), and the Members shall have executed a guarantee on a joint and several basis in favour of the City in connection with the Promissory Note, in form mutually agreed upon by the City and OSEG, each acting reasonably, which guarantee shall provide that:
 - (A) in the event that there are sufficient funds in the Closed System for repayment of the Promissory Note after all required payments have been made in accordance with Sections 5.1(a), (b) and (c) of the Limited Partnership Agreement of the Master Partnership, the Members shall not be obligated to advance any funds under such guarantee; and
 - (B) any funds advanced by the Members under such guarantee in accordance with the provisions thereof shall be deemed to be Additional Equity;

(the "**Ottawa 67's Guarantee**");

- (v) the CFL shall have entered into the CFL Agreement with the City, on terms acceptable to both the City and the CFL, acting reasonably:
 - (A) consenting to the purchase by the City of the CFL Team pursuant to the OSEG RFO in the event the CFL Partnership wishes to offer to sell the CFL Team to a third party;
 - (B) granting the City a right of first offer to be assigned the CFL Partnership's Membership Agreement with the CFL in the event that the CFL Partnership's membership in the CFL is terminated or repudiated, including upon bankruptcy of the CFL Partnership, for no consideration except assumption of debt and obligations of the CFL Partnership to the CFL; and
 - (C) granting the City a first right to be assigned the CFL Partnership's Membership Agreement with the CFL in the event the City terminates this Agreement after the Closing Date, provided that, in such event, if in the opinion of an independent expert chosen by the City and the CFL at the City's expense, the Stadium Improvements will not be built in accordance with the terms and on the timetable set out in this Agreement, the CFL may terminate the CFL Partnership's Membership Agreement,

provided that in the case of each of subparagraphs (A), (B) and (C) above:

- (1) any such sale or assignment must be completed in compliance and in accordance with the applicable provisions of the CFL Constitution and the CFL Partnership's Membership Agreement;
- (2) the City will be assigned the benefit of and will be responsible for all the obligations under (or will enter into

new agreements containing the same benefits and obligations in) all of the documentation between the CFL Partnership and the CFL, including the Membership Agreement (including with respect to any unpaid membership fees or other amounts owing) and the security agreement and letter of credit contemplated in the Membership Agreement;

- (3) the City will cure any breaches by the CFL Partnership of the documentation between the CFL Partnership and the CFL, including the Membership Agreement, the security agreement and the letter of credit, or of the CFL Constitution to the extent that such breaches are capable of being cured, prior to the consent being granted or the right of first offer or first right to acquire being exercised;
 - (4) at the time of such sale or assignment, the City will (or shall have previously) set up a municipal services corporation (as shall be approved by Council) or such other entity or arrangement as may be agreed upon by the City and the CFL with a separate board of trustees/governors/directors, whose scope of authority includes the overseeing of the new member of the CFL/the CFL team and its operations; and
 - (5) the management of the new member of the CFL/the CFL team will be conducted in such a manner that at no time will operational decisions be discussed during meetings of, and no operational decision will be made by, Council;
- (vi) the CFL Partnership and OSEG shall each provide a covenant on Closing that the CFL Team shall operate during each of the eight (8) years

immediately following the Lease Commencement Date (as that term is defined in the Stadium Lease) of the Stadium Lease, unless the CFL ceases to operate during such period; and

- (vii) the Ottawa 67's Partnership and OSEG shall each provide a covenant on Closing that the Ottawa 67's shall operate during each of the eight (8) years immediately following the Lease Commencement Date (as that term is defined in the Stadium Lease) of the Stadium Lease, unless the OHL ceases to operate during such period.

5.9 Right of First Offer for each of the CFL Team and the Ottawa 67's

On Closing, each Sports Partnership shall enter into an agreement with the City granting the City a right of first offer to acquire that Sports Partnership's Team, if it wishes to offer to sell or accept an offer to sell its Team to a third party during the Initial Term (as defined in the Stadium Lease) of the Stadium Lease (following the eight (8) year prohibition on any Disposition of a Team referred to in Section 25.6(b)) (together, the "**OSEG RFOs**" and individually, an "**OSEG RFO**"). Each OSEG RFO shall be in form mutually agreed upon between the Parties, each acting reasonably, provided that the following terms and conditions shall be included therein:

- (a) subject to Section 5.9(e), each Sports Partnership shall, prior to offering its Team for sale, first provide notice in writing offering to sell the Team to the City (the "**Sale Notice**"), which Sale Notice shall contain (collectively, the "**Offered Terms**"):
 - (i) the sale price of the Team (the "**Price**"); and
 - (ii) the remaining terms and conditions (other than the Price) on and subject to which the Sports Partnership is prepared to sell the Team (the "**Terms and Conditions**");

- (b) the City shall have the longer of ninety (90) Business Days from receipt of the Sale Notice and ninety (90) Business Days following the first meeting of Council following receipt of the Sale Notice (the “**Acceptance Period**”) to advise the Sports Partnership in writing that the City agrees to purchase the Team on the Offered Terms (the “**Acceptance**”). Upon receipt of an Acceptance by the Sports Partnership within the Acceptance Period, a binding agreement of purchase and sale shall exist between the City and the Sports Partnership for the Team on the Offered Terms;
- (c) if the Sports Partnership does not receive an Acceptance from the City within the Acceptance Period, it shall be free for the period of one hundred eighty (180) days following the Acceptance Period to enter into an agreement to sell the Team to a third party, provided it sells the Team to such third party at or above the Price and on terms and conditions that in total are not more beneficial to such third party or parties than the Terms and Conditions of the Offered Terms;
- (d) in the event that the Sports Partnership does not enter into a binding agreement or agreements to sell the Team to a third party or parties during the period of one hundred eighty (180) days following the Acceptance Period, the Sports Partnership shall be obliged to once again comply with the provisions contained in this Section 5.9, from time to time, during the Initial Term (as that term is defined in the Stadium Lease) of the Stadium Lease; and
- (e) each of the City and the CFL Partnership acknowledges that the OSEG RFO in respect of the CFL Team is subject to the CFL Agreement and each of the City and the Ottawa 67’s Partnership acknowledges that the OSEG RFO in respect of the Ottawa 67’s is subject to:
 - (i) the right of first refusal in respect of the sale of all OHL member teams, including the Ottawa 67’s, reserved in favour of the OHL under the OHL Constitution; and

- (ii) the requirement that any sale of an OHL member team, including the Ottawa 67's, obtain the approval of three-quarters of all OHL member teams under the OHL Constitution or any other requisite percentage then required under the OHL Constitution, provided that the Ottawa 67's Partnership shall recommend to the other OHL member teams that they approve any sale to the City pursuant to the OSEG RFO for the Ottawa 67's and the Ottawa 67's Partnership shall vote in favour of any such sale (if it is entitled to a vote on such sale).

- (f) In the event of any sale of a Team by a Sports Partnership to a third party under Section 5.9(c), the Sports Partnership shall include in the terms of sale to the third party purchaser, the purchaser's agreement to (i) continue to use the Stadium as the "home field" or "home ice", as applicable, for the Team during the balance of the Initial Term (as that term is defined in the Stadium Lease) of the Stadium Lease, subject to the continued existence and operation of the Team and, if the Team is the Ottawa 67's, subject to the approval of the OHL, and (ii) grant a right of first offer to the City to acquire the Team if the purchaser subsequently wishes to sell or to accept an offer to sell the Team to a third party during the Initial Term (as that term is defined in the Stadium Lease) of the Stadium Lease, on terms substantially similar to the terms of the OSEG RFO for the Team, *mutatis mutandis*.

5.10 Soccer Team

- (a) Affiliates of the Members have secured a professional soccer membership from the North American Soccer League (the "**Professional Soccer League**") for a professional soccer team (the "**Soccer Team**") as a tenant at the Stadium.

- (b) The following shall be conditions to the grant of any Sublease (as such term is defined in the Stadium Lease) to the Soccer Team:
 - (i) the Sublease (as such term is defined in the Stadium Lease) shall comply with the provisions of the Stadium Lease;
 - (ii) the Sublease shall contain terms and conditions which are consistent with Market Terms and Conditions that would be entered into with parties dealing at Arm's Length, and shall be subject to the prior Approval of the City as to the conformity of the Sublease with such Market Terms and Conditions; and
 - (iii) subject to any approval required by the Professional Soccer League and/or any right of other members of the Professional Soccer League, the Affiliates of the Members that have acquired the soccer membership shall grant the City a right of first offer to acquire the Soccer Team, on substantially the same terms and conditions as the OSEG RFOs, *mutatis mutandis*, if they propose to have the Soccer Team play at a "home field" outside of the City of Ottawa.

5.11 Transportation Matters

The Stadium Lease shall require the Stadium Partnership, as tenant:

- (a) to implement the Transportation Impact Matters in relation to the Stadium and in all Subleases (as such term is defined in the Stadium Lease) and in accordance with obligations and requirements set out in the Transportation Plan and Site Plan Agreement related to Stadium Events, including participation in the TMA;
- (b) to implement and pay for, and to obtain a covenant within each Sublease (as such term is defined in the Stadium Lease) requiring each subtenant to implement and pay for, applicable Transportation Impact Matters, including the payment of the

cost under agreements negotiated and/or entered into by the City with third parties providing services with respect to such matters, provided that the City agrees to consult with the Stadium Partnership with respect to the terms of any such agreements entered into after the Execution Date and further provided that, so long as the Stadium Partnership shall consult with the City with respect to the terms of any such agreements, the Stadium Partnership shall be responsible for negotiating and entering into agreements directly with third parties for off-site parking and the Stadium Partnership may negotiate and enter into agreements directly with third parties for shuttle services; and

- (c) to enter into a Transportation Management Agreement with each subtenant.

5.12 Cultural Events

The Stadium Lease shall contain a provision entitling the City to make bookings for special sports and cultural events that are of community interest and which, in the Discretion of the City, are unable to pay the market rental rates established by the Stadium Partnership from time to time for events being held at the Stadium. Bookings for such events shall be made not more than one (1) month in advance and shall be at preferred rates that are not less than eighty-five percent (85%) of the market rental rates established by the Stadium Partnership from time to time for events being held at the Stadium. The number of dates, the preferred rates and the other relevant terms for such bookings shall be mutually agreed upon from time to time between the City and the Stadium Partnership, each acting reasonably.

5.13 Relationship with Retail Lease

- (a) Two portions of the Retail Component, being the Stadium Retail Pods Parcel and the Stadium Retail Salons Parcels, shall be located within the Stadium.
- (b) The Stadium Retail Parcels shall form part of the demise within the Retail Lease.

- (c) The Stadium Partnership and the Retail Partnership shall enter into a Reciprocal Agreement to deal with matters of mutual interest and concern respecting the Stadium Retail Parcels, including obligations respecting maintenance of structural elements of the Stadium contained within or affecting the Stadium Retail Parcels and mutual cost sharing of such structural elements and other expenses to be reasonably apportioned between the Stadium Partnership and the Retail Partnership.

5.14 Non-Arm's Length Contracts

Except as otherwise specifically contemplated in this Agreement (including Section 6.6(b)) or any of the Material Agreements, any agreement or arrangement entered into by OSEG or any of the Component Partnerships with any non-Arm's Length Person shall contain terms and conditions consistent with an agreement entered into with Persons dealing at Arm's Length ("**Market Terms and Conditions**") and shall require the City's prior Approval with respect to such conformity with Market Terms and Conditions, provided that any non-Arm's Length agreement in which both the revenue and expense sides thereof are included in the Closed System, copies of the agreement for which have been provided to the City prior to the execution thereof, shall not be required to be on Market Terms and Conditions, provided that the proportion of revenue to expense and the timing of the receipt of revenue and payment of expenses are substantially similar as would be applicable to an Arm's Length transaction in similar circumstances and the City has Approved the terms and conditions thereof.

ARTICLE VI

RETAIL COMPONENT

6.1 Retail Component Uses

- (a) The Retail Component will be focused on the Distinctive Uses.

- (b) It is anticipated that the Retail Component will, subject to the Retail Design Strategy, consist substantially of:
 - (i) a retail area;
 - (ii) a food store;
 - (iii) a cinema; and
 - (iv) cultural uses.
- (c) The Retail Component will also contain:
 - (i) second floor spaces of the Retail Component Building (as that term is defined in the Retail Lease) for office or retail use;
 - (ii) the Stadium Retail Parcels; and
 - (iii) the Office Retail Parcel.

6.2 Retail Design Strategy

OSEG acknowledges and agrees that the Retail Design Strategy shall be implemented in the Master Site Plan and the Component Site Plan Conditions respecting the Retail Component.

6.3 Development of Retail Plans and Specifications

- (a) OSEG or the Retail Partnership shall have carriage of the preparation and finalization of the Retail Plans and Specifications. The Retail Plans and Specifications shall be developed pursuant to the Plan Approval Procedure.

- (b) All Retail Plans and Specifications, including the Final Plans and Specifications for the Retail Component, shall be in conformity with the Design and Plan Requirements and the Retail Design Strategy.
- (c) In addition, the Retail Plans and Specifications shall contemplate the Distinctive Uses and the Retail Partnership shall use commercially reasonable efforts to enter into Subleases (as that term is defined in the Retail Lease) with subtenants in a manner that implements the Distinctive Uses.
- (d) The architectural and other costs incurred in connection with the preparation of the Retail Plans and Specifications shall be borne by the Retail Partnership.
- (e) The City shall reimburse the Retail Partnership for incremental design and Construction costs of the Retail Component, including the Retail Component's Portion of the Parking Structure, resulting from: (i) the Design Solutions as provided for in Section 4.5(a)(i); (ii) the imposition by the City of sustainable site development, water efficiency, energy efficiency, materials selection and indoor environmental quality requirements that are greater than those required to achieve Silver certification under the Leadership in Energy and Environmental Design (LEED) Green Building Rating System for Core & Shell Development (known as LEED CS), except as required under applicable Law of general application; and (iii) the imposition by the City of accessibility requirements that are greater than those required under applicable Law of general application.
- (f) The Retail Partnership shall reimburse the City, on Closing, the sum of one hundred ninety-four thousand dollars (\$194,000) on account of certain consultant costs incurred by the City that benefit the Retail Component. The Retail Partnership shall not otherwise be responsible for the cost of any consultants that are retained directly by the City.

6.4 Retail Lease

- (a) On Closing, the City and the Retail Partnership shall enter into the Retail Lease.
- (b) The granting of the Retail Lease by the City to the Retail Partnership shall be conditional (the “**Retail Condition**”) (which conditions have been inserted for the sole benefit of the City and may be waived by the City alone) upon:
 - (i) the Final Plans and Specifications for the Retail Component having been completed in conformity with the Retail Design Strategy and the Design and Plan Requirements, in accordance with the Plan Approval Procedure; and
 - (ii) the Retail Partnership providing sufficient executed agreements to sublease or Subleases (as that term is defined in the Retail Lease) for Distinctive Uses and other evidence satisfactory to the City, acting reasonably, to satisfy the City, acting reasonably, that there shall be sufficient retail subleases, demising sufficient rentable area within the Retail Component, which shall comply with the requirement for Distinctive Uses upon the opening of the Retail Component to the public (which agreements, Subleases and evidence, for greater certainty, shall be subject to the provisions of Section 23.1 respecting confidentiality).

6.5 Transportation Matters

The Retail Lease shall require the Retail Partnership, as tenant, to implement the Transportation Impact Matters and the Transportation Management Agreement in relation to the Retail Component, including the Transportation Impact Matters as specifically set out in the Transportation Plan and Site Plan Agreement in relation to the Retail Component and in all Subleases (as that term is defined in the Retail Lease) at the Retail Component.

6.6 Construction of the Retail Component

- (a) The Retail Lease shall require that the Retail Partnership construct the Retail Component Improvements substantially in accordance with the Final Plans and Specifications for the Retail Component.
- (b) The Retail Partnership may, at permitted fees, enter into a development management agreement for the development, construction and initial leasing of the Retail Component, and subsequently a property management agreement for the ongoing management and leasing of the Retail Component, and an agreement for arranging financing for the Retail Component, including in each case an agreement with an OSEG Member or a Permitted Transferee of an OSEG Member (collectively, a “**Manager**”), and shall pay such permitted fees payable under any such agreement(s) to the relevant Manager (the “**Retail Fees**”), provided that such Retail Fees are below market rates for comparable agreements providing similar services and are in an amount which is not intended to result in a profit to the Manager (collectively, the “**Fee Limitations**”). Compliance with the Fee Limitations shall be required to be reviewed and confirmed in writing by the City prior to Closing as a condition for any such agreement with a Manager to be valid.

6.7 OMB Minutes of Settlement

- (a) The Retail Partnership shall construct, at its expense, the passive public open space described in section 11 of each of the Holmwood Group Minutes of Settlement and the Community Association Minutes of Settlement.
- (b) If applicable, the City shall implement, at its expense, the landscape plan described in section 18 of the Holmwood Group Minutes of Settlement.
- (c) The Retail Partnership shall maintain the passive open space as provided for in Section 6.7(a) hereof in accordance with the Final Retail Component Plans and

Specifications (as such term is defined in the Retail Lease), the Design and Plan Requirements (as such term is defined in the Retail Lease), the Site Plan Agreement and the Standard (as such term is defined in the Retail Lease).

- (d) The provisions in Sections 6.7(a) and (c) shall be included as obligations of the Retail Partnership in the Retail Lease.

ARTICLE VII

OFFICE COMPONENT

7.1 Office Developer

On or prior to Closing, the City shall use commercially reasonable efforts to enter into the Office Lease with the Person that has been selected by the City to develop the Office Component pursuant to the Approved Selection Process (the “**Office Developer**”).

7.2 OSEG as Possible Developer

Because OSEG, an OSEG Member or an Affiliate of OSEG or of an OSEG Member may have become the Office Developer or a co-developer with another Person with respect to the Office Component, the City utilized the Approved Selection Process and Non-Conflict Procedure in seeking an Office Developer.

7.3 Plans and Specifications

All stages of the Plans and Specifications for the Office Component, including the Final Plans and Specifications, shall require the Approval of the City (which Approvals shall be required in the Office Lease) and shall be in conformity with the Design and Plan Requirements. The required City Approvals respecting the Plans and Specifications for the Office Component shall be in accordance with the Plan Approval Procedure.

7.4 Construction

The Office Lease shall contain provisions requiring the Office Developer to construct the Office Component substantially in accordance with the Final Plans and Specifications with respect thereto Approved by the City and the Office Developer with such amendments thereto as may be Approved by the City, as landlord, in accordance with the Office Lease.

7.5 Transportation Matters

The Office Lease shall require the Office Developer, as tenant, to implement the Transportation Impact Matters and the Transportation Management Agreement in relation to the Office Component, including the Transportation Impact Matters set out in the Transportation Plan and Site Plan Agreement in relation to the Office Component and in all subleases entered into by the Office Developer at the Office Component.

7.6 Reciprocal Agreement(s)

- (a) On or before Closing, the Office Developer shall enter into one or more Reciprocal Agreements with applicable Component Partnerships, the Residential Developer and, if applicable, the City in respect of the Urban Park to deal with shared facilities and costs, easements and other similar matters of mutual interest or requirements pursuant to Section 2.10(c).
- (b) The Office Component shall be constructed above the Retail Component. Accordingly, without limiting the generality of subparagraph (a), on or before Closing, the Office Developer shall enter into a Reciprocal Agreement with the Retail Partnership pursuant to Section 2.10(d) for the equitable sharing of the incremental cost of all elements within the Retail Component utilized by the Office Component, including structural elements, and the manner of payment of such costs (the “**Shared Office Costs**”). The City shall pay the Shared Office Costs and obtain reimbursement from the Office Developer for a portion of such Shared Office Costs.

ARTICLE VIII
RESIDENTIAL COMPONENT

8.1 Relationship With Retail and Parking Structure

The Residential Component as described in Section 2.8 shall contain the following components (each a “**Residential Project**”) to be constructed in conjunction with the Retail Component and the Parking Structure:

- (a) a residential building to be constructed above the Retail Component;
- (b) a residential building to be constructed over a portion of the Parking Structure;
and
- (c) townhouses to be constructed over a portion of the Parking Structure.

8.2 Condominium Residential

The City has determined in its Discretion that each Residential Project shall be created on a freehold air parcel in order to permit the creation of residential condominiums for sale to individual purchasers (a “**Residential Air Parcel**”).

8.3 Residential Parking

Parking for each of the Residential Projects shall be created by a freehold parcel and shall be within a contained area within the Parking Structure having security entrance arrangements.

8.4 Net Proceeds

The City, as owner of the Residential Air Parcels, shall receive the net proceeds from the sale of the Residential Air Parcels.

8.5 Residential Developer

On or prior to the Closing Date, the City shall use commercially reasonable efforts to enter into an agreement for the purchase of the Residential Air Parcels with the Person that has been selected by the City to develop the Residential Projects pursuant to the Approved Selection Process (the “**Residential Developer**”). The form of the agreement for the purchase and sale of Residential Air Parcels between the City and the Residential Developer shall be as determined by the City in its Discretion.

8.6 OSEG as Residential Developer

Because OSEG, an OSEG Member or an Affiliate of OSEG or of an OSEG Member may have become the Residential Developer or a co-developer with another Person with respect to the Residential Component, the City utilized the Approved Selection Process and Non-Conflict Procedure in seeking the Residential Developer.

8.7 Reciprocal Agreements

- (a) On or before Closing, the Residential Developer shall enter into Reciprocal Agreements with applicable Component Partnerships, the Office Developer and the City, to deal with shared facilities and costs, easements and other similar matters of mutual interest or requirements pursuant to Section 2.10(c).
- (b) On or before the Closing, the Residential Developer shall enter into a Reciprocal Agreement with the Retail Partnership pursuant to Section 2.10(d) for the equitable sharing of the incremental cost of all elements within the Retail Component utilized by the Residential Component, including structural elements, and the manner of payment of such costs (the “**Shared Residential Costs**”). Notwithstanding the foregoing, the City shall pay the Shared Residential Costs and obtain reimbursement thereof from the Residential Developer.

- (c) The Residential Developer shall commence Construction of the Residential Component Improvements and Substantially Complete the Residential Component Improvements in accordance with the provisions of the Master Construction Schedule and the Construction Procedures Agreement.

ARTICLE IX

PARKING STRUCTURE

9.1 Parking Plans and Specifications

The Parking Plans and Specifications shall require the Approval of the City, shall be developed by OSEG in accordance with the Plan Approval Procedure and, to the extent applicable, shall be in compliance with the Design and Plan Requirements. Because the Parking Structure shall be utilized for the benefit of all Components within the Site, the Parties acknowledge and agree that the requirements of all Components shall be included in the Parking Plans and Specifications.

9.2 Construction of Parking Structure

Parking areas on the Site will include both surface parking and underground parking. Although the lease of specific parking areas on the Site will be included in each of the Stadium Lease, the Retail Lease and the Office Lease, the underground portion of such parking areas and the underground parking areas for the Residential Component shall be contained within one physical structure (the “**Parking Structure**”). Underground parking for the Residential Component shall be separated from the remainder of the underground parking within the Parking Structure.

9.3 Project Management Agreement

- (a) OSEG shall act as project manager for the Construction of the Parking Structure pursuant to the Project Management Agreement. Subject to Sections 9.3(b), 9.3(c) and 9.3(d) below, the terms and conditions of the Project Management Agreement shall be based on current market terms and conditions.

- (b) The total fee payable to OSEG by all parties responsible shall be three percent (3%) of the Soft Costs and the Hard Costs of Construction of the Parking Structure (the “**Parking Project Management Fee**”).
- (c) The portion of the Parking Project Management Fee payable to OSEG by the City shall be three percent (3%) of the Soft Costs and the Hard Costs of Construction of the City’s Portion of the Parking Structure. In addition, the City shall also in the first instance pay to OSEG the portions of the Parking Project Management Fee in respect of each of the Office Component’s Portion of the Parking Structure (the “**Office Fee Portion**”) and the Residential Component’s Portion of the Parking Structure (the “**Residential Fee Portion**”); the City shall be compensated by each of the Office Developer and the Residential Developer with respect to the Office Fee Portion and the Residential Fee Portion, respectively, to the extent provided in accordance with agreements to be separately entered into by the City and each of the Office Developer and the Residential Developer.
- (d) The portion of the Parking Project Management Fee payable to OSEG by the City for the City’s Portion of the Parking Structure that shall be included in Maximum City Cost shall be that amount equal to three percent (3%) of the difference between (i) Maximum City Cost, minus (ii) the actual cost borne by the City for the Stadium Improvements (calculated using the same inclusions and exclusions of costs as are used in this Agreement for the Maximum City Cost, *mutatis mutandis*, including the inclusions and exclusions described in Sections 5.2(b) and (c)).

9.4 Parking Management Agreement

The Parking Structure shall be managed in accordance with the Parking Structure Reciprocal Agreement and OSEG shall be the shared facilities manager pursuant to the Parking Structure Reciprocal Agreement, unless it is replaced in accordance with the terms of the Parking Structure Reciprocal Agreement. OSEG may subcontract with a competent operator from time to time, as Approved by the City, (the “**Parking Operator**”) to operate and maintain some or all of the

parking spaces within the Parking Structure, and applicable Component Partnerships may contract with the Parking Operator to operate and maintain surface parking, pursuant to a parking management agreement containing such terms and conditions as are contained in Arm's Length market arrangements and in such form as mutually agreed upon between such Parking Operator, OSEG, applicable Component Partnerships (for surface parking) and the City, each acting reasonably (the "**Parking Management Agreement**"). The Parking Management Agreement shall, among other things, support achieving overall objectives of the Transportation Plan.

9.5 Parking Structure Reciprocal Agreement

The Retail Partnership, the Stadium Partnership, the Residential Developer, the Office Developer and the City shall enter into a Reciprocal Agreement pursuant to Section 2.10(c) to deal with shared costs, easements, licenses, decisions and other similar matters of mutual interest or requirements with respect to the Parking Structure (the "**Parking Structure Reciprocal Agreement**"). The Parking Structure Reciprocal Agreement shall also contain provisions respecting a lifecycle reserve.

ARTICLE X

COMPREHENSIVE CONSTRUCTION CONTRACT

10.1 Comprehensive Construction Contract

- (a) The construction of the Stadium Improvements, the Parking Structure and the Infrastructure Upgrades shall be by way of one (1) general contract with a maximum upset price or some other arrangement satisfactory to the City in its Discretion, which assures the City of a limitation on the costs thereunder (the "**Comprehensive Construction Contract**"). Notwithstanding the foregoing, the City and OSEG may elect, each acting reasonably, to construct the Stadium Improvements, the Parking Structure and the Infrastructure Upgrades under one (1) or more separate contracts if it is financially advantageous to split the Comprehensive Construction Contract and, in that event, the provisions of this

Article X shall apply to each such separate contract, *mutatis mutandis*, except as otherwise specifically provided in this Article X.

- (b) The plans and specifications pursuant to which the Comprehensive Construction Contract shall be entered into shall include the Plans and Specifications for each of the Stadium and the Parking Structure and plans and specifications for the Infrastructure Upgrades.
- (c) OSEG shall enter into the Comprehensive Construction Contract directly with the contractor and shall be the “owner” for applicable Law. The contractor in the Comprehensive Construction Contract shall be the “constructor” for the purposes of the *Occupational Health and Safety Act* (Ontario). In the event that the Comprehensive Construction Contract is split as contemplated in Section 10.1(a), then the contractor in the contract for the Construction of the Parking Structure shall be the “constructor” for the purposes of the *Occupational Health and Safety Act* (Ontario).
- (d) OSEG shall have carriage of the negotiation of the Comprehensive Construction Contract, but all terms and conditions contained in the Comprehensive Construction Contract shall require the approval of the City in its Discretion, including, by way of example only, the guaranteed maximum amount payable pursuant to the Comprehensive Construction Contract (except as otherwise provided in this Agreement), payment terms, warranties and warranty periods, methods of approval and pricing of change orders, security such as bonding and letters of credit, time permitted for Construction of the Stadium Improvements and the Parking Structure and the quantum of liquidated damages for failure to complete as required.
- (e) The Project Management Agreement will provide that all day-to-day decisions to be made in connection with the Comprehensive Construction Contract shall be made by OSEG, except as provided in subparagraph (f) below.

- (f) Any material decisions to be made in connection with the City's Portion of the Construction Components shall be made by the City in its Discretion, including in respect of the following matters, provided that if any such decision affects the Retail Component's Portion of the Parking Structure (including the cost of the Retail Component's Portion of the Parking Structure), OSEG must also agree to the decision in its Discretion, failing which agreement, the matter shall be submitted to the dispute resolution procedure relating to construction matters set out in Construction Procedures Agreement:
 - (i) the making of any City Change Orders, which shall be at the City's cost;
 - (ii) the amendment of the Comprehensive Construction Contract or the Final Plans and Specifications for the Stadium Improvements or other matters within the City's Portion of the Construction Components;
 - (iii) the waiver, termination, surrender or alteration in any material respect of OSEG's rights or obligations under the Comprehensive Construction Contract;
 - (iv) any decision which materially affects the City's interest in the City's Portion of the Construction Components;
 - (v) any other matter deemed material by the City, in its Discretion, in respect of the City's requirements for or costs of the City's Portion of the Construction Components of which the City notifies OSEG in writing; and
 - (vi) any material change to the Parking Structure affecting the Office Component or the Residential Component.
- (g) Provisions consistent with the City's procurement protocols shall be established to ensure a competitive and transparent process for the Comprehensive Construction Contract and the construction of the Stadium Improvements, the Parking Structure

and the Infrastructure Upgrades, including tendering, pricing, competence, assurance of competition and other similar matters.

- (h) Payments to be made to the contractor pursuant to the Comprehensive Construction Contract (subject to the provisions respecting Total Excess Costs and the Completion Guarantee by OSEG and the Members) shall be made in accordance with Section 10.5 hereof.

10.2 Assignment of Comprehensive Construction Contract

The Comprehensive Construction Contract shall provide for a right of the City to receive an assignment of the Comprehensive Construction Contract permitting the City to enforce the provisions thereof against the contractor, in form satisfactory to the City.

10.3 Completion and Completion Guarantee

- (a) The Members jointly and severally covenant to ensure the Total Completion of the Parking Structure and the Stadium Improvements in accordance with the Final Plans and Specifications for the Parking Structure and the Stadium Improvements, respectively, subject to the payment by the City of the Maximum City Cost.
- (b) OSEG and the Members jointly and severally covenant to provide funds from time to time pursuant to Section 10.3(c) (the “**Completion Funds**”) for any Total Excess Costs as necessary to cause Total Completion of the Stadium Improvements and the Parking Structure and shall execute the guarantee annexed hereto as Schedule H (the “**Completion Guarantee**”).
- (c) OSEG and each of the Members, upon becoming aware that Total Excess Costs shall be incurred in order to cause Total Completion of the Stadium Improvements and the Parking Structure, whether by way of a Notice from the City or otherwise, shall make the payments required or provide funds to OSEG to make the payments required to satisfy the Total Excess Costs in accordance with

the procedure set out in Section 10.5 and shall notify the City or cause OSEG to notify the City in writing of the same and provide the City with relevant details regarding, and the reasons for, the Total Excess Costs.

- (d) For clarity, the determination of the potential for Total Excess Costs and the obligation arising on account of the Completion Guarantee shall be determined on a monthly basis prior to the Total Completion of the Stadium Improvements and the Parking Structure, based upon Hard Costs and Soft Costs incurred from time to time and an analysis of the Cost to Complete, as determined by the Payment Certifier. If Total Excess Costs are incurred, the City agrees to consider in good faith suggestions by OSEG for value engineering that will reduce the Cost to Complete, as determined by the Payment Certifier, and in the event that on any Relevant Payment Date subsequent to the payment of Total Excess Costs by OSEG or the Members, the Cost to Complete is less than the difference between (i) the aggregate amount contemplated in Section 10.5(b)(vi)(B), and (ii) the aggregate amount contemplated in Section 10.5(b)(vi)(A), then OSEG and/or the Members that funded the Total Excess Costs shall be paid on that Relevant Payment Date an amount equal to the lesser of such difference or the Total Excess Costs paid by OSEG and/or the Members that have not previously been repaid to them in accordance with the foregoing and so on from time to time.
- (e) The City shall not be obligated to seek any recourse against any of OSEG or any individual Member or Members or the Stadium Security before being entitled to demand payment from another Member or Members of any amount on account of Total Excess Costs.
- (f) Nothing in this Section shall impair the City's rights against any of the Members in respect of any of the obligations of such Member and any security or remedies provided in connection with this Agreement, the Stadium Lease and/or the Project Management Agreement.

- (g) No change in the name, objects, capital stock or constitution of any of the Members, as applicable, shall in any way affect the liability of any of the other Members, with respect to transactions occurring either before or after any such change, and the City shall not be concerned to see or inquire into the powers of any of the Members or any of their respective directors or other agents, acting or purporting to act on its behalf. If any of the Members shall amalgamate with one or more other corporations, as applicable, the covenants herein contained shall continue to be binding upon the corporation continuing from the amalgamation.
- (h) The City, without consent of any of the Members and without exonerating in whole or in part any of the Members, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from, or from perfecting securities of, may accept compositions from, and may otherwise deal with any of the Members (and any other Person) and any Stadium Security, all as the City may see fit.
- (i) The provisions of this Section 10.3 are in addition to and not in substitution for any other guarantees, agreements and/or security given to the City in respect of the Project, including the Stadium Security.

10.4 Total Cost Allocation and Payments

- (a) Forthwith following bids in response to the tender call for the Comprehensive Construction Contract and the selection of the successful bidder, as mutually agreed on between the City and OSEG, (i) the total Hard Costs and Soft Costs of the construction of the Construction Components shall be determined (the “**Total Agreed Upon Costs**”), (ii) the Construction Contract Price Allocation shall be made by the City and OSEG, and (iii) the total Soft Costs for the Construction Components shall be allocated amongst each of the Construction Components (the “**Soft Cost Allocation**”) as agreed between the City and OSEG, each acting reasonably, provided that with respect to the Parking Structure, the Hard Costs

and Soft Costs allocated to the Parking Structure shall be based on the Parking Structure Cost Allocation Principles.

- (b) The Total Agreed Upon Cost shall be payable as follows:
 - (i) the City shall be responsible for:
 - (A) with respect to the Stadium Improvements and the City's Portion of the Parking Structure, the lesser of (1) the aggregate of Maximum City Cost and the costs described in Section 5.2(c) (to the extent that such costs are included in Total Agreed Upon Cost), or (2) the Construction Contract Price Allocation and Soft Cost Allocation for the Stadium Improvements and the City's Portion of the Parking Structure;
 - (B) the Construction Contract Price Allocation and Soft Cost Allocation for the Infrastructure Upgrades, the Office Component's Portion of the Parking Structure and the Residential Component's Portion of the Parking Structure;
 - (C) the environmental remediation costs and archaeological costs payable by the City under Section 2.12 (to the extent such costs are included in the Total Agreed Upon Cost); and
 - (ii) OSEG shall be responsible for the Retail Component's Share of the Cost of Parking.

10.5 Funding of Construction Components

- (a) A Person or Persons mutually agreed upon between the City and OSEG, each acting reasonably, shall be selected as the payment certifier for the Comprehensive Construction Contract and with respect to the Soft Costs incurred

with respect to the Construction Components (the “**Payment Certifier**”). The Payment Certifier shall also be required to allocate Hard Costs and Soft Costs incurred amongst each of the Construction Components (in a manner consistent with the Construction Contract Price Allocation and the Soft Cost Allocation) and the environmental remediation costs and archaeological costs payable by the City under Section 2.12 (to the extent such costs are included in the Total Agreed Upon Cost) (individually, an “**Allocation**”). In the event that the Payment Certifier for the Parking Structure is an independent third party other than the architect for the construction of the Construction Components, the costs of the Payment Certifier shall be payable by the parties to the Parking Structure Reciprocal Agreement in proportion to the notional parking spaces allocable to each of the Components; otherwise, there shall be no allocation of the costs of the Payment Certifier as aforesaid.

- (b) On each payment date pursuant to the Comprehensive Construction Contract (a “**Relevant Payment Date**”), the Payment Certifier shall provide a certificate in form mutually agreed upon between the City and OSEG (the “**Payment Certificate**”). In any event, the Payment Certificate shall certify the following as of the Relevant Payment Date:
 - (i) Hard Costs incurred on account of the Comprehensive Construction Contract subsequent to the last Relevant Payment Date and the Allocation of such Hard Costs (“**Current Hard Costs**”);
 - (ii) total Hard Costs incurred on account of the Comprehensive Construction Contract to date and the Allocation of such Hard Costs;
 - (iii) Soft Costs incurred on account of the Construction Components subsequent to the last Relevant Payment Date and the Allocation of such Soft Costs (“**Current Soft Costs**”);

- (iv) total Soft Costs incurred on account of the Construction Components to date and the Allocation of such Soft Costs;
- (v) total Hard Costs and Soft Costs still be incurred to achieve Total Completion of the Stadium Improvements and the Parking Structure (the **“Cost to Complete”**);
- (vi) the amount, if any, by which:
 - (A) the aggregate of (1) the total Hard Costs and Soft Costs incurred for the Stadium Improvements and the Parking Structure to date, and (2) the Cost to Complete, exceeds
 - (B) the aggregate of (1) Maximum City Cost and the costs described in Section 5.2(c) (to the extent that such costs are included in Total Agreed Upon Cost); and (2) the Construction Contract Price Allocation and Soft Cost Allocation for the Office Component’s Portion of the Parking Structure, the Residential Component’s Portion of the Parking Structure and the Retail Component’s Portion of the Parking Structure,(the **“Current Cost Overrun”**);
- (vii) the holdback from payments to be made on the Relevant Payment Date required for the purposes of the *Construction Lien Act* (Ontario) (the **“Current Holdback”**); and
- (viii) the environmental remediation costs and archaeological costs payable by the City under Section 2.12 (to the extent such costs are included in the Total Agreed Upon Cost).

- (c) On each Relevant Payment Date, the City shall pay the Allocation of the Current Hard Costs and the Current Soft Costs for the City's Portion of the Construction Components and for the environmental remediation costs and archaeological costs payable by the City under Section 2.12 (to the extent such costs are included in the Total Agreed Upon Cost), minus (i) any Current Cost Overrun, and (ii) its proportionate share of the Current Holdback (based on such Allocation, minus the Current Cost Overrun). For the purpose of the calculation in this subparagraph (c), the amount of the Current Cost Overrun related to the Retail Component's Portion of the Parking Structure shall be excluded.
- (d) On each Relevant Payment Date, OSEG shall pay (i) the Allocation of the Current Hard Costs and the Current Soft Costs for the Retail Component's Portion of the Parking Structure, and (ii) any Current Cost Overrun, minus its proportionate share of the Current Holdback (based on such Allocation, plus the Current Cost Overrun).
- (e) Notwithstanding anything herein contained to the contrary, the City shall have no obligation to advance any funds on account of the City's Portion of the Construction Components in the event that there shall be a default by OSEG or any of the Members with respect to its obligations under Section 10.5(d) or under the Comprehensive Construction Contract, or OSEG, the Retail Partnership or any Retail Mortgagee shall be in default pursuant to this Agreement, Retail Lease or any other Material Agreement or (in the case of any Retail Mortgagee) pursuant to a Parking Funding Agreement.

10.6 Financing of Retail and Retail Parking

- (a) The Retail Partnership shall be entitled to arrange construction financing for the Retail Component, including the Retail Component's Portion of the Parking Structure, consisting of one or more Tenant Mortgages (as defined in the Retail Lease) having an aggregate total amount not exceeding seventy-five percent (75%) of the Hard Costs and Soft Costs of constructing the Retail Component,

including the Retail Component's Share of the Cost of Parking (collectively, the **"Retail Mortgages"**).

- (b) The terms and conditions of the Retail Mortgages shall be in accordance with the provisions of the Retail Lease and shall require the Approval of the City.
- (c) If the Retail Partnership shall elect to arrange a second Retail Mortgage, the second Retail Mortgage shall be granted in favour of OSEG, an OSEG Member or a Permitted Transferee of an OSEG Member, shall bear interest at a rate which is the lower of the then market rate and eight percent (8%) per annum, shall provide for no arranging or mortgagee fees or other similar fees and shall otherwise be on market terms. The entitlement to provide a second Retail Mortgage shall not derogate from the obligation of OSEG to provide the Minimum Equity Requirement.
- (d) It shall be a condition precedent to each Retail Mortgage that the mortgagee (the **"Retail Mortgagee"**) enter into an agreement with the City with respect to the mutual funding (i) by the City of the City's Share of Cost of Parking, the Office Component's Portion of the Parking Structure and the Residential Component's Portion of the Parking Structure, and (ii) by the relevant Retail Mortgagee of its mortgage with respect to the Retail Component's Share of the Cost of Parking, on terms mutually agreed upon between the Retail Mortgagee and the City, in each party's Discretion (a **"Parking Funding Agreement"**).

10.7 Required Funding of Retail and Retail Parking

- (a) As a condition precedent in favour of the City to the commencement of Construction of the Parking Structure, the City shall be satisfied in its Discretion that:
 - (i) the amount of Equity available for the Construction of the Retail Buildings and the Retail Component's Portion of the Parking Structure (the

“Required Equity”), together with the principal amount of the Retail Mortgage or Retail Mortgages, shall be sufficient for the Hard Costs and Soft Costs of constructing the Retail Component, including the Retail Component’s Share of the Cost of Parking;

- (ii) the Required Equity has been deposited in the accounts of the OSEG Members, OSEG or the Retail Partnership by way of cash or its equivalent (including letters of credit); and
 - (iii) the Required Equity has been charged in favour of the City by way of security pursuant to the *Personal Property Security Act* (Ontario).
- (b) The Required Equity shall be advanced by the OSEG Members to the Master Partnership and from the Master Partnership to the Retail Partnership as required in order to meet funding obligations of the Retail Partnership respecting the Retail Buildings and the Retail Component’s Share of the Cost of Parking as required by the Retail Mortgagees.

10.8 Pre-Contract Work

In the event that the City elects, in its Discretion, to cause any work to be commenced on account of the Stadium Improvements prior to entry into of the Comprehensive Construction Contract (the **“Pre-Contract Work”**), the amount payable by the City on account of the Pre-Contract Work shall be agreed to by OSEG and the City, each acting reasonably, and such Pre-Contract Work and the amounts agreed upon shall be included in the Maximum City Cost.

10.9 Incorporation of Provisions in Other Agreements

Applicable provisions contained in this Article X shall be included in the Limited Partnership Agreements for the Master Partnership and in the Retail Lease. A default by OSEG or any OSEG Member under this Article X or by a Retail Mortgagee pursuant to the Parking Funding Agreement shall be deemed to be a default by OSEG under this Agreement, the Limited

Partnership Agreement for the Master Partnership, the Master GP Shareholder's Agreement and the Retail Lease.

ARTICLE XI
LEGAL STRUCTURE

11.1 Components

- (a) A limited partnership shall be established with respect to the CFL Team, the Ottawa 67's and each of the Components other than the Residential Component and the Office Component (individually, a "**Component Partnership**").
- (b) Accordingly, the following Component Partnerships shall be established:
 - (i) With respect to the Stadium, Lansdowne Stadium Limited Partnership (the "**Stadium Partnership**");
 - (ii) With respect to the CFL Team, Capital Gridiron Limited Partnership (the "**CFL Partnership**");
 - (iii) With respect to the Ottawa 67's, Ottawa 67's Limited Partnership (the "**Ottawa 67's Partnership**"); and
 - (iv) With respect to the Retail Component, Lansdowne Retail Limited Partnership (the "**Retail Partnership**").
- (c) The limited partner with respect to each of the Component Partnerships shall be the Master Partnership.
- (d) For each Component Partnership, a corporation shall be incorporated pursuant to the *Business Corporations Act* (Ontario) to be the general partner of the Component Partnership. The sole shareholder of each general partner of each

Component Partnership shall be OSEG or a corporation, all of the shares of which are owned by OSEG or by the OSEG Members.

- (e) Each Component Partnership shall be established under *The Partnership Act* (Manitoba).
- (f) Subject to the terms of this Agreement and the Material Agreements, the City will have no active involvement in the day-to-day operation of any of the Component Partnerships.

11.2 Master Partnership

- (a) A limited partnership shall be established pursuant to *The Partnership Act* (Manitoba) under the name Lansdowne Master Limited Partnership (the “**Master Partnership**”).
- (b) The limited partners in the Master Partnership shall be:
 - (i) OSEG, as to fifty percent (50%) of the limited partnership units; and
 - (ii) the City, as to fifty percent (50%) of the limited partnership units.
- (c) The Master GP shall be a newly incorporated corporation pursuant to the *Business Corporations Act* (Ontario).
- (d) The sole shareholder of the Master GP shall be OSEG owning one hundred (100) common shares.

11.3 Master GP Shareholder’s Agreement and Limited Partnership Agreements

- (a) An agreement shall be entered into between OSEG as shareholder, the Master GP and the City as party thereto in connection with the Master GP in form mutually

agreed upon between OSEG and the City, each acting reasonably (the “**Master GP Shareholder’s Agreement**”).

- (b) A limited partnership agreement shall be entered into with respect to each of the Component Partnerships and the Master Partnership. The Limited Partnership Agreements shall be in form mutually agreed upon between OSEG and the City, each acting reasonably.
- (c) The Master GP Shareholder’s Agreement and the Limited Partnership Agreements shall effect the Closed System and the Waterfall (as each is described in Article XII and Article XIII below).

ARTICLE XII

EQUITY CONTRIBUTIONS, THE CLOSED SYSTEM AND THE WATERFALL

12.1 Fundamental Business Concept – the “Closed System”

The fundamental financial concept for the arrangement between the Parties is that there is a “Closed System”, the essential elements of which are as described below.

12.2 Minimum Equity Requirement

- (a) There will be a minimum Equity contribution to the Total Project required of OSEG in the amount of thirty million dollars (\$30,000,000), subject to the provisions of Section 12.3 (the “**Minimum Equity Requirement**”). The Minimum Equity Requirement of OSEG will be jointly and severally guaranteed by the Members.
- (b) The Minimum Equity Requirement shall be satisfied in the first instance at or prior to the Closing by the amounts described in subparagraphs (i), (ii), (iii), (iv) and (viii) of the definition of Equity and, to the extent applicable to the period prior to Closing, subparagraph (ix) of the definition of Equity, and then, as to any

deficiency, by cash advances at or prior to Closing by each of the Members to OSEG (the amount of such deficiency being, “**Initial Capital Contributed**”). Each of the Members shall covenant with the City, which covenants shall also be contained in the Limited Partnership Agreement for the Master Partnership, that:

- (i) the Initial Capital Contributed shall remain with OSEG and not used for any purpose other than (i) cash contributions to the Master Partnership, or (ii) the purposes of the Total Project in accordance with the provisions of this Agreement and/or any relevant Material Agreement, provided that any part of the Initial Capital Contributed that is not immediately required by OSEG, the Master Partnership or any Component Partnership for the purposes of the Total Project may be invested by OSEG in Permitted Interim Investments and the amount of income earned therein (the “**Initial Investment Income**”) shall be credited against the amount payable to OSEG pursuant to Section 13.4(a)(ii)(A) (respecting the Waterfall);
 - (ii) none of the Members shall engage in any business, hold any assets, or incur any other obligations or liabilities or debts except in connection with the Total Project, the Soccer Team or as permitted in the definition of S.P.V. Assets and each of the Members is and shall remain a Special Purpose Vehicle; and
 - (iii) contributions from the Initial Capital Contributed (except to the extent previously contributed to the Master Partnership or previously used for the purposes of the Total Project in accordance with the provisions of this Agreement and/or any relevant Material Agreement) may be called upon to be provided by OSEG to the Master Partnership in accordance with the provisions of the Limited Partnership Agreement for the Master Partnership from time to time for the purposes of the Total Project.
- (c) Any amount contributed by Members on account of Completion Funds respecting Excess Stadium/Parking Costs, other than Stadium Completion Funds, shall be

deemed to be Additional Equity, but shall not be included in the determination of compliance with the Minimum Equity Requirement. Any amount contributed by Members on account of Stadium Completion Funds shall be deemed to be Equity, but shall not be included in the determination of compliance with the Minimum Equity Requirement nor be deemed to be Additional Equity.

- (d) There will not be an obligation on OSEG in the first instance to contribute any specific amount of Equity to the Master Partnership, but contributions will be made by OSEG from the Initial Capital Contributed to the Master Partnership from time to time (except to the extent previously contributed to the Master Partnership or previously used for the purposes of the Total Project in accordance with the provisions of this Agreement and/or any relevant Material Agreement) to meet Total Project obligations and commitments for future Total Project requirements, such as Negative Cash Flow (as shall be defined in the Limited Partnership Agreement for the Master Partnership), in a given period.
- (e) At any time, the City may request evidence of the amount of the Equity and the nature of the amounts and OSEG shall, in form and content satisfactory to the City:
 - (i) provide a summary of the amounts and the nature of such amounts which it asserts comprise part of the Equity, having regard to the definition of “Equity”;
 - (ii) provide copies of all available invoices, receipts or other instruments evidencing such amounts; and
 - (iii) certify that such amounts have been paid, posted or contributed in full without any holdback or deduction.
- (f) Notwithstanding the foregoing, all amounts must be the following in order to be included in Equity:

- (i) reasonable and/or in accordance with applicable industry standards;
- (ii) directly related to the Total Project or be available to meet Total Project obligations and commitments for future Total Project requirements; and
- (iii) would not have been paid, posted or contributed but for the Total Project,

provided that, for greater certainty, the Parties agree that the following amounts are to be included in the calculation of Equity: the fee payable to the CFL for the CFL Membership, the letter of credit required to be posted with the CFL under the terms of the Membership Agreement for the CFL Team (provided that letter of credit meets the requirements described in subparagraph (ii) or (iii) of the definition of Equity), five million dollars (\$5,000,000) on account of that part of the Ottawa 67's Purchase Price that is not satisfied by the Promissory Note and the contribution to the Hard Costs of improving the Urban Park payable under Section 4.5(a)(ii).

- (g) OSEG shall keep for seven (7) years proper accounts and records of transactions and activities in respect of amounts comprising Equity. All accounts, records, invoices, receipts and vouchers that are kept by or available to OSEG shall at all times be open to audit, inspection and examination by or on behalf of the City.

12.3 Return of and on Equity

- (a) If OSEG shall contribute Additional Equity to the Total Project in excess of the Minimum Equity Requirement from time to time, (which shall exclude any Stadium Completion Funds), OSEG shall be entitled to the return of such Additional Equity in accordance with the Waterfall. OSEG will not be entitled to the return of the Minimum Equity Requirement or any Stadium Completion Funds for a period of three (3) years from the Lease Commencement Date (as that term is defined in the Stadium Lease) of the Stadium Lease. The Minimum Equity Requirement will thereafter be reduced and repaid, and any Stadium

Completion Funds will be reduced and repaid, on a “straight-line amortized” basis over a period of twenty-seven (27) years, commencing upon the third (3rd) anniversary of the Lease Commencement Date of the Stadium Lease.

- (b) From and after the Closing Date, OSEG will be entitled to a return on the outstanding amount of the Equity from time to time at the rate of eight percent (8%) per annum, provided that where the face amount (or outstanding balance) of a letter of credit is included as part of Equity, there will be no return paid to OSEG on the undrawn amount of the letter of credit. The fees paid by OSEG to the issuer of any such letter of credit will be included in Equity and shall be included in the amount of the Equity on which OSEG is entitled to a return under this Section 12.3. Funds or security provided by the Members of OSEG to obtain a letter of credit or other similar security for the purpose of establishing the availability of the Minimum Equity Requirement, shall not be deemed to be Equity for the purpose of this Article XII.
- (c) The return of Equity and the return on Equity described above will be payable only in accordance with a set of priority payments described below in the Waterfall.

12.4 Return to the City on Deemed Equity

- (a) The City will receive a credit for “deemed equity” (“**City Deemed Equity**”) for the Fair Market Value of the Retail Component lands (excluding any improvements constructed and paid for by the tenant under the Retail Lease), based on the Rezoning having been obtained for the Retail Component and taking into account the different nature of the Stadium Retail Parcels (the “**Retail Value**”), which Retail Value shall be determined as follows (notwithstanding anything contained herein to the contrary):
 - (i) the Parties agree that the Retail Value for the period commencing on Closing and ending on the fifth (5th) anniversary of the Operating Term

Commencement Date (as such term is defined in the Retail Lease) shall be twenty-three million seven hundred fifty thousand dollars (\$23,750,000) (the “**Initial Retail Value**”); and

- (ii) the Retail Value shall be re-established on the fifth (5th) anniversary of the Operating Term Commencement Date (as such term is defined in the Retail Lease) and every five (5) years thereafter using the valuation methodology described in Schedule J, provided that for the purposes of calculating the City Deemed Equity under this Section 12.4(a)(i), the Retail Value amount shall not be less than the Initial Retail Value.
- (b) From and after the Closing Date, the City will be entitled to a return on the amount of the City Deemed Equity from time to time at the rate of eight percent (8%) per annum, which will be payable to the City only in accordance with the priority of distributions under the Waterfall.

12.5 Determination of City Funding Equity

For the purposes of this Agreement:

- (a) “**Deemed Debenture Financing**” shall mean and be calculated as at July 31, 2012 (the “**Calculation Date**”) as the maximum amount of debenture financing (the “**Financing**”) that could be obtained by the City on the Calculation Date assuming:
 - (i) the Financing is serviced solely by:
 - (A) seventy-five percent (75%) of the municipal portion of the amount reasonably anticipated to be received by the City on account of realty taxes with respect to the Stadium, Retail Component and Office Component when those Components are Substantially Completed and occupied, excluding any realty taxes that are

payable by the City under the Leases for such Components, but including any realty taxes that would otherwise have been payable by any tenant or subtenant under the Leases or subleases of such Components but for the fact that part or parts of such Components are designated as, and qualify under the *Municipal Act, 2001* (Ontario) as, a municipal capital facility because of the identity or operations of the subtenant occupying each such part; and

(B) the Agreed Avoided Costs;

- (ii) the principal repayment of the Financing is amortized over forty (40) years from the Calculation Date; and
- (iii) the interest rate of the Financing is the forty (40) year lending rate in respect of municipalities for “amortizer” debentures published by Infrastructure Ontario (or any successor thereto) on the Calculation Date,

all as agreed by the City and OSEG, each acting reasonably, provided that the amount of the realty taxes reasonably anticipated to be received by the City with respect to the Stadium, Retail Component and Office Component when those Components are Substantially Completed and occupied shall be determined by the Ottawa office of Altus Group Limited;

(b) **“City Funding Equity”** means and shall be calculated as of the Calculation Date as follows:

(i) the lesser of:

(A) the Maximum City Cost; or

(B) the actual cost borne by the City for the Stadium Improvements and the City’s Share of Cost of Parking (calculated using the same

inclusions and exclusions of costs as are used in this Agreement for the Maximum City Cost, *mutatis mutandis*, including the inclusions and exclusions described in Sections 5.2(b) and (c));

minus

- (ii) the amount of the Deemed Debenture Financing; minus
- (iii) seven million seven hundred sixteen thousand eight hundred and seventy nine dollars (\$7,716,879) payable by the Residential Developer for the Residential Air Parcels.

12.6 Return to the City on City Funding Equity

- (a) From and after the Closing Date, the City shall be entitled to a return on City Funding Equity contributed and outstanding from time to time at the rate of eight percent (8%) per annum.
- (b) The City shall not be entitled to a return of its City Funding Equity for a period of three (3) years from the Lease Commencement Date (as that term is defined in the Stadium Lease) of the Stadium Lease. Thereafter, the City shall be entitled to the return of the City Funding Equity on a “straight-line amortized” basis over a period of twenty-seven (27) years, commencing upon the third (3rd) anniversary of the Lease Commencement Date of the Stadium Lease.
- (c) The return of the City Funding Equity and the return on the City Funding Equity, as discussed above, will be payable only in accordance with the set of priority payments described below in the Waterfall.

12.7 Reserve Established and Covenant to Effect Repairs

- (a) A reserve will be established for lifecycle replacements and major capital repairs for the Stadium and the City's Portion of the Parking Structure (the "**Reserve**").
- (b) The Stadium Partnership with respect to the Stadium and the Retail Partnership with respect to the Retail Component shall promptly make any required repairs, lifecycle replacement and major capital expenditures to its Component, or parts thereof, all as set out in the applicable Leases.
- (c) Notwithstanding that the Reserve shall only be in respect of the Stadium and the City's Portion of the Parking Structure, each building that is the subject matter of a Lease shall be handed back at the end of the relevant term in a good state of repair, taking into account the repair and maintenance standard in the applicable Lease and the age of the relevant building.

12.8 Amount of Reserve

The Reserve will be based upon an agreed upon formula in the Stadium Lease, and as it relates to the Parking Structure, the formula contained in the Parking Structure Reciprocal Agreement.

12.9 Reserve Payment Obligation

The Stadium Lease shall contain an obligation on the part of the Stadium Partnership to make payments on account of the Reserve. The Limited Partnership Agreement for the Master Partnership shall contain an obligation on OSEG to contribute such funds to the Master Partnership as shall be required to provide an advance to the Stadium Partnership to ensure that all Reserve requirements are met in the Stadium Lease in the event that there is insufficient Net Cash Flow in the Stadium Partnership to make the Reserve payment and insufficient Net Cash Flow to make the payment contemplated in Section 13.4(a)(i), provided that any such advance(s) shall be deemed to be Equity.

ARTICLE XIII
WATERFALL OF DISTRIBUTIONS

13.1 Overall Project

This Article deals with distributions of “**Net Cash Flow**” (as shall be defined in the Limited Partnership Agreements) to the Parties. The distribution of Net Cash Flow will be based upon the Total Project, excluding the Urban Park. The Parties acknowledge that Net Cash Flow shall exclude any payments pursuant either to Section 13.6(c) or to Article XXII and any payments to OSEG under the Project Management Agreement.

13.2 Concept of Waterfall

The distribution of Net Cash Flow will be based upon a “waterfall” of priorities; that is, available Net Cash Flow will be distributed in the priority of the various categories of entitlement set out below in Section 13.4.

13.3 Net Cash Flow

- (a) In determining distributions to be made, the concept of Net Cash Flow will be utilized, as shall be agreed upon and included in the Limited Partnership Agreements.
- (b) A provision will be included in the Limited Partnership Agreements to deal with “normalizing” transactions which are at non-Arm’s Length or which may have the potential to be at non-Arm’s Length, including:
 - (i) capital expenditures (other than the capital expenditure for the acquisition of the Ottawa 67’s, the amount of which the City acknowledges it is satisfied); and

- (ii) transactions of an expense nature, such as payments to employees and officers,

provided that non-Arm's Length transactions in which both the revenue and expense sides of the transaction are included in the Closed System, copies of the agreements for which have been provided to the City prior to the execution thereof, shall not be required to be "normalized", provided that the proportion of revenue to expense and the timing of the receipt of revenue and payment of expenses are the same as would be applicable to an Arm's Length transaction in similar circumstances and the City has Approved the terms and conditions thereof.

13.4 Waterfall

- (a) Net Cash Flow from the Total Project, excluding the Urban Park, shall be distributed in accordance with the following priorities:
 - (i) payments on account of the Reserve, on a cumulative, but not compounded basis;
 - (ii) (A) to each of OSEG and the City, a return from and after the Closing Date on the outstanding amount from time to time of the Equity and the City Funding Equity, respectively, at the rate of eight percent (8%) per annum, on a cumulative, but not compounded basis (minus in the case of OSEG, the Initial Investment Income);

or

(B) notwithstanding subparagraph (A) above, in the event that the available Net Cash Flow from the Total Project, excluding the Urban Park, in any "Fiscal Year" (as such Fiscal Year shall be defined in the Master GP Shareholder's Agreement and the

Limited Partnership Agreement for the Master Partnership), shall be sufficient to make a portion but not all of the amounts payable in accordance with subparagraph (A) above, the amount of such available Net Cash Flow shall be paid to each of OSEG and the City in the proportion that the amount of the Equity and the City Funding Equity bear to each other;

- (iii) return of Additional Equity to OSEG;
- (iv) (A) following the third (3rd) anniversary of the Operating Term Commencement Date (as such term is defined in the Retail Lease) of the Retail Lease, the return of the Minimum Equity Requirement, any Stadium Completion Funds and the City Funding Equity as follows:
 - (1) to OSEG on account of the return of the Minimum Equity Requirement and any Stadium Completion Funds on the amortized basis referred to in Section 12.3; and
 - (2) to the City on account of the City Funding Equity on the amortized basis referred to in Section 12.6(b); or
- (B) notwithstanding subparagraph (A) above, in the event that in any “Fiscal Year” (as such Fiscal Year shall be defined in the Master GP Shareholder’s Agreement and the Limited Partnership Agreement for the Master Partnership) the amount of available Net Cash Flow from the Total Project, excluding the Urban Park, shall be sufficient to make a portion but not all of the payments to each of OSEG and the City in accordance with subparagraph (A) above, payments shall be made to OSEG on account of the return of the Minimum Equity Requirement and any Stadium Completion Funds and to the City on the account of the return of the City Funding

Equity in the proportion that the then unreturned aggregate amount of the Minimum Equity Requirement and any Stadium Completion Funds and the then unreturned amount of the City Funding Equity bear to each other;

- (v) a return to the City from and after the Closing Date on City Deemed Equity (as referred to and adjusted in accordance with Section 12.4(a)) at the rate of eight percent (8%) per annum, on a cumulative, but not compounded basis; and
 - (vi) the balance of the available Net Cash Flow from the Total Project, excluding the Urban Park, will be distributed to OSEG and the City in equal shares.
- (b) Notwithstanding the provisions of Section 13.4(a) above, in the event that either the CFL Team or the Ottawa 67's cease to operate without the consent of the City for any reason whatsoever other than the CFL or the OHL ceasing to operate, then at the option of the City, the City Deemed Equity together with interest accrued and unpaid, determined on a cumulative, but not compounded basis, shall be deemed to be City Funding Equity for the purposes of the priority of payments of the available Net Cash Flow and the Waterfall referred to in Section 13.4(a) above, as follows:
- (i) such deemed City Funding Equity shall be subject to and included in the determinations made under Section 13.4(a)(ii); and
 - (ii) such deemed City Funding Equity shall not be subject to or included in the determinations made under Section 13.4(a)(iv).

For clarity, the provisions contained in subparagraph (b) respecting the cessation of operation of either the CFL Team or the Ottawa 67's shall be applicable whether or not the CFL Partnership or the Ottawa 67's Partnership shall own the CFL Team or the

Ottawa 67's, as the case may be, at the time of the cessation of operation, or whether a third party shall own the CFL Team or the Ottawa 67's as a result of the CFL Team or the Ottawa 67's having been sold to a third party at the time of the cessation of operation.

13.5 Limits on Mortgaging

There shall be limits on the construction and permanent financing of the Retail Component as provided in the Retail Lease.

- (a) Prior to the Waterfall Expiry, there shall be no refinancing which increases the principal amount outstanding on account of the mortgage following the obtaining of the first (1st) permanent financing of the Retail Component, except as Approved by the City and then only to the extent that the amount of the increase is utilized for tenant improvements or other capital improvements and there is no availability of funds from the Minimum Equity Requirement.
- (b) There shall be no second mortgage financing, except as provided in subparagraph (c) below.
- (c) Notwithstanding subparagraph (b), any OSEG Member or a Permitted Transferee of any OSEG Member may provide funding for the Retail Component by way of a second mortgage, provided that such second mortgage complies with the restrictions on the amount thereof contained in the Retail Lease and the provisions of Section 10.6(c).
- (d) For the purpose of both construction financing and permanent financing of the Retail Component prior to the Waterfall Expiry, subject to paragraph (e) below, the Fair Market Value (as defined in the Retail Lease) of the Retail Lands shall be deemed to initially be three million two hundred fifty thousand dollars (\$3,250,000) (the “**Initial Mortgage Value**”). If there shall be a power of sale, the proceeds from it shall be distributed as follows:

- (i) firstly, the mortgagee shall be entitled to the principal amount outstanding on account of the mortgage, together with outstanding interest and costs; and
 - (ii) secondly, the remainder shall be paid to the Retail Partnership.
- (e) Until conclusion of such power of sale, the mortgagee in possession shall pay annual rent of five percent (5%) of the Initial Mortgage Value.
- (f) For both construction financing and permanent financing of the Retail Component, the City, as landlord, shall have a right of first offer in event that there shall be a power of sale on the terms and conditions more particularly set out in the Retail Lease.
- (g) In the event that there is a refinancing permitted hereunder and under the Retail Lease in respect of which there is a subsequent enforcement action by the mortgagee, the mortgagee in possession shall pay an annual rent based on five percent (5%) of the fair market value of the Retail Lands as determined at the time of such refinancing using the same valuation principles as used for determining the Tenant Mortgagee Retail Lands Mortgage Value under the Retail Lease.

13.6 Waterfall Expiry Provisions

On the Waterfall Expiry:

- (a) the Waterfall and the Closed System will be terminated;
- (b) at the option of the City and subject to the agreement of the Stadium Partnership, the Stadium Lease may be extended on terms to be agreed between the City and the Stadium Partnership, all as more fully set out in the Stadium Lease;

- (c) in respect of the Retail Lease:
 - (i) subject to Sections 13.6(f)(ii), the Retail Lease rental shall thereafter be based on:
 - (A) Fair Market Value Rent (as defined in the Retail Lease) of the Retail Lands, determined at intervals provided in the Retail Lease; and
 - (B) participation rent equal to fifty percent (50%) of the Retail Partnership's share of the Annual Net Cash Flow (as defined in the Retail Lease) from the Retail Component;
 - (ii) or on the thirtieth (30th) anniversary of the Operating Term Commencement Date (as defined in the Retail Lease), whichever is later, the City shall be entitled to terminate the Retail Lease pursuant to its Termination Option (as such term is defined and described in the Retail Lease). For greater certainty, if the Termination Option is exercised on the Waterfall Expiry, the Termination Amount (as defined in the Retail Lease) shall be deemed to be payable after the transfer described in Section 13.6(f);
 - (iii) the Retail Partnership shall be entitled to finance and refinance the Retail Component from time to time, subject to an overall limit on the amount of financing equal to seventy-five percent (75%) of the Fair Market Value of the Retail Component at the time of each financing, provided that to the extent that the proceeds of the financing are not used for tenant improvements or other capital improvements, the principal and interest payments for the portion of the financing not so used shall be excluded from the calculation of Annual Net Cash Flow (as defined in the Retail Lease);

- (d) in respect of the revenue from the Parking Structure:
 - (i) net operating revenue from the Parking Structure (the “**Parking NOI**”) shall be allocated amongst the Retail Partnership, the Office Developer (to the extent only that the Office Developer elects to allow any of the parking spaces forming part of the Office Component’s Portion of the Parking Structure to be included in the pool of parking spaces for general parking rather than being restricted for use by occupants of the Office Component) and the City, as owner of the Stadium (collectively, the “**Parking Participants**”), based upon the Equitable Principles (as defined below), as mutually agreed upon amongst the Parking Participants, each acting reasonably, and failing agreement, as determined in accordance with the Dispute Resolution Procedure;
 - (ii) in the event that any of the Retail Component, the Office Component or the Stadium shall no longer be in existence, the Parking Participants shall be deemed to include only the relevant tenant, subtenant and/or owner of those of the Components as shall be in existence as at the Waterfall Expiry;
 - (iii) “**Equitable Principles**” shall include:
 - (A) an allocation of the Parking NOI amongst the Parking Participants in the same proportions as the Parking Participants contributed to the total Hard Costs and Soft Costs (excluding interest and financing fees) with respect to the creation of the Parking Structure, subject to any appropriate modifications as a result of the relevance of any of the matters referred to in subparagraphs (B), (C), (D) and (E) below, and provided that the Office Developer shall be deemed to have contributed all of the Hard Costs and Soft Costs for the creation of the Office Component’s Portion of the Parking Structure;

- (B) the impact of the absence of one or more of the Retail Component, the Office Component and the Stadium, if such is the case, on the Parking NOI;
 - (C) the usage of the Parking Structure by various Components if the Stadium has less than twenty-five (25) Events in any given calendar year;
 - (D) the extent to which those of the ninety (90) parking spaces of the Office Component allocated to it are made available for public use;
 - (E) such other equitable factors and relevant circumstances, if any, in the consideration of the Parking NOI allocation as shall exist at the Waterfall Expiry, including the circumstances respecting leasing of space in a Component such as the number of parking spaces of the Component made available to the public, the parking fee (if any) payable by users of parking spaces reserved for the Component and the amount of rent payable, tenant inducements and other relevant factors of subtenant leases containing a right to reserved parking; and
- (iv) the Parking Participants shall commence consideration of the Equitable Principles at the commencement of the twenty-fifth (25th) year of the Operating Term (as such term defined in the Retail Lease) of the Retail Lease; however, in the event that there shall be any change of circumstance relevant to the determination of Equitable Principles between the time of resolution of such Equitable Principles and the Waterfall Expiry, the Equitable Principles shall be re-established as at the Waterfall Expiry, taking into account all relevant factors and circumstances in existence at the Waterfall Expiry;

- (e) all limitations on Dispositions described in this Agreement or in the Master GP Shareholder's Agreement or in the Limited Partnership Agreement for the Master Partnership shall terminate, except as specifically set forth in the Leases;
- (f) in respect of the Master Partnership:
 - (i) subject to subparagraph (ii) below, the City shall transfer its interest in the Master Partnership to OSEG for one dollar (\$1);
 - (ii) the Fair Market Value of the Retail Lands for the purpose of determining the Fair Market Value Rent (as defined in the Retail Lease) shall be increased by the amount, if any, of the Team Differential. For the purposes hereof, the "**Team Differential**" shall be equal to the difference, if a positive number, between Teams' Value minus Participation Rent Value, where:
 - (A) "**Participation Rent Value**" means the present value of the revenue anticipated to be received by the City, as landlord, with respect to the Participation Rent (as defined in the Retail Lease) commencing upon the Waterfall Expiry for the remainder of the Operating Term (as defined in the Retail Lease) of the Retail Lease, utilizing a discount factor of five percent (5%); and
 - (B) "**Teams' Value**" means one-half of the Fair Market Value of the CFL Team and the Ottawa 67's as at the Waterfall Expiry.

ARTICLE XIV
OBLIGATIONS OF OSEG PRIOR TO CLOSING

14.1 Pre-Closing Obligations

Without limiting specific obligations of OSEG as otherwise provided in this Agreement, prior to the Closing, OSEG shall:

- (a) Membership Conditions – use its commercially reasonable efforts to cause the Membership Conditions to be satisfied;
- (b) Stadium – use its commercially reasonable efforts to cause (i) the Final Plans and Specifications for the Stadium to be completed in conformity with the Design and Plan Requirements, and (ii) the Comprehensive Construction Contract to be completed and entered into by the relevant parties;
- (c) Retail Condition – use its commercially reasonable efforts to cause the Retail Condition to be satisfied;
- (d) Planning Approvals – use its commercially reasonable efforts to obtain all of the Planning Approvals, excluding Planning Approvals relating to the Urban Park;
- (e) Retail Component – use its commercially reasonable efforts to be in a position to cause Construction of the Retail Component (in compliance with the Final Plans and Specifications for the Retail Component) to commence within a period of six (6) months following the Completion of the Slab; and
- (f) OSEG Documents on or before the Execution Date, make available to a representative of the City, for review, copies of (i) the Membership Agreement for the CFL Team and any amendments to it, (ii) the partnership agreement for OSEG and any amendments to it, (the items described in subparagraphs (i) and (ii) collectively, the “**OSEG Documents**”); (iii) the acquisition agreement for the

Ottawa 67's (the "**Ottawa 67's Acquisition Agreement**"); (iv) constating documents with respect to each of the Members; and (v) an affidavit from a senior officer or director of each Member establishing that such Member is a Special Purpose Vehicle, in form and content satisfactory to the City.

ARTICLE XV
CONDITIONS PRECEDENT

15.1 Conditions Precedent for City

The obligation of the City to complete the transactions contemplated by this Agreement on the Closing shall be subject to the following conditions precedent (which conditions have been inserted for the sole benefit of the City and which the City alone may waive by Notice to OSEG):

(a) **Environmental Due Diligence**

on or before Closing, the City shall have conducted whatever searches, inspections, analysis and investigations as the City, in its Discretion, deems advisable with respect to soil and environmental matters relating to the Site and is satisfied, in its Discretion, with the results of all such searches, inspections, analysis and investigations;

(b) **OSEG Documents Due Diligence**

on or before the Closing, the City has conducted whatever review and other investigations of the OSEG Documents as the City shall determine in its Discretion and is satisfied with the OSEG Documents and on Closing the OSEG Documents in the form previously reviewed and approved by the City are unamended and in good standing;

(c) **Members**

on or before the Closing, the City is satisfied that the corporations used as the Members of OSEG are Special Purpose Vehicles;

(d) **Third Party Agreements**

the Third Party Agreements, other than Third Party Agreements relating to the Urban Park, shall have been obtained and/or entered into on or before Closing;

(e) **Rate on Debt**

on or before Closing, the City shall be satisfied, in its Discretion, that the City is able to issue debentures to fund the Maximum City Cost at the rate assumed in the final pro forma financial statement respecting the Project and Waterfall prepared by PricewaterhouseCoopers (the “**Final Pro Forma**”);

(f) **Title to Site**

on the Execution Date, the City shall be satisfied that there are no encumbrances, defects in title, adverse claims, leases, rights of way or mortgages, charges or other encumbrances of any nature or kind affecting title to the Site;

(g) **Absence of Aboriginal Rights**

on the Execution Date, the City is satisfied, in its Discretion, that it has satisfied all obligations respecting aboriginal rights claims with respect to any portion of the Site and the City is satisfied, in its Discretion, that there are no aboriginal rights claims with respect to the Site;

(h) **CFL Agreement**

on or before the Closing Date, the CFL Agreement shall have been executed and delivered by the CFL;

(i) **Retail Condition**

on Closing, the Retail Condition shall have been satisfied;

(j) **Section 2.12 Costs**

(i) on Closing, the City shall be satisfied with the costs and expenses to be incurred pursuant to Section 2.12 in respect of remediation of environmental conditions at the Site; and

(ii) on or before Closing, the City shall be satisfied with the costs and expenses to be incurred pursuant to Section 2.12 in respect of archaeological conditions at the Site;

(k) **Exposition Hall Facility**

on or before Closing, the City and Shenkman Corporation or an Affiliate of Shenkman Corporation approved by the City, in its Discretion, shall have entered into an agreement for the Exposition Hall Facility project and Shenkman Corporation or its approved Affiliate, as the case may be, shall have provided the City Manager with reasonable evidence that the required funding for the Exposition Hall Facility has been obtained, that a building permit has been issued and that construction of that project has commenced;

(l) **OSEG Closing Documents**

on Closing, OSEG shall execute (to the extent it is a party) and shall deliver to the City all of the OSEG Closing Documents;

(m) **Covenants**

on Closing, OSEG and the Component Partnerships shall have complied with or performed all covenants and obligations under this Agreement required to be performed by them on or before Closing, in all material respects;

(n) **Representations**

on Closing, the representations and warranties of OSEG contained in this Agreement shall be true and accurate in all material respects and OSEG shall have delivered an OSEG Certificate confirming same; and

(o) **No Material Adverse Change**

between the Execution Date and the Closing Date there shall have been no material adverse change with respect to (i) the legal, financial or economic positions of OSEG or any of the Members, and OSEG shall have delivered an OSEG Certificate to such effect, or (ii) the existence, operations or financial or economic position of the CFL.

The conditions precedent set forth in this Section 15.1 are for the benefit of the City and may be waived in whole or in part by the City. Unless the City gives Notice to OSEG on or before 5:00 p.m. on the Closing Date, or such earlier date by which any condition set out above must be satisfied, that a condition has not been satisfied and is not waived by the City, the condition shall be deemed to be satisfied and waived as of 5:00 p.m. on such date.

15.2 Conditions Precedent for OSEG

The obligation of OSEG and each Component Partnership to complete the transactions contemplated by this Agreement on the Closing, shall be subject to the following conditions precedent (which conditions have been inserted for the sole benefit of OSEG and which OSEG alone may waive by Notice to the City):

(a) **Title to Site**

- (i) on or before the Execution Date, OSEG shall have examined title to the Site at its own expense and be satisfied acting reasonably that the City's title to the Site is good and free from all mortgages, charges, easements, rights of way and other encumbrances or claims; and
- (ii) on or before Closing, the City shall have provided OSEG and each Component Partnership with an indemnity respecting any claims with respect to aboriginal rights with respect to any portion of the Site, on terms and conditions satisfactory to OSEG, acting reasonably;

(b) **Retail Subleases**

on or before the fifth (5th) Business Day prior to the Closing Date, the Retail Partnership shall have entered into one or more Sublease(s) (as such term is defined in the Retail Lease) in respect of not less than sixty-five percent (65%) of the GFA (as such term is defined in the Retail Lease) of the Retail Component as set out in the Final Plans and Specifications for the Retail Component, provided that the Retail Partnership shall have used commercially reasonable efforts to negotiate and enter into such Sublease(s);

(c) **Financing**

on or before the fifth (5th) Business Day prior to the Closing Date, OSEG and/or the Retail Partnership, as applicable, shall have obtained a binding commitment (subject to usual conditions) for financing for the Retail Component in accordance with the applicable provisions contained in the Retail Lease and otherwise on commercially reasonable terms and conditions, provided that OSEG and/or the Retail Partnership, as applicable, shall have used commercially reasonable efforts to negotiate and obtain such financing;

(d) **City Closing Documents**

on Closing, the City shall execute (to the extent a party) and shall deliver to OSEG all of the City Closing Documents;

(e) **Covenants**

on Closing, the City shall have complied with or performed all covenants and obligations under this Agreement required to be performed by it on or before Closing, in all material respects;

(f) **Representations**

on Closing, the representations and warranties of the City contained in this Agreement shall be true and accurate in all material respects and the City shall have delivered a City Certificate confirming same; and

(g) **Retail Construction Cost**

on the Execution Date, OSEG shall be satisfied, in its Discretion, with the cost of Construction for the Retail Component, including the Retail Component's Portion of the Parking Structure.

The conditions precedent set forth in this Section 15.2 are for the benefit of OSEG and may be waived in whole or in part by OSEG. Unless OSEG gives Notice to the City on or before 5:00 p.m. on the Closing Date, or such earlier date by which any condition set out above must be satisfied, that a condition has not been satisfied and is not waived by OSEG, the condition shall be deemed to be satisfied and waived as of 5:00 p.m. on such date.

15.3 Mutual Conditions

The obligations of the City, OSEG and the Component Partnerships to complete the transactions contemplated by this Agreement on the Closing are subject to the fulfilment of the following conditions:

- (a) no injunctive or restraining order or other decision or order of a Relevant Authority of competent jurisdiction is in effect on Closing which prohibits, restrains, limits or imposes conditions having a material adverse effect on the obligations or liabilities of any of the Parties or the transactions contemplated by this Agreement;
- (b) without limiting the generality of Section 15.3(a), there shall not be in effect on Closing an order under Part II of the *Environmental Assessment Act* (Ontario), or any equivalent provision under any other Environmental Laws, in respect of all or a material part of the Site;
- (c) on the Execution Date, the City and OSEG shall have agreed upon the terms of the Reserve to be included within the Stadium Lease;
- (d) no Law having application to the Parties, the Site or the Project which prohibits, restrains, limits or imposes conditions having a material adverse effect on the obligations or liabilities of any of the Parties or the transactions contemplated by this Agreement shall be in force and effect on the Closing, excluding the Site Plan Agreement;

- (e) on the Closing Date, each of the City and OSEG, respectively, shall each be satisfied, in its Discretion, with the Final Pro Forma;
- (f) on or before the Closing Date, the Office Developer shall have entered into the Office Lease;
- (g) OSEG has obtained all Planning Approvals In Final Form on or before the Execution Date, other than Planning Approvals related to the Urban Park;
- (h) a foundation permit has been obtained on Closing for the Stadium
- (i) on Closing, the Membership Conditions shall have been satisfied;
- (j) the Material Agreements which are contemplated hereby to be entered into on or before Closing shall have been entered into, each on terms and conditions satisfactory to each of the City and OSEG, in its Discretion;
- (k) on or before the Closing Date, the Parties shall be satisfied that the total of the cost of the Stadium Improvements and of the City's Share of Cost of Parking based upon the Construction Contract Price Allocation and the Soft Cost Allocation with respect thereto shall not exceed the Maximum City Cost;
- (l) the City shall have obtained all Heritage Approvals In Final Form on or before the Closing;
- (m) the City shall have received on or before the Closing all approvals from NCC as shall be required to effect the Project, other than the redevelopment of the Urban Park;
- (n) the City shall have received on or before the Closing all approvals from Parks Canada as shall be required to effect the Project, other than the redevelopment of the Urban Park; and

- (o) on or before Closing, the City shall have designated the Stadium (other than the Stadium Retail Parcels) and the City's Portion of the Parking Structure as a municipal capital facility pursuant to Section 110 of the *Municipal Act, 2001* (Ontario).

The conditions precedent set forth in this Section 15.3 are for the benefit of both the City and OSEG and may be waived in whole or in part by both the City and OSEG. Unless OSEG or the City gives Notice to the other on or before 5:00 p.m. on the Closing Date, or such earlier date by which any condition set out above must be satisfied, that a condition has not been satisfied and is not waived by OSEG or the City, as applicable, the condition shall be deemed to be satisfied and waived as of 5:00 p.m. on such date.

15.4 Termination of Agreement

In the event that this Agreement shall be terminated by either of the Parties as a result of the non-satisfaction and non-waiver of any of the conditions contained in Section 15.1, 15.2 or 15.3, neither Party shall have any further obligations or liabilities to the other of any nature or kind, except as set out in the First Cost Sharing Agreement and the Second Cost Sharing Agreement.

ARTICLE XVI

REPRESENTATIONS AND WARRANTIES

16.1 Representations and Warranties of OSEG and the Members

- (a) OSEG and the Members jointly and severally (except as herein otherwise specified) represent and warrant to the City:
 - (i) as at the date of this Agreement, OSEG is a general partnership established pursuant to the Law of the Province of Ontario, validly existing and registered and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all of

its obligations contained in this Agreement and the Material Agreements to which it is a party;

- (ii) as at the date of this Agreement, OSEG has no material financial or other obligations, and shall have none until the Waterfall Expiry or the earlier termination of this Agreement, that are unrelated to the Total Project or the Soccer Team;
- (iii) as at the date of this Agreement, the execution and delivery of this Agreement and all Material Agreements to which OSEG is a party and all documents, instruments and other agreements required to be executed and delivered by OSEG pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary partnership action on the part of OSEG, and this Agreement has been duly executed and delivered by OSEG and constitutes a legal, valid and binding obligation of OSEG enforceable in accordance with its terms (except as may be limited by Law of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court);
- (iv) as at the date of this Agreement, there are no current and, to the Knowledge of OSEG, there are no pending or threatened actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions or other proceedings of, by, against or relating to OSEG; and
- (v) as at the date of delivery thereof, the OSEG Documents as delivered to the City are and will be complete, unamended and in good standing, there are and will be no defaults by OSEG thereunder and, to the Knowledge of OSEG, there are and will be no defaults thereunder by the other parties to the OSEG Documents.

- (b) Each of the Members represents and warrants for itself only to the City that:
- (i) as at the date of this Agreement, all third party consents to the execution of this Agreement by such Member and the performance of its obligations hereunder have been received;
 - (ii) as at the date of this Agreement, such Member is a corporation duly incorporated and validly existing under its respective incorporating statute, its shareholders are as set out in a certificate to be delivered to the City by such Member contemporaneously with the execution of this Agreement and such Member has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all of the obligations contained in this Agreement and the Material Agreements to which OSEG is a party on behalf of and as a partner of OSEG;
 - (iii) as at the date of this Agreement, such Member has no material financial or other obligations, and shall have none until the Waterfall Expiry or the earlier termination of this Agreement, that are unrelated to the Total Project or the Soccer Team, except as permitted under the definition of Special Purpose Vehicle;
 - (iv) as at the date of delivery thereof, with respect to documents relating to such Member, that the documents provided in accordance with Section 14.1(f) are and will be complete, unamended and in good standing and there are no defaults thereunder; and
 - (v) as at the date of this Agreement, the execution and delivery of this Agreement and all Material Agreements to which such Member is a party (whether on its own behalf or as a partner of OSEG) and all documents, instruments and other agreements required to be executed and delivered by such Member pursuant to this Agreement (whether on its own behalf or as a partner of OSEG), and the completion of the transactions contemplated

by this Agreement, have been duly authorized by all necessary corporate action on the part of such Member, and this Agreement has been duly executed and delivered by such Member and constitutes a legal, valid and binding obligation of such Member enforceable in accordance with its terms (except as may be limited by Law of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court).

16.2 Representations and Warranties of the City

The City represents and warrants to OSEG that as at the date of this Agreement:

- (a) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the City pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary action on the part of the City, and this Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms, except as may be limited by Law of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;
- (b) the City has full power and capacity to enter into and carry out the transactions contemplated by, and duly observe and perform all of its obligations contained in, this Agreement and the Material Agreements to which it is a party;
- (c) there are no third party consents required for the execution by the City of, and performance of its obligations under, this Agreement and the Material Agreements to which it is a party; and

- (d) there are no current and, to the Knowledge of the City, there are no pending or threatened actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions or other proceedings of, by, against or relating to the City which could have a material adverse effect on the ability of the City to perform its obligations under this Agreement and the Material Agreements to which it is a party and the City does not have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding. Notwithstanding the foregoing, the parties acknowledge that the appeal period from the unsuccessful application by Lansdowne Park Conservancy to appeal to the Ontario Court of Appeal has not expired.

16.3 Survival of Representations and Warranties

The representations and warranties contained in Section 16.1 and Section 16.2 shall not merge but shall survive the Closing for a period of two (2) years thereafter.

16.4 Change in Representations

In the event that there shall be any material change to any representation or warranty at any time prior to the termination of this Agreement, OSEG or the City, as the case may be, shall forthwith provide information with respect thereto, together with an OSEG Certificate or City Certificate, as applicable, in connection therewith.

16.5 Liability for Disclosed Data

The City:

- (a) gives no warranty or undertaking of whatever nature and shall have no liability with respect to or arising from information contained in or omitted from third party opinions in the Disclosed Data;

- (b) does not warrant that the Disclosed Data represents all of the information in its possession or power respecting the Project on the Execution Date relevant or material to or in connection with the Project, the obligations of OSEG under this Agreement or the obligations of OSEG or a Component Partnership under any of the Material Agreements, but the City has not intentionally failed to provide any such information to OSEG;
- (c) except as expressly provided in this Agreement or a Material Agreement, will not be liable to OSEG (or the Members) in respect of (i) any failure to disclose or make available to OSEG (whether before, on or after the execution of this Agreement) any information, documents or data, except for an intentional failure to disclose any material information in its possession or power respecting the Project on the Execution Date relevant or material to or in connection with the Project, the obligations of OSEG under this Agreement or the obligations of OSEG or a Component Partnership under any of the Material Agreements, (ii) any failure to review or to update the Disclosed Data, nor (iii) any inadvertent failure to inform OSEG (whether before, on or after execution of this Agreement) of any inaccuracy, error, omission, defects or inadequacy in the Disclosed Data;
- (d) except as provided for in this Section or as otherwise expressly provided for in this Agreement or a Material Agreement, will not be liable to OSEG for, and OSEG will not seek to recover from the City or from any City Indemnified Person, any damages, losses, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use, reliance or application of the Disclosed Data by, or on behalf of, OSEG or any sub-contractor, unless any such Disclosed Data is to the actual knowledge of a senior staff member of the City false or contains material misrepresentations or contains any material inaccuracy, error, omission or defect (collectively, a “**Misrepresentation**”) and such senior staff member does not disclose such Misrepresentation to OSEG before OSEG takes actions which result in detrimental reliance upon such Misrepresentation; and

- (e) shall use commercially reasonable efforts to obtain, but without being obligated to make any payment therefor, reliance letters in favour of OSEG and applicable Component Partnerships in respect of reports from consultants contained within the Disclosed Data which originate from a Person other than the City.

16.6 As Is Where Is

Subject to Section 2.12 and any specific provisions in this Agreement to the contrary, OSEG acknowledges and agrees that it enters into this Agreement on an “as is where is” basis and that it is relying solely on its own due diligence and, except as expressly set out in this Agreement, relies on no representations or warranties of any nature or kind whatsoever by the City.

ARTICLE XVII **REPRESENTATIVES**

17.1 City’s Representatives

The following will apply with respect to the appointment and authority of the City’s Representative:

- (a) the City shall appoint a Person to represent the City (the “**City’s Representative**”), to exercise the functions and powers of the City in relation to the Project which are identified in this Agreement as functions or powers to be carried out by the City’s Representative and will also exercise such other functions and powers of the City under this Agreement as the City may notify OSEG in writing from time to time;
- (b) the City’s Representative will be entitled at any time by Notice to OSEG to authorize any other Person to exercise the functions and powers of the City delegated to the City’s Representative pursuant to this Section 17.1, either generally or specifically. Any act of any such Person will, for the purposes of this Agreement, constitute an act of the City’s Representative and all references to the

“City’s Representative” in this Agreement (apart from this Section) will be taken as a reference to such Person so far as they concern matters within the scope of such Person’s authority;

- (c) the City may by Notice to OSEG change the City’s Representative at any time or times. Such change will have effect on the date specified in the Notice (which date will, other than in the case of an Emergency, be a date that will not cause material inconvenience to OSEG in the execution of its obligations under this Agreement);
- (d) during any period when no City’s Representative has been appointed (or when the City’s Representative is unable through illness, incapacity or other reason whatsoever to carry out or exercise the City’s Representative’s functions under this Agreement), the City will carry out the functions which would otherwise be performed by the City’s Representative; and
- (e) except as previously notified in writing before such act by the City to OSEG, OSEG and OSEG’s Representative will be entitled to treat any act of the City’s Representative in connection with the Project as being expressly authorized by the City and OSEG and OSEG’s Representative will not be required to determine whether an express authority has in fact been given.

17.2 Member Representatives

The following will apply with respect to the appointment and authority of each Member Representative:

- (a) each Member hereby appoints the following one (1) individual to represent such Member (each a “**Member Representative**” and together the “**Member Representatives**”), to exercise the functions and powers of such Member pursuant to the Project, this Agreement and/or the Material Agreements and to

also exercise such other functions and powers of the Member as the Member may notify the other Parties in writing from time to time:

- (i) from the Execution Date until such date which is the tenth (10th) anniversary of the Closing Date, Roger Greenberg in respect of the interest in OSEG held by Lansgreen Investments Inc. at Closing and, thereafter, such other individual as the Member may notify the other Parties in writing from time to time;
- (ii) from the Execution Date until such date which is the tenth (10th) anniversary of the Closing Date, John Ruddy in respect of the interest in OSEG held by Trinity Lansdowne Ltd. at Closing and, thereafter, such other individual as the Member may notify the other Parties in writing from time to time;
- (iii) from the Execution Date until such date which is the tenth (10th) anniversary of the Closing Date, William Shenkman in respect of the interest in OSEG held by Shenkman Lansdowne Ltd. at Closing and, thereafter, such other individual as the Member may notify the other Parties in writing from time to time;
- (iv) from the Execution Date until such date which is the tenth (10th) anniversary of the Closing Date, Jeff Hunt in respect of the interest in OSEG held by Keljay Ltd. at Closing and, thereafter, such other individual as the Member may notify the other Parties in writing from time to time; and
- (v) from the Execution Date until such date which is the tenth (10th) anniversary of the Closing Date, John Pugh in respect of the interest in OSEG held by Friarmere Holdings Inc. at Closing and, thereafter, such other individual as the Member may notify the other Parties in writing from time to time;

- (b) notwithstanding Section 17.2(a), in the event of the death or permanent incapacity of Roger Greenberg (in respect of the interest in OSEG held by Lansgreen Investments Inc. at Closing), John Ruddy (in respect of the interest in OSEG held by Trinity Lansdowne Ltd. at Closing), William Shenkman (in respect of the interest in OSEG held by Shenkman Lansdowne Ltd. at Closing), Jeff Hunt (in respect of the interest in OSEG held by Keljay Ltd. at Closing) or John Pugh (in respect of the interest in OSEG held by Friarmere Holdings Inc. at Closing) during the period between the Execution Date and such date which is the tenth (10th) anniversary of the Closing Date, subject to the Approval of the City, acting reasonably, a Member may appoint a replacement Member Representative to replace such deceased or incapacitated individual, which replacement shall be confirmed by OSEG in writing;
- (c) notwithstanding Section 17.2(a), but subject to Section 17.2(b), in the event of a Disposition of Securities:
 - (i) of a Member; or
 - (ii) of OSEG by a Member,

in each case to a Permitted Transferee with respect to that Member during the period between the Execution Date and ending on such date which is the tenth (10th) anniversary of the Closing Date, the following individuals shall remain the Member Representative notwithstanding such Disposition: Roger Greenberg (in respect of the interest in OSEG held by Lansgreen Investments Inc. at Closing), John Ruddy (in respect of the interest in OSEG held by Trinity Lansdowne Ltd. at Closing), William Shenkman (in respect of the interest in OSEG held by Shenkman Lansdowne Ltd. at Closing), Jeff Hunt (in respect of the interest in OSEG held by Keljay Ltd. at Closing) or John Pugh (in respect of the interest in OSEG held by Friarmere Holdings Inc. at Closing);

- (d) the Member Representative shall not authorize any other Person to exercise the functions and powers of the Member; and
- (e) the Parties will be entitled to treat any act of a Member Representative in connection with this Agreement or a Material Agreement as being expressly authorized by the Member and no Party will be required to determine whether an express authority has in fact been given.

17.3 OSEG's Representative

The following will apply with respect to the appointment and authority of OSEG's Representative:

- (a) OSEG shall appoint one (1) Person to represent OSEG for all purposes of the Project, this Agreement and/or the Material Agreements ("**OSEG's Representative**"). Except as previously notified in writing before such act by OSEG to the City, the City and the City's Representative will be entitled to treat any act of OSEG's Representative in connection with this Agreement as being expressly authorized by OSEG and the City and the City's Representative will not be required to determine whether any express authority has in fact been given by OSEG for such act;
- (b) OSEG will be entitled at any time by Notice to the City to authorize another Person to exercise the functions and powers of OSEG delegated to OSEG's Representative pursuant to this Section 17.3, either generally or specifically. Any act of any such Person will, for the purposes of this Agreement, constitute an act of OSEG's Representative and all references to "OSEG's Representative" in this Agreement (apart from this Section) will be taken as references to such Person so far as they concern matters within the scope of such Person's authority; and
- (c) OSEG may by Notice to the City change OSEG's Representative at any time or times. Such change will have effect on the date specified in the Notice (which

date will, other than in the case of an Emergency, be a date that will not cause material inconvenience to the City in the execution of its obligations under this Agreement).

ARTICLE XVIII

THE CLOSING

18.1 The Closing

The Closing shall occur on the Closing Date.

18.2 OSEG Closing Documents

OSEG shall deliver the following documents to the City on Closing, except for those documents provided for in subparagraphs (a) (to the extent entered into by an independent third party as a counterparty to them), (b), (c) and (d) with respect to which OSEG shall use commercially reasonable efforts to obtain such documents on or prior to Closing (all documents provided for in this Section 18.2 being collectively referred to as, the “**OSEG Closing Documents**”):

- (a) copies of each of the Material Agreements which are contemplated hereby to be entered into on or before Closing (being all of the Material Agreements, with the exception of the Parking Management Agreement) and the Office Lease, in each case executed by each party to them other than the City;
- (b) the bonding, letter of credit or other security requirements from the construction contractor under the Comprehensive Construction Contract;
- (c) letters from the Commissioners of the CFL and OHL addressed to the CFL Partnership and the Ottawa 67's Partnership, respectively, and the City confirming satisfaction of the Membership Conditions as contemplated in Sections 5.8(b)(i) and (ii);

- (d) the CFL Agreement executed by the CFL;
- (e) copies of agreements to sublease or subleases with tenants of the Retail Component then entered into;
- (f) an assumption agreement amongst the Parties and each of the Component Partnerships, the Residential Developer and the Office Developer in respect of the rights and obligations of such Component Partnership, Residential Developer or Office Developer, as applicable, provided for hereunder on the terms mutually agreed upon by the Parties, executed by OSEG and each of the Component Partnerships;
- (g) an OSEG Certificate confirming that all of the OSEG Documents in the form previously reviewed and approved by the City are unamended and in good standing or setting out any amendments to the OSEG Documents and the details of the manner in which they are not in good standing in any material respect (provided that nothing herein derogates from the condition precedent in favour of the City set out in Section 15.1(b));
- (h) an OSEG Certificate confirming that all of the representations and warranties contained in Section 16.1 are true and correct in all material respects as at the Closing or setting out the details of any manner in which they are not true and correct in any material respect (provided that nothing herein derogates from the condition precedent in favour of the City set out in Section 15.1(n));
- (i) a legal opinion from the solicitors for OSEG respecting the matters referred to in Sections 16.1(a)(i) and (iii) (but subject to such further exceptions as to enforceability as are customary for legal opinions in commercial transactions in Ontario), in form satisfactory to the City, acting reasonably; and
- (j) such other documentation as required by this Agreement as reasonably requested by the City or the City's solicitors.

18.3 City Closing Documents

On Closing, the City shall deliver the following documents to OSEG (the “**City Closing Documents**”):

- (a) copies of each of the Material Agreements which are contemplated hereby to be entered into on or before Closing (being all of the Material Agreements, with the exception of the Parking Management Agreement) and the Office Lease, in each case executed by the City;
- (b) the CFL Agreement executed by the City (provided OSEG shall have obtained and delivered same);
- (c) an assumption agreement amongst the Parties and each of the Component Partnerships, the Residential Developer and the Office Developer in respect of the rights and obligations of such Component Partnership, the Residential Developer or the Office Developer, as applicable provided for hereunder on the terms mutually agreed upon by the Parties, executed by the City, the Residential Developer and the Office Developer;
- (d) a City Certificate confirming that the representations and warranties of the City contained in Section 16.2 are true and accurate in all material respects as at the Closing or setting out the details of any manner in which they are not true and correct in any material respect (provided that nothing herein derogates from the condition precedent in favour of OSEG and the Component Partnerships set out in Section 15.2(f));
- (e) a legal opinion from the solicitors for the City respecting the matters referred to in Sections 16.2(a) and 16.2(b) (but subject to such further exceptions as to enforceability as are customary for legal opinions in commercial transactions in Ontario), in form satisfactory to OSEG, acting reasonably; and

- (f) such other documentation as required by this Agreement as reasonably requested by OSEG or OSEG's solicitors.

ARTICLE XIX
LIMITS ON LIABILITY

19.1 Limitations on Liability

- (a) Subject to the provisions of Section 19.1(b), the total aggregate amount of liability of the City to OSEG shall not exceed in aggregate fifty million dollars (\$50,000,000), Adjusted for Inflation, during the entire period of time that this Agreement and/or the Retail Lease and/or the Stadium Lease shall be in existence. The aggregate of liabilities referred to in this Section 19.1(a) shall be applicable with respect to the aggregate of all liability contained in or resulting from this Agreement, the Retail Lease, the Stadium Lease and all other Material Agreements.
- (b) The limitation on liability provided in Section 19.1(a) shall exclude payments and/or liabilities in respect of the following:
 - (i) any payment required to be made by the City to OSEG pursuant to Section 22.1;
 - (ii) any payment required to be made by the City upon exercise of its Termination Option (as such term is defined in the Retail Lease) pursuant to Article XVIII of the Retail Lease;
 - (iii) the improper termination of, or breach going to the root of, this Agreement or any Material Agreement;
 - (iv) the amount of any liability of the City to OSEG which is paid by an insurer on behalf of the City;

- (v) the amount of any costs and expenses of the City pursuant to Section 2.12;
- (vi) the City's failure to pay when due any costs of the City's Portion of the Construction Components that are required to be paid by the City; and
- (vii) amounts payable by the City under the First Cost Sharing Agreement and the Second Cost Sharing Agreement.

For greater certainty, there shall be no limit on the amount of the City's liability for the payments and/or liabilities set out in this Section 19.1(b) and no payment by the City on account of any of the payments and/or liabilities set out in this Section 19.1(b) shall be included in the determination or quantification of the aggregate amount of the liability of the City for the purposes of Section 19.1(a).

19.2 No Indirect Losses

Subject to the provisions of Article XXII, the indemnities under this Agreement will not apply and there will be no right to claim damages for breach of this Agreement, in contract, in tort or on any other basis whatsoever to the extent that any loss claimed by either Party is for Indirect Losses, howsoever caused, suffered or allegedly suffered by that Party.

19.3 OSEG's Remedies Against the City

All of OSEG's remedies under or in relation to this Agreement, whether in contract, tort or otherwise, shall only be against the City and OSEG will not have any rights, causes of action or remedies against the City Indemnified Parties (other than the City) with respect to their role or responsibilities relating to the Project, any of the Material Agreements, the Office Lease or this Agreement. Notwithstanding any other provision of this Agreement, nothing in this Agreement will give rise to any contract between OSEG and any of the City Indemnified Parties (other than the City).

19.4 City's Remedies Against OSEG

- (a) All of City's remedies under or in relation to this Agreement, whether in contract, tort or otherwise, shall only be against OSEG and the City will not have any rights, causes of action or remedies against OSEG Indemnified Parties (other than OSEG), with respect to their role or responsibilities relating to the Project, any of the Material Agreements or this Agreement. Notwithstanding any other provision of this Agreement, nothing in this Agreement will give rise to any contract between the City and any of OSEG Indemnified Parties (other than OSEG).
- (b) Notwithstanding Section 19.4(a), the City retains its remedies under or in relation to this Agreement, in contract only, for any breach by a Member (but not any of the other OSEG Indemnified Parties) of its specifically contracted obligations under this Agreement or any of the Material Agreements to which the Member is a party.

ARTICLE XX

OSEG DEFAULT

20.1 OSEG Events of Default

For the purposes of this Agreement, "**OSEG Event of Default**" means any of the following events or circumstances:

- (a) OSEG committing a breach of any of its obligations under this Agreement (not otherwise specifically referred to in this Section 20.1) or under any of the Material Agreements or any of the Component Partnerships (or the general partner thereof) committing a breach of any of its obligations under any Material Agreement (except as a result of any act or omission of the City) or any of the Members committing a breach of any of its obligations under this Agreement or any of the Material Agreements;

- (b) revocation of any Permit required for the performance of the Construction of a Component or the Construction of the Parking Structure pursuant to any of the Material Agreements as a result of a breach of the terms thereof by an OSEG Company or a Component Partnership (except as a result of any act or omission of the City);
- (c) OSEG or the contractor of the Stadium and/or the Parking Structure ceases Construction of any of the Components (other than the Office Component or a Residential Project) or Construction of the Parking Structure for a consecutive period of sixty (60) days, in the absence of a Relief Event, or sixty (60) days within any period of one hundred eighty (180) days, in the absence of a Relief Event, except as a result of any act or omission of the City;
- (d) the occurrence of any of the following events in respect of an OSEG Company:
 - (i) any proceedings with respect to the OSEG Company being commenced under the *Companies' Creditors Arrangement Act* (Canada) and if not initiated by the OSEG Company, not being dismissed by a court of competent jurisdiction within thirty (30) days;
 - (ii) a receiver, receiver manager or an encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the OSEG Company and not being contested in good faith using all reasonable efforts for a period not exceeding thirty (30) days;
 - (iii) the OSEG Company ceasing to carry on business;
 - (iv) the OSEG Company making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar

legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the OSEG Company under the *Bankruptcy and Insolvency Act* (Canada) or otherwise and, if commenced against the OSEG Company, not being stayed within thirty (30) days of its commencement; or

- (v) a petition being filed (and not being contested in good faith using all reasonable efforts for a period not exceeding thirty (30) days), or a resolution being passed or an order being made for the winding up, liquidation or dissolution of the OSEG Company and if not initiated by the OSEG Company, not being dismissed by a court of competent jurisdiction within thirty (30) days,

wherein any of the events described in this subparagraph (d) is not followed within sixty (60) days thereafter with the acquisition of the interest of such OSEG Company by one or more other OSEG Companies;

- (e) the occurrence of a Disposition by OSEG, an OSEG Member or a holder of Securities of an OSEG Member not permitted in accordance with this Agreement;
- (f) the occurrence of an event defined as an Event of Default by the Stadium Partnership under the Stadium Lease or by the Retail Partnership under the Retail Lease; or
- (g) OSEG or a Component Partnership is in default of any of its obligations under the Site Plan Agreement, including those with respect to the Master Site Plan and the Transportation Plan.

20.2 Notification

OSEG will notify the City of the occurrence, and details, of any OSEG Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or

give rise to an OSEG Event of Default, in either case promptly on OSEG becoming aware of its occurrence. However, a failure to provide such Notice shall not derogate from the rights of the City as provided in this Agreement.

20.3 Rights of City

On the occurrence of an OSEG Event of Default or any time thereafter while it is subsisting, the City may:

- (a) serve Notice of default on OSEG requiring OSEG, at OSEG's option:
 - (i) in the case of an OSEG Event of Default other than pursuant to Section 20.1(f), to remedy or cause to be remedied the OSEG Event of Default referred to in such Notice of default (if it is continuing) within the 30-Day Period, provided that with respect to a non-monetary OSEG Event of Default, the 30-Day Period to remedy an OSEG Event of Default shall be extended to such greater period than thirty (30) days as shall be reasonable in the circumstances, such greater period to be as Approved by the City, acting reasonably;
 - (ii) in the case of a non-monetary OSEG Event of Default other than pursuant to Section 20.1(f), to put forward within ten (10) days of such Notice of default, a reasonable program (set out, if appropriate, in stages) for remedying the OSEG Event of Default, which program shall be subject to the approval of the City, in its Discretion. The program will specify in reasonable detail the manner in, and the latest date by, which such OSEG Event of Default is proposed to be remedied. Notwithstanding the foregoing, in the event there is an OSEG Event of Default, but OSEG has exercised its right pursuant to and in accordance with this Agreement, to require a sale of either or both of the CFL Team and the Ottawa 67's under the Limited Partnership Agreement for the CFL Partnership and the Ottawa 67's Partnership, respectively, then the exercise of that right shall

be deemed to be a program approved and accepted by the City, provided that the OSEG Event of Default is remedied in conjunction with the completion of the sale; or

(iii) in the case of an OSEG Event of Default pursuant to Section 20.1(f), to remedy or cause to be remedied the OSEG Event of Default within the period provided therefor in the Stadium Lease or Retail Lease, as applicable; and

(b) exercise any rights contained in this Agreement and/or any of the Material Agreements as contained therein.

20.4 City Termination Right

If:

- (a) an OSEG Event of Default notified in a Notice of default served under Section 20.3 is not remedied before the expiry of the applicable period referred to in Section 20.3;
- (b) OSEG puts forward a program pursuant to Section 20.3 which has been accepted by the City and OSEG fails to achieve any material element of the program or the end date for the program (as the case may be); or
- (c) any program put forward by OSEG pursuant to Section 20.3 is rejected by the City, in its Discretion, and no alternate program has been approved by the City, in its Discretion, within ten (10) days of the rejection of the original program (provided that any alternate program that is so approved by the City shall be deemed to be a program made pursuant to Section 20.3 for the purposes of this Agreement),

then at any time thereafter while an OSEG Event of Default is in existence, the City may upon ten (10) Business Days further Notice to OSEG terminate this Agreement in its entirety by Notice to OSEG with immediate effect in the event such OSEG Event of Default is not cured within such further ten (10) Business Day period. For the purposes of this Section 20.4, if OSEG's performance of a program pursuant to Section 20.3 is adversely affected by the occurrence of a Relief Event, then, subject to OSEG complying with the mitigation and other requirements in this Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay permitted by Section 26.2.

20.5 Alternative Remedies

All of the rights and remedies of the City under this Agreement and the Material Agreements are cumulative and not alternative. In addition to the right to terminate under Section 20.4 and any other rights pursuant to this Agreement, the City may exercise, either separately or simultaneously, any of the following remedies with respect to an OSEG Event of Default for which the City then has the right to deliver a Notice terminating this Agreement under the terms of Section 20.4:

- (a) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Parties that damages at law may not be an adequate remedy for a default or breach of this Agreement; and
- (b) bring any action at law as may be necessary or advisable in order to recover damages, subject to the limitations contained in this Agreement.

20.6 City Costs

OSEG will reimburse the City for all reasonable costs incurred by the City in exercising any of its rights (including any relevant increased administrative expenses and actual legal expenses) under this Article XX. In addition, in the event that the City exercised any of its rights contained in this Article XX, OSEG will reimburse the City for all reasonable costs incurred by the City in

connection therewith together with an administrative fee of fifteen percent (15%) on costs incurred.

20.7 Non-Derogation of Rights

For clarity, the provisions regarding default and the City's rights in the event of an OSEG Event of Default contained in this Agreement shall be in addition to and without derogation from the rights of the City contained in the Material Agreements. However, the provisions respecting limitation of liability contained in Article XIX in favour of OSEG shall be applicable with respect to this Agreement and all of the Material Agreements.

ARTICLE XXI **DEFAULT BY THE CITY**

21.1 City Events of Default

For the purposes of this Agreement, a “**City Event of Default**” means the City committing a breach of any of its obligations under this Agreement and failing to remedy same within thirty (30) days of Notice of such default given by OSEG to the City or such longer period of time as shall be reasonable in the circumstances and is Approved by OSEG, acting reasonably.

21.2 OSEG Costs

The City will reimburse OSEG for all reasonable costs incurred by OSEG as a result of a City Event of Default (including any relevant increased administrative expenses and actual legal expenses). In the event that this Agreement is terminated by OSEG pursuant to applicable law as a result of a City Event of Default following Closing and prior to the Waterfall Expiry, OSEG shall be entitled to payment in accordance with the provisions in Schedule M (Termination Compensation Principles) in the same manner as for a termination pursuant to Section 22.1, *mutatis mutandis*. In the event that this Agreement is terminated by OSEG pursuant to applicable law as a result of a City Event of Default after the Waterfall Expiry, OSEG shall be entitled to payment of its damages as determined in accordance with applicable law.

21.3 Effect of Dispute Resolution Procedure

In the event that there shall be an alleged OSEG Event of Default or an alleged City Event of Default, the City or OSEG, as the case may be, shall not be entitled to exercise any remedies contained in this Agreement in the event that such OSEG Event of Default or City Event of Default is the subject matter of a Dispute Resolution Procedure, other than the right to seek interim injunctive relief.

ARTICLE XXII

TERMINATION

22.1 Post Closing Termination Rights

- (a) Notwithstanding the provisions of Article XX or Article XXI and subject to Section 22.1(b)(iii), this Agreement and all Material Agreements to which the City and OSEG, a Member, a Component Partnership and/or the Master Partnership are parties may be terminated by the City at any time following the Operating Term Commencement Date (as that term is defined in the Retail Lease) upon the provision of sixty (60) days prior Notice thereof to OSEG.
- (b) The City shall, as a condition to the termination of this Agreement pursuant to this Section 22.1, on the effective date of termination:
 - (i) remit to OSEG a payment calculated in the manner set out in Schedule M;
 - (ii) either pay-off or assume from the Retail Partnership its then-outstanding obligations pursuant to any Permitted Tenant Mortgage (as such term is defined in the Retail Lease);
 - (iii) assume all sublease, license and concession agreements in respect of the Components, including Subleases (as such term is defined in the Retail Lease), Subleases (as such term is defined in the Stadium Lease), and, if

there is a subcontract to a third party Parking Operator under the Parking Management Agreement, that subcontract;

- (iv) if the effective date of the termination is prior to the end of the Term (as such term is defined in the Stadium Lease), enter into a fair market value lease with each of the CFL Partnership and the Ottawa 67's Partnership for Frank Clair Stadium and the Civic Centre, respectively, for what would have been the balance of the Term (as such term is defined in the Stadium Lease);
 - (v) transfer any direct or indirect ownership interest it or an Affiliate of it may have in the CFL Team and the CFL Partnership (including in the limited partner and the general partner thereof) to OSEG or as OSEG may direct; and
 - (vi) transfer any direct or indirect ownership interest it or an Affiliate of it may have in the Ottawa 67's and the Ottawa 67's Partnership (including in the limited partner and the general partner thereof) to OSEG or as OSEG may direct.
- (c) Upon fulfilment of the City's obligations contemplated in Section 22.1(b), OSEG shall be deemed to release and forever discharge the City from any and all actions, causes of action, claims, demands, covenants, obligations, contracts, liabilities, costs and damages, whether absolute or contingent and of any nature whatsoever, which it now has or hereafter can, shall or may have, for or by reason of or in any way arising out of this Agreement or a Material Agreement existing up to the time of the termination of this Agreement or such Material Agreement pursuant to this Section 22.1.

ARTICLE XXIII
CONFIDENTIALITY

23.1 Use and Disclosure of Confidential Information

Each Party will hold in confidence any Confidential Information, provided that the provisions of this Section will not restrict either Party from passing such information to its Affiliates or professional advisers, provided such Affiliates and advisers are subject to similar confidentiality obligations, to the extent necessary to enable OSEG to perform (or to cause to be performed) or to enforce OSEG's rights or obligations under this Agreement. The provisions of this Section also will not restrict:

- (a) OSEG from passing Confidential Information to contractors and sub-contractors, the CFL and the OHL and actual or potential lenders, provided such Persons are subject to similar confidentiality obligations, to enable OSEG to perform (or caused to be performed) its rights and obligations under this Agreement; and
- (b) the City from passing reasonably required Confidential Information to the respondents of request for offers issued by the City in respect of the air rights within the Office Component and the Residential Component, provided that such Persons are subject to similar confidentiality obligations.

23.2 Exceptions

The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- (a) which the other Party confirms in writing is not required to be treated as Confidential Information;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;

- (c) to the extent any Person is required to disclose such Confidential Information by Law, including the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) or any other applicable Law (provided that such Person shall promptly advise the other Party of such requirement in respect of any particular Confidential Information prior to disclosing same, and, if permitted under applicable Law, provide it with an opportunity to dispute the disclosure of Confidential Information); and
- (d) to the extent consistent with any City policy the details of which have been provided to OSEG in writing prior to the disclosure of the Confidential Information to the City and subject to OSEG's confirmation in writing that the Confidential Information is not required to be treated as such.

23.3 Press Releases

Unless otherwise required by any Law or any Relevant Authority, neither Party shall make or publish any public press release respecting the Project, except as otherwise mutually agreed upon between the Parties.

ARTICLE XXIV

DISPUTE RESOLUTION

24.1 Procedure

Except as otherwise provided in this Agreement, any Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE XXV
DISPOSITIONS AND ENCUMBRANCES

25.1 Restrictions on Dispositions

- (a) There shall be no Disposition of the Securities of, or of any interest in or any portion of the assets (other than any S.P.V. Assets) of, an OSEG Member, of OSEG, of the Master Partnership, of the Master GP, of a Component Partnership or of the general partner of a Component Partnership, except in accordance with this Article XXV, Section 13.6(f)(i) or Section 26.8.
- (b) If otherwise permitted by this Agreement, any Disposition of Securities of an OSEG Member, of OSEG, of the Master Partnership, of the Master GP, of a Component Partnership or of the general partner of a Component Partnership to a Person with whom the disposing Person is not dealing at Arm's Length (except as provided in Section 25.2(a)(v) or Section 26.8) shall be subject to the "normalizing" provisions described in Section 13.3(b).

25.2 Disposition of Securities of an OSEG Member, of OSEG or of the Master Partnership

- (a) The following terms and conditions shall apply to any Disposition of Securities of an OSEG Member, of OSEG or of the Master Partnership by a holder of Securities of an OSEG Member, by an OSEG Member or by OSEG:
 - (i) during the period commencing on Closing to and including the tenth (10th) anniversary of the Closing:
 - (A) subject to subparagraph (C) below, if the Disposition results in a Gain, then the prior approval of the City, in its Discretion, shall be required for the Disposition;

- (B) subject to subparagraph (C) below, if the Disposition does not result in a Gain, then the prior Approval of the City, acting reasonably, shall be required for the Disposition, based on the Disposition Approval Guidelines; or
 - (C) if the Disposition is of Securities of the Master Partnership, the prior written approval of the City, in its Discretion, shall be required, except as otherwise provided in the Limited Partnership Agreement for the Master Partnership;
- (ii) commencing on Closing, and thereafter until the Waterfall Expiry or the earlier termination of this Agreement:
 - (A) if the Disposition results in a Change of Control of OSEG or if a Change of Control of OSEG otherwise arises in accordance with the definition of that term, the prior approval of the City, in its Discretion, shall be required for the Disposition or such other Change of Control; or
 - (B) if the Disposition does not result in a Change of Control of OSEG and a Change of Control does not otherwise arise in accordance with the definition of that term, the prior Approval of the City, acting reasonably, shall be required for such Disposition, based on the Disposition Approval Guidelines;
- (iii) notwithstanding subparagraphs (a)(i) and (a)(ii), if the Disposition occurs within twelve (12) months of the death or permanent incapacity of Roger Greenberg or any subsequent Member Representative in respect of Lansgreen Investments Inc., John Ruddy or any subsequent Member Representative in respect of Trinity Lansdowne Ltd., William Shenkman or any subsequent Member Representative in respect of Shenkman Lansdowne Ltd., Jeff Hunt or any subsequent Member Representative in

respect of Keljay Ltd. or John Pugh or any subsequent Member Representative in respect of Friarmere Holdings Inc., the prior Approval of the City, acting reasonably, shall be required for such Disposition, based on the Disposition Approval Guidelines;

- (iv) notwithstanding subparagraphs (a)(i) and (a)(ii), in respect of a Disposition between OSEG Members or in respect of a Disposition from an OSEG Member to a Permitted Transferee of another OSEG Member, the prior Approval of the City, acting reasonably, shall be required for such Disposition, based on the Disposition Approval Guidelines; and
- (v) notwithstanding subparagraphs (a)(i), (a)(ii), (a)(iii) and (a)(iv), no approval of the City (whether acting reasonably or in its Discretion) shall be required for a Disposition which is a Disposition to a Permitted Transferee, provided that the City shall be provided at least ten (10) Business Days' written Notice thereof.

(b) For the purposes of subparagraph (a) above:

- (i) where the Approval of the City, acting reasonably, is required for a Disposition by virtue of subparagraph (a)(i)(B) or (a)(ii)(B), but the approval of the City, in its Discretion, is required with respect to the same Disposition by virtue of subparagraph (a)(ii)(A) or (a)(i)(A), respectively, then for the purposes of such Disposition, the approval of the City, in its Discretion, shall be applicable; and
- (ii) with respect to any potential Disposition, the disposing Person shall provide a copy of all relevant agreements and information respecting the Person to whom the Disposition is to be made and all other relevant information requested by the City to the City not less than ten (10) Business Days prior to the Disposition.

- (c) Subject to subparagraph (d), the total aggregate Disposition Consideration received or to be received in respect of a Disposition under subparagraph (a), calculated in money or in money's worth, shall be distributed as follows:
 - (i) in the case of the Disposition of Securities of an OSEG Member by a holder of Securities of the OSEG Member, the transferor of the Disposed Securities shall retain the lesser of:
 - (A) the total aggregate Disposition Consideration; or
 - (B) an amount equal to the product of:
 - (1) the outstanding Equity immediately prior to the Disposition;
 - (2) the Proportionate Share of such OSEG Member; and
 - (3) the percentage of all issued Securities of the OSEG Member immediately prior to completion of the Disposition that is represented by the Disposed Securities;
 - (ii) in the case of a Disposition of Securities of an OSEG Member that is the issuance of Securities by the OSEG Member, the OSEG Member shall retain, and shall be entitled to distribute to any or all of the holders of its Securities, the lesser of:
 - (A) the difference (if a positive number) between:
 - (1) total aggregate Disposition Consideration; minus
 - (2) that portion of the Disposition Consideration, if any, paid by the OSEG Member to OSEG:

(I) as a contribution of capital; or

(II) to purchase additional Securities of OSEG,

and then paid by OSEG to the Master Partnership as a contribution of capital, provided that additional Equity in such amount is then required or is reasonably expected to be required for the Total Project; or

(B) an amount equal to the product of:

(1) the outstanding Equity immediately following the Disposition and the payments described in subparagraph (c)(ii)(A)(2);

(2) the Proportionate Share of such OSEG Member; and

(3) the percentage of all issued Securities of the OSEG Member that is represented by the Disposed Securities immediately following the issue of such Disposed Securities;

(iii) in the case of a Disposition of Securities of OSEG by an OSEG Member, the OSEG Member shall retain the lesser of:

(A) the total aggregate Disposition Consideration; or

(B) an amount equal to the product of:

(1) the outstanding Equity immediately prior to the Disposition;

- (2) the Proportionate Share of the OSEG Member immediately prior to the completion of the Disposition; and
 - (3) the percentage of all issued Securities of OSEG held by the OSEG Member immediately prior to the completion of the Disposition that is represented by the Disposed Securities;
- (iv) in the case of a Disposition of Securities of OSEG that is the issuance of Securities by OSEG, OSEG shall retain, and shall be entitled to distribute to any or all of the holders of its Securities, the lesser of:
 - (A) the difference (if a positive number) between:
 - (1) the total aggregate Disposition Consideration; minus
 - (2) that portion of the Disposition Consideration, if any, paid by OSEG to the Master Partnership as a contribution of capital, provided that additional Equity in such amount is then required or is reasonably expected to be required for the Total Project; or
 - (B) an amount equal to the product of:
 - (1) the outstanding Equity immediately following the Disposition and the payments described in subparagraph (c)(iv)(A)(2); and
 - (2) the percentage of all issued Securities of OSEG that is represented by the Disposed Securities immediately following the issue of such Disposed Securities;

- (v) in the case of a Disposition of Securities of the Master Partnership by OSEG, OSEG shall retain the lesser of:
 - (A) the total aggregate Disposition Consideration; or
 - (B) an amount equal to the product of:
 - (1) the outstanding Equity immediately prior to the Disposition; and
 - (2) the percentage of all issued Securities of the Master Partnership held by OSEG immediately prior to the completion of the Disposition that is represented by the Disposed Securities; and
- (vi) the transferor or issuer of the Disposed Securities, as applicable, and the City shall share equally the difference (if a positive number) between:
 - (A) in the case of the Disposition of Securities of an OSEG Member by a holder of Securities of the OSEG Member, the total aggregate Disposition Consideration, minus the amount the transferor of the Disposed Securities is entitled to retain under subparagraph (c)(i);
 - (B) in the case of a Disposition of Securities of an OSEG Member that is the issuance of Securities by the OSEG Member, the amount described in subparagraph (c)(ii)(A), minus the amount the OSEG Member is entitled to retain, and to pay to holders of its Securities, under subparagraph (c)(ii);
 - (C) in the case of a Disposition of Securities of OSEG by an OSEG Member, the total aggregate Disposition Consideration, minus the

amount the OSEG Member is entitled to retain under subparagraph (c)(iii);

(D) in the case of a Disposition of Securities of OSEG that is the issuance of Securities by OSEG, the amount described in subparagraph (c)(iv)(A), minus the amount OSEG is entitled to retain, and to pay to holders of its Securities, under subparagraph (c)(iv); or

(E) in the case of a Disposition of Securities of the Master Partnership by OSEG, the total aggregate Disposition Consideration, minus the amount OSEG is entitled to retain under subparagraph (c)(v).

Any payments made to the City under this subparagraph (c)(vi) shall be deemed to be applied to the City's then current entitlements under, and in the same order as set out in, Section 13.4 (without regard to the entitlements of OSEG), provided that if any part of the payments made to the City under this subparagraph (c)(vi) are deemed to be applied in accordance with the foregoing to the City's entitlement under Section 13.4(a)(vi), then City Deemed Equity shall thereafter be deemed to be reduced by the amount of such part of the payments.

(d) Notwithstanding the provisions of subparagraph (c), in the case of a Disposition of Securities:

(i) of an OSEG Member; or

(ii) of OSEG by an OSEG Member,

in each case to:

(iii) a Permitted Transferee with respect to that OSEG Member; or

- (iv) another OSEG Member or a Permitted Transferee of another OSEG Member,

the transferor or issuer of the Disposed Securities, as applicable, shall retain the total aggregate Disposition Consideration from such Disposition of Securities.

25.3 Transferee of Securities of OSEG or of the Master Partnership

In the case of a Disposition of Securities:

- (a) of OSEG by an OSEG Member, other than to a Permitted Transferee with respect to that OSEG Member, another OSEG Member or a Permitted Transferee of another OSEG Member, the Person to which the Disposed Securities are transferred shall be deemed to be entitled to:
 - (i) that portion of Equity equal to the amount the OSEG Member is entitled to retain under Section 25.2(c)(iii); and
 - (ii) that portion of the cumulative unpaid amount of return on Equity as contemplated in Section 13.4(a)(ii) equal to the product of (A) such cumulative unpaid amount of return on Equity immediately prior to the Disposition, (B) the OSEG Member's Proportionate Share immediately prior to the completion of the Disposition, and (C) the percentage of all issued Securities of OSEG held by the OSEG Member immediately prior to the completion of the Disposition that is represented by the Disposed Securities;
- (b) of OSEG by an OSEG Member to a Permitted Transferee with respect to that OSEG Member, another OSEG Member or a Permitted Transferee of another OSEG Member, the Person to which the Disposed Securities are transferred shall be deemed to be entitled to:

- (i) that portion of Equity equal to the product of (A) the outstanding Equity immediately prior to the Disposition, (B) the OSEG's Member's Proportionate Share immediately prior to the completion of the Disposition, and (C) the percentage of all issued Securities of OSEG held by the OSEG Member immediately prior to the completion of the Disposition that is represented by the Disposed Securities; and
 - (ii) that portion of the cumulative unpaid amount of return on Equity as contemplated in Section 13.4(a)(ii) equal to the product of (A) such cumulative unpaid amount of return on Equity immediately prior to the Disposition, (B) the OSEG Member's Proportionate Share immediately prior to the completion of the Disposition, and (C) the percentage of all issued Securities of OSEG held by the OSEG Member immediately prior to the completion of the Disposition that is represented by the Disposed Securities;
- (c) of OSEG that is the issuance of Securities by OSEG, the Person to which the Disposed Shares are issued shall be entitled to:
 - (i) that portion of Equity equal to the amount that OSEG is entitled to retain, and to pay to holders of its Securities, under Section 25.2(c)(iv); and
 - (ii) that portion of the cumulative unpaid amount of return on Equity as contemplated in Section 13.4(a)(ii) equal to the product of (A) such cumulative unpaid amount of return on Equity immediately prior to the Disposition, and (B) the percentage of all issued Securities of OSEG that is represented by the Disposed Securities immediately following the issue of such Disposed Securities;
- (d) of the Master Partnership by OSEG, the Person to which the Disposed Securities are transferred shall be deemed to be entitled to:

- (i) that portion of Equity equal to the product of (A) the outstanding Equity immediately prior to the Disposition, and (B) the percentage of all issued Securities of the Master Partnership held by OSEG immediately prior to the completion of the Disposition that is represented by the Disposed Securities; and
 - (ii) that portion of the cumulative unpaid amount of return on Equity as contemplated in Section 13.4(a)(ii) equal to the product of (A) such cumulative unpaid amount of return on Equity immediately prior to the Disposition, and (B) the percentage of all issued Securities of the Master Partnership held by OSEG immediately prior to the completion of the Disposition that is represented by the Disposed Securities; and
- (e) of OSEG or the Master Partnership, the Person to which the Disposed Securities are transferred or issued (as applicable), unless that Person is already an OSEG Member, shall, as a condition precedent to the completion of the Disposition, enter into an assumption agreement respecting this Agreement and any applicable Material Agreement in form mutually agreed among the City, OSEG and that Person, each acting reasonably.

25.4 Disposition of Securities of a Component Partnership

- (a) The Master Partnership shall not Dispose of any Securities of the Stadium Partnership or the Retail Partnership without the approval of each of the City and of OSEG, in their Discretion.
- (b) The Master Partnership shall not Dispose of any Securities of the CFL Partnership or the Ottawa 67's Partnership without the approval of each of the City and of OSEG as more fully set out in the Limited Partnership Agreement for the CFL Partnership and the Ottawa 67's Partnership, respectively.

- (c) The net proceeds from a Disposition by the Master Partnership of any Securities of a Component Partnership shall form part of Net Cash Flow and shall be distributed in accordance with the Waterfall.

25.5 Disposition of Securities of the Master GP or of the General Partner of a Component Partnership

- (a) OSEG shall not Dispose of any Securities of the Master GP, except in conjunction with a permitted Disposition of Securities of the Master Partnership. In the event of a permitted Disposition of Securities of the Master Partnership by OSEG, OSEG also shall Dispose, to the same Person and at the same time as it Disposes the Securities of the Master Partnership, that portion of the Securities of the Master GP held by OSEG that is equal to the product of (i) the number of Securities of the Master GP held by OSEG immediately prior to the Disposition, and (ii) the percentage of all issued Securities of the Master Partnership held by OSEG immediately prior to the completion of the Disposition that is represented by the Disposed Securities of the Master Partnership, and the total aggregate Disposition Consideration to OSEG for the Disposition of Securities of the Master GP shall be added to the total aggregate Disposition Consideration to OSEG for the Disposition of Securities of the Master Partnership for the purposes of Section 25.2(c).
- (b) If OSEG is the holder of Securities of the general partner of a Component Partnership, then:
 - (i) OSEG shall not Dispose of any Securities of the general partner of a Component Partnership, except in conjunction with a permitted Disposition of Securities of the Master Partnership;
 - (ii) in the event of a permitted Disposition of Securities of the Master Partnership by OSEG, OSEG also shall Dispose, to the same Person and at the same time as it Disposes the Securities of the Master Partnership, that

portion of the Securities of each general partner of a Component Partnership held by OSEG that is equal to the product of (A) the number of Securities of the general partner of the Component Partnership held by OSEG immediately prior to the Disposition, and (B) the percentage of all issued Securities of the Master Partnership held by OSEG immediately prior to the completion of the Disposition that is represented by the Disposed Securities of the Master Partnership; and

- (iii) the total aggregate Disposition Consideration to OSEG for the Disposition of Securities of each general partner of a Component Partnership shall be added to the total aggregate Disposition Consideration to OSEG for the related Disposition of Securities of the Master Partnership for the purposes of Section 25.2(c).
- (c) If an OSEG Member is the direct or indirect holder of Securities of the general partner of a Component Partnership, other than through OSEG, then:
- (i) the OSEG Member shall not directly or indirectly Dispose of any Securities of the general partner of a Component Partnership, except in conjunction with either (A) a permitted Disposition of Securities of the Master Partnership by OSEG, or (B) a permitted Disposition of Securities of OSEG by the OSEG Member;
 - (ii) in the event of a permitted Disposition of Securities of the Master Partnership by OSEG, each OSEG Member shall directly or indirectly Dispose, to the same Person and at the same time as OSEG Disposes the Securities of the Master Partnership, that portion of the Securities of each general partner of a Component Partnership directly or indirectly held by the OSEG Member that is equal to the product of (A) the number of Securities of the general partner of the Component Partnership directly or indirectly held by the OSEG Member immediately prior to the Disposition, and (B) the percentage of all issued Securities of the Master

Partnership held by OSEG immediately prior to the completion of the Disposition that is represented by the Disposed Securities of the Master Partnership;

- (iii) in the event of a permitted Disposition of Securities of OSEG by the OSEG Member, the OSEG Member shall directly or indirectly Dispose, to the same Person and at the same time as it Disposes the Securities of OSEG, that portion of the Securities of each general partner of a Component Partnership directly or indirectly held by the OSEG Member that is equal to the product of (A) the number of Securities of the general partner of the Component Partnership directly or indirectly held by the OSEG Member immediately prior to the Disposition, and (B) the percentage of all issued Securities of OSEG held by the OSEG Member immediately prior to the completion of the Disposition that is represented by the Disposed Securities of OSEG;
- (iv) the total aggregate Disposition Consideration to the OSEG Member for the direct or indirect Disposition of Securities of each general partner of a Component Partnership under subparagraph (ii) shall be added to the total aggregate Disposition Consideration to OSEG for the related Disposition of Securities of the Master Partnership for the purposes of Section 25.2(c); and
- (v) the total aggregate Disposition Consideration to the OSEG Member for the direct or indirect Disposition of Securities of each general partner of a Component Partnership under subparagraph (iii) shall be added to the total aggregate Disposition Consideration to the OSEG Member for the related Disposition of Securities of OSEG for the purposes of Section 25.2(c).

25.6 Dispositions of Assets

- (a) None of the Stadium Partnership or the Retail Partnership shall Dispose of all or any material portion of its assets or an interest in all or any material portion of its assets (including the Stadium Lease or the Retail Lease) without the approval of each of the City, in its Discretion, and of OSEG, in its Discretion, except as otherwise provided in any of the Material Agreements.
- (b)
 - (i) Neither the CFL Partnership nor the Ottawa 67's Partnership shall Dispose of all or any material portion of its assets or an interest in all or any material portion of its assets (including the CFL Team and the Ottawa 67's) without the approval of each of the City, in its Discretion, and of OSEG, in its Discretion, except as otherwise provided in this Agreement and/or any of the Material Agreements, subject to the rights of the CFL and the OHL and subject to the rights of the City on the sale of the CFL Team, the Ottawa 67's or the Soccer Team.
 - (ii) Notwithstanding anything herein to the contrary, there shall be no Disposition of a Team prior to the eighth (8th) anniversary of the Lease Commencement Date (as defined in the Stadium Lease). Notwithstanding the foregoing, at any time after the eighth (8th) anniversary of the Lease Commencement Date (as defined in the Stadium Lease), OSEG shall have the right to require a Disposition of either or both of the Teams, provided that:
 - (A) the City shall have Approved:
 - (1) the price and terms of the proposed Disposition, taking into account the then current Fair Market Value of the Team or Teams being Disposed; and

- (2) the purchaser(s) or transferee(s) of the Team or Teams being Disposed, taking into account, *inter alia*,
 - (I) the financial strength of such purchaser(s) or transferee(s);
 - (II) the general reputation of such purchaser(s) or transferee(s);
 - (III) whether the majority of such purchaser(s) or transferee(s) are local;
 - (IV) whether such purchaser(s) or transferee(s) has/have a history of litigation or negative relationships with the City; and
 - (V) evidence of such purchaser(s) or transferee(s) having or having secured, or the ability to secure, experience/knowledge in the operation of the Team or Teams being Disposed;
- (B) the purchaser(s) or transferee(s) of the Team or Teams being Disposed shall be obliged to covenant to keep such Team or Teams in Ottawa for the balance of the Initial Term (as such term defined in the Stadium Lease) if such Team or Teams continue to operate;
- (C) OSEG shall provide a letter of credit in favour of the Master Partnership in form mutually agreed upon with the City, each acting reasonably, which letter of credit shall be:

- (1) for a term of two (2) years (or a term of one (1) year renewable or renewed for an additional period of one (1) year);
- (2) in the principal amount equal to the amount paid to OSEG under the Waterfall from the sale of the Team or Teams in accordance with Section 13.4;
- (3) security that may be called upon by the Master Partnership with respect to any negative Net Cash Flow relating to the Master Partnership for a period of two (2) years from the receipt of each of such amounts as provided for in subparagraph (2) above received from time to time, provided that any amount so called by the Master Partnership shall be deemed to be Additional Equity.

For greater certainty, any costs and expenses incurred for such letter of credit shall be at the expense of OSEG, and shall not, together with the principal amount of such letter of credit, constitute Equity.

- (c) Notwithstanding Section 25.6(b)(ii), at any time after the eighth (8th) anniversary of the Lease Commencement Date (as defined in the Stadium Lease), OSEG shall have the right to require either or both of the Teams to cease to operate, subject to the provisions of Section 13.4(b).
- (d) Subject to subparagraph (e), the net proceeds from the Disposition by a Component Partnership of any assets or of an interest in any assets shall form part of the Waterfall of the Closed System.

- (e) Notwithstanding subparagraph (d), in the event of a Disposition of all or any portion of the Retail Lease prior to the Operating Term Commencement Date (as defined in the Retail Lease):
 - (i) the third party transferee shall pay Fair Market Value Rent (as defined in the Retail Lease) to the City for the leased lands for the Retail Component based on its proportionate interest in the Retail Lease (the “**Third Party Rentals**”);
 - (ii) the City shall be entitled to the Third Party Rentals and such Third Party Rentals shall not be included in the Waterfall, but the Present Value of the Third Party Rentals shall thereafter be subtracted from the amount of City Deemed Equity; and
 - (iii) the consideration payable by the third party transferee in connection with the Disposition shall require the approval of the City, in its Discretion, and shall be paid to the City to reduce the amount of City Funding Equity, if applicable.

25.7 Other Disposition Provisions

No Disposition described in this Article XXV shall reduce the Minimum Equity Requirement, provided that in the case of a Disposition of Securities of the Master Partnership held by OSEG, the Minimum Equity Requirement shall thereafter be satisfied by OSEG and the transferee of the Disposed Securities pro rata to their respective holdings, if any, of Securities of the Master Partnership.

25.8 Encumbrances

- (a) There shall be no Encumbrance of the Securities of, or of any interest in or any portion of the assets of, an OSEG Member, of OSEG, of the Master Partnership, of the Master GP, of a Component Partnership or of the general partner of a

Component Partnership, except in accordance with Section 25.8(b), as otherwise provided in any of the Material Agreements or as may be approved by the City, in its Discretion acting in good faith.

- (b) Notwithstanding anything to the contrary in Section 25.8(a), the following Encumbrances are permitted:
 - (i) Encumbrances of Securities of OSEG Members and of OSEG may be granted to other OSEG Members or Permitted Transferees of other OSEG Members as security for loans made to an OSEG Member for the purpose of funding Equity other than the Minimum Equity Requirement, provided that any enforcement of such security shall be subject to the provisions of this Agreement with respect to Dispositions;
 - (ii) the Master Partnership may pledge one-half of its partnership interest in the Ottawa 67's Partnership as security for the Promissory Note as part of the consideration payable in connection with its purchase of the Ottawa 67's Partnership;
 - (iii) the Retail Partnership may mortgage its leasehold interest in the Retail Component and the Retail Component's Portion of the Parking Structure in accordance with the terms of this Agreement and the Retail Lease;
 - (iv) the CFL Partnership may Encumber its assets in favour of the CFL pursuant to the terms of the Membership Agreement for the CFL Team;
 - (v) the CFL Partnership may Encumber its assets in favour of a third party lender as security for an operating line of credit or by way of purchase money security interests, provided that:
 - (A) such third party lender shall be an institutional lender;

- (B) the Equity described in the last paragraph of Section 12.2(f) in respect of the CFL Team and the CFL Membership shall have been contributed in accordance with the provisions therein; and
 - (C) the CFL Partnership shall act in good faith;
- (vi) the Ottawa 67's Partnership may Encumber its assets in favour of the OHL if required pursuant to the terms of the OHL Constitution;
- (vii) the Ottawa 67's Partnership may Encumber its assets in favour of a third party lender as security for an operating line of credit or by way of purchase money security interests, provided that:
 - (A) such third party lender shall be an institutional lender;
 - (B) the Equity described in the last paragraph of Section 12.2(f) in connection with OSEG's partnership interest in the Ottawa 67's Partnership shall have been contributed in accordance with the provisions therein; and
 - (C) the Ottawa 67's Partnership shall act in good faith; and
- (viii) the Ottawa 67's Partnership may Encumber assets in favour of Toronto-Dominion Bank as provided for in the Shareholder's Agreement for the general partner of the Ottawa 67's Partnership.

ARTICLE XXVI

GENERAL

26.1 Approvals

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

- (a) receipt of a written request for approval shall be required;
- (b) the Party whose approval is required will within ten (10) Business Days (or such longer period of time as shall be mutually agreed upon between the Parties in writing) after receipt of a request for approval, accompanied in all cases by reasonable detail if the circumstances require, notify the requesting Party in writing either that it approves or that it withholds its approval, setting forth in reasonable detail its reasons for withholding;
- (c) if the notification referred to in Section 26.1(b) is not given within the applicable period of time, the Party whose approval is requested will be deemed conclusively to have given its approval in writing;
- (d) the determination by a Party of whether to provide an approval shall be made in good faith;
- (e) an approval may not be unreasonably withheld or delayed (whether or not reference is specifically made to such approval not being unreasonably withheld or delayed); and
- (f) a Dispute as to whether or not the approval has been unreasonably withheld or whether or not such approval ought to have been provided in accordance with the

requirements of this Agreement shall be resolved by the Dispute Resolution Procedure.

26.2 Relief Event

In the event that there shall be a Relief Event and a Party claiming the Relief Event uses commercially reasonable efforts to mitigate the consequences of any time delay resulting therefrom (including, where possible, establishing a contingency plan on commercially reasonable terms which will allow such Party's normal operations to be resumed within a reasonable time thereafter) and shall have provided Notice to either of the other Parties, as the case may be, with respect to the occurrence of the Relief Event within seven (7) days of its occurrence, OSEG, the applicable Members or the City, as the case may be, shall be entitled to an extension of time with respect to the obligations of OSEG, the applicable Members or the City, as the case may be, directly, adversely affected by the Relief Event equal to the time during which the Relief Event occurred.

26.3 Construction Liens

- (a) OSEG shall promptly pay all its contractors and suppliers and shall use all reasonable efforts to avoid any lien under the *Construction Lien Act* (Ontario) being filed or registered against any portion of the Project Lands or any part thereof by reason of work, labour, services or material supplied or claimed to have been supplied to OSEG, its general contractor or any other contractor or agent of OSEG. If any such lien shall at any time be filed or registered it shall be discharged or vacated within thirty (30) days after the same has come to the notice or Knowledge of OSEG. In the event that OSEG wishes to contest the amount or validity of any lien in good faith, OSEG shall so notify the City in writing and in such event OSEG may cause the discharge of such lien by payment into court or the provision of permitted security in accordance with the *Construction Lien Act* (Ontario). The foregoing provisions do not apply with respect to any lien directly arising as a result of the non-payment by the City of any amount for which the

City is responsible under this Agreement or any Material Agreement and which is due and owing.

- (b) OSEG shall comply with the requisite holdbacks pursuant to the *Construction Lien Act* (Ontario).

26.4 Land Transfer Taxes, Retail Sales Taxes, GST/HST and Other Taxes

Each of the City and OSEG shall pay, in addition to any other consideration payable to the other pursuant to this Agreement and any of the Material Agreements, all Taxes, including all GST/HST.

OSEG also shall cause each Component Partnership to pay all land transfer taxes (if any) which are payable pursuant to the *Land Transfer Tax Act* (Ontario) in connection with a Lease to which the Component Partnership is a party. All land transfer taxes (if any) which are payable pursuant to the *Land Transfer Tax Act* (Ontario) in connection with the Office Lease shall be payable by the Office Developer.

26.5 No Registration

OSEG agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation or any other document providing evidence of this Agreement or of any interest of OSEG in the Site against title to the Site (collectively, “**OSEG’s Registration**”). OSEG irrevocably nominates, constitutes and appoints the City as its agent and attorney in fact and in Law to cause the removal of OSEG’s Registration from title to the Site. Should OSEG be in default of its obligations under this Section, the City may (as agent and attorney of OSEG) cause the removal of OSEG’s Registration from the title to the Site. Nothing in this Section 26.5 prohibits the registration by any Component Partnership of a notice of a Lease to which it is a party in accordance with the terms of that Lease.

26.6 No Partnership or Agency

The Parties expressly disclaim any intention to create a partnership or joint venture or to constitute the other Party as its agent. Nothing in this Agreement shall constitute the Parties, partners or joint venturers, nor constitute one Party, the agent of the other Party. The Parties acknowledge and agree that OSEG is an independent contractor of the City.

26.7 City as Planning Authority

OSEG acknowledges that although the City is a party to this Agreement, nevertheless, the City is and shall remain an independent planning authority and municipality with all requisite powers and discretion provided under Law, including the *Planning Act* (Ontario) and the *Municipal Act, 2001* (Ontario). Without limiting the generality of the foregoing, the provisions of Section 26.1 have no application to matters relating to the City's rights and powers under the *Planning Act* (Ontario), the *Municipal Act, 2001* (Ontario), the *Ontario Heritage Act* and any other applicable statute respecting the City's rights and obligations.

26.8 Assignment by the City

- (a) Subject to Section 26.8(b), the City will not, without the prior consent of OSEG in its Discretion, make a Disposition.
- (b) Notwithstanding the provisions of Section 26.8(a), the City may, without the prior consent of OSEG, make a Disposition to a Municipal Services Corporation, of all the Securities of the Master Partnership which are owned by the City, or to a successor entity to the City or to any other Relevant Authority.
- (c) An assignment by the City pursuant to Section 26.8(b) shall relieve the City from all rights, obligations and liabilities hereunder as it relates to the portion of this Agreement so assigned, other than in respect of any payment to be made pursuant to Article XXII.

26.9 Notices

Any Notice to a Party must be given in writing. A Notice may be given by delivery to an individual or electronically by fax or electronic mail, and will be validly given if delivered to the following address or if transmitted by fax or electronic mail to the following fax number or email address, addressed to the following Party:

If to the City: Real Estate Partnership and Development Office
110 Laurier Avenue West
Ottawa, Ontario
K1P 1J1

Attention: Gordon MacNair, Director
Fax: 613-560-6051
Email: gordon.macnair@ottawa.ca

with a copy to: City Clerk & Solicitor Department
110 Laurier Avenue West
Ottawa, Ontario
K1P 1J1

Attention: M. Rick O'Connor, City Clerk & Solicitor
Fax: 613-580-2416
Email: rick.oconnor@ottawa.ca

If to OSEG: Ottawa Sports and Entertainment Group
200-180 Kent Street
Ottawa, Ontario
K1P 0B6

Attention: Bronwen Heins
Fax: 613-788-2758
Email: bronwenheins@oseg.ca

with a copy to: Soloway Wright LLP
366 King Street East
Suite 510
Kingston, ON K7K 6Y3

Attention: Beth Gearing
Fax: 800-263-4213
Email: bgearing@solowaywright.com

If to the Members: c/o Ottawa Sports and Entertainment Group
200-180 Kent Street
Ottawa, Ontario
K1P 0B6

Attention: Bronwen Heins
Fax: 613-788-2758
Email: bronwenheins@oseg.ca

with a copy to: Soloway Wright LLP
366 King Street East
Suite 510
Kingston, ON K7K 6Y3

Attention: Beth Gearing
Fax: 800-263-4213
Email: bgearing@solowaywright.com

or to any other address, fax number, email address or individual that the Party designates. Any Notice:

- (a) if validly delivered or if validly transmitted electronically and received before 5:00 p.m. (Ottawa time) on a Business Day, will be deemed to have been given on that Business Day; and
- (b) if validly delivered or if validly transmitted electronically and received after 5:00 p.m. (Ottawa time) on a Business Day or if validly delivered or if validly transmitted electronically and received on a day that is not a Business Day, will be deemed to have been given on the first (1st) Business Day after the date of delivery or transmission.

26.10 Waivers

No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the Parties to this Agreement, except that any provision which does not give rights or benefits to a particular Party may be waived in writing, signed only by that Party who has rights under, or holds the benefit of, the provision being waived if that Party sends a copy of the executed waiver

to the other Party. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

26.11 Further Assurances

Each Party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated by this Agreement.

26.12 Non-Merger

All of the obligations contained in this Agreement by the Parties hereto shall not merge, but shall survive the Closing.

26.13 Remedies Cumulative

The rights and remedies under this Agreement are cumulative. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

26.14 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all Parties had signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

26.15 Delivery by Fax or Electronic Mail

Any Party may deliver an executed copy of this Agreement by fax or electronic mail but that Party will immediately dispatch by delivery to the other Party an originally executed copy of this Agreement.

26.16 Amendments

No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by a duly authorized representative of each Party to this Agreement.

26.17 Submission to Jurisdiction

Except where the Parties agree to arbitration of a particular matter under the Dispute Resolution Procedure that is provided for in this Agreement, the courts of the Province of Ontario and Canada shall have exclusive jurisdiction to entertain and determine all Actions, and each of the Parties does and shall irrevocably submit to the exclusive jurisdiction of such courts and hereby waives, and will not assert by way of motion, as a defence or otherwise in any Action, any claim that: (i) such Party is not subject to the jurisdiction of such courts; (ii) the Action is brought in an inconvenient forum; or (iii) any subject matter of the Action may not be enforced in or by such courts. In any suit, action or proceeding brought to obtain a judgment for the recognition or enforcement of any judgment rendered in any Action, no Party will seek any review with respect to the merits of any Action, whether or not that Party appears in or defends that Action.

26.18 Enurement

This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

26.19 No Assumption of Contracts

- (a) Neither OSEG nor any Component Partnership shall be obligated to assume any contracts relating to the Site, any of the Components or either of the Teams to which the City is a party, except as otherwise agreed in writing by OSEG or a Component Partnership. The City shall indemnify and save harmless OSEG and each Component Partnership from any claims arising from the termination by the City of any contracts that are not assumed by OSEG or any Component Partnership in accordance with this Section 26.19.
- (b) The Parties acknowledge that the City has provided to its employees at Lansdowne Park and/or their respective bargaining agents the required notices and/or communications for the redeployment of all affected employees as a result of the ongoing implementation of the Project and the transactions contemplated by this Agreement and will be solely responsible, and shall indemnify OSEG and each Component Partnership, for any severance costs or benefits, if applicable, that may be payable to the City's employees as a result of the ceasing of City operations at Lansdowne Park. If any of these employees become employees of OSEG and/or any of the Component Partnerships, then OSEG and/or the Component Partnerships shall be solely responsible for any severance costs or benefits that may be payable to such employees that relate solely to the period from and after their employment by OSEG and/or the Component Partnership.

26.20 Use of Lansdowne Name

Nothing contained in this Agreement shall prevent OSEG and each of the Component Partnerships from using the name "Lansdowne" in conjunction with the operations of the various Components, provided that the City makes no representation or warranty as to the entitlement to the use thereof.

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date hereof.

THE CITY OF OTTAWA

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

The Members:

**LANSGREEN INVESTMENTS
INC., in its own capacity and in its
capacity as a partner in Ottawa
Sports and Entertainment Group**

**SHENKMAN LANSDOWNE LTD., in its
own capacity and in its capacity as a
partner in Ottawa Sports and
Entertainment Group**

By: _____
Name: **Roger Greenberg**
Title: **President**

By: _____
Name: **Kevin McCrann**
Title: **President**

By: _____
Name: **Robert Greenberg**
Title: **Vice President**

**TRINITY LANSDOWNE LTD., in its
own capacity and in its capacity as a
partner in Ottawa Sports and
Entertainment Group**

**KELJAY LTD., in its own capacity and in
its capacity as a partner in Ottawa Sports
and Entertainment Group**

By: _____
Name: **John Ruddy**
Title: **President**

By: _____
Name: **Jeff Hunt**
Title: **President**

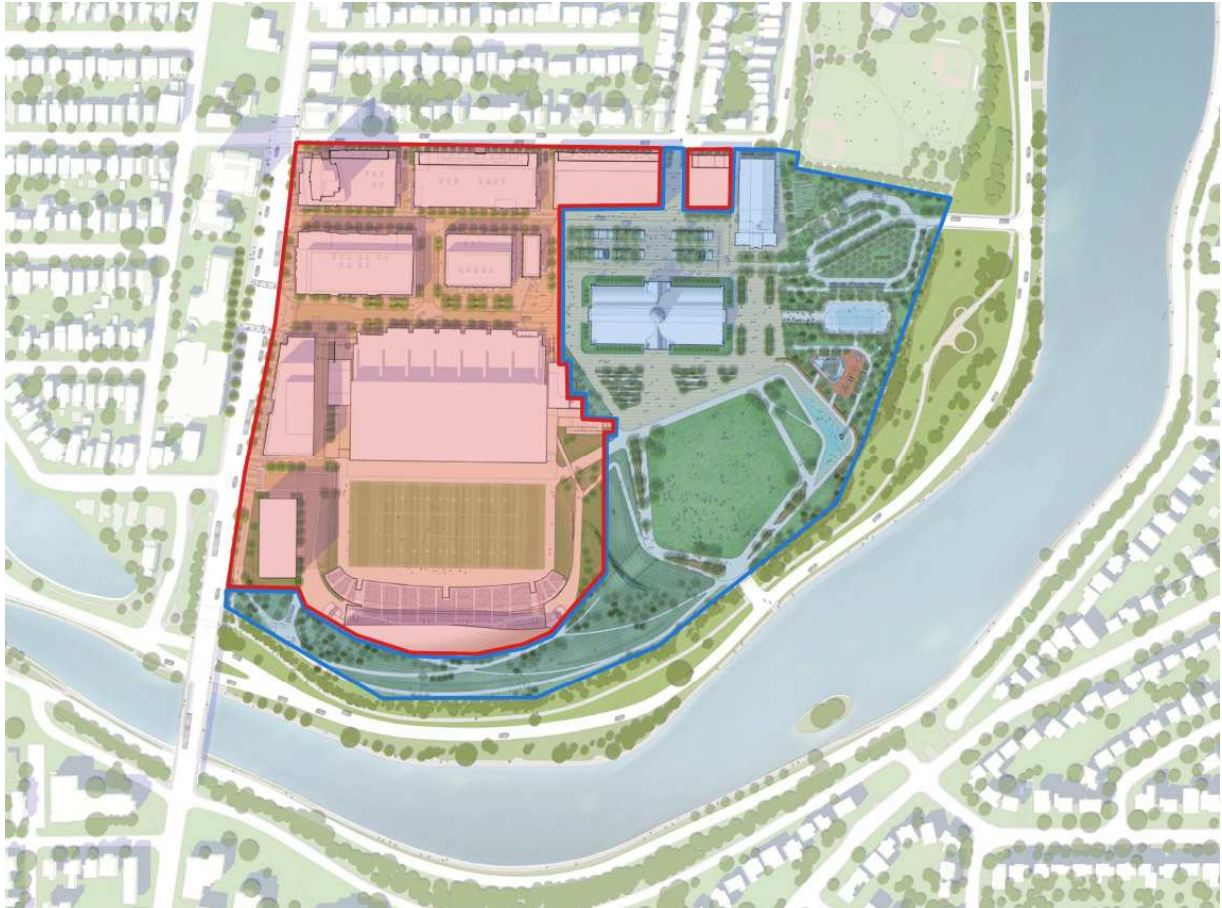
**FRIARMERE HOLDINGS INC., in
its own capacity and in its capacity as**

**a partner in Ottawa Sports and
Entertainment Group**

By: _____
Name: **John Pugh**
Title: **President**

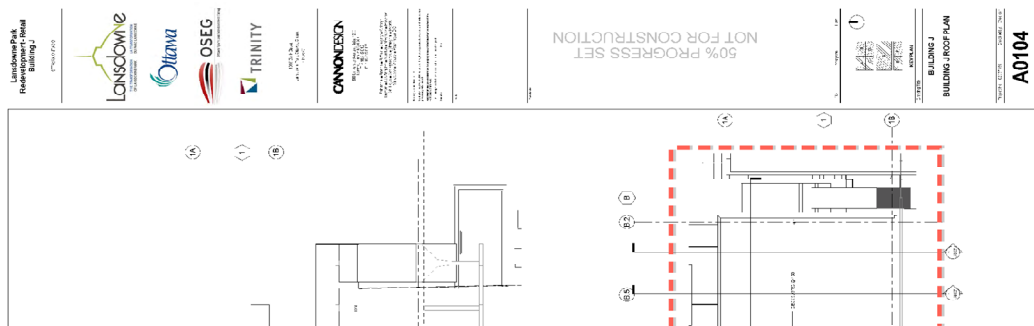
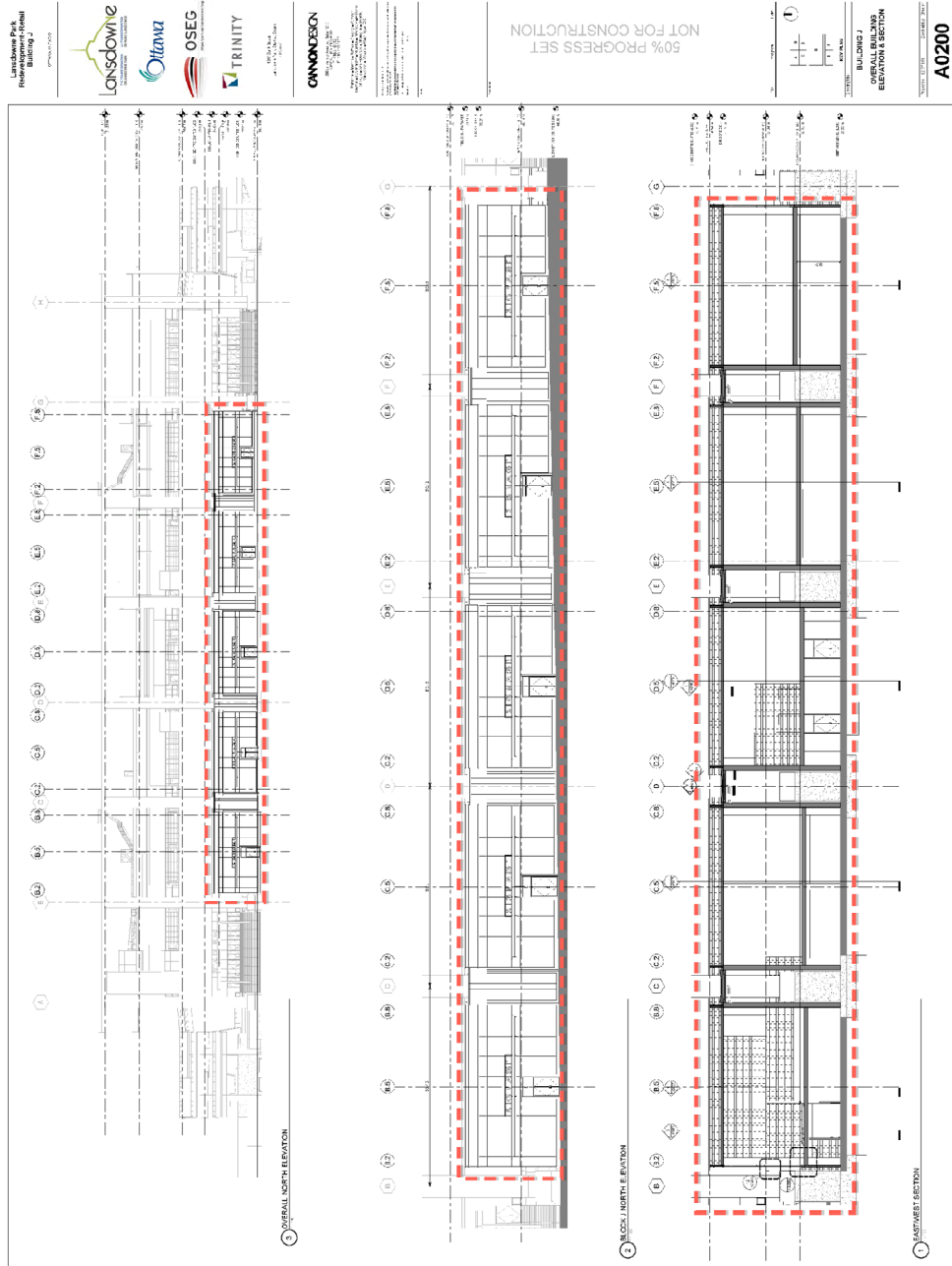
SCHEDULE A
SITE AND URBAN PARK

[NTD: Updated sketch to be provided by surveyors for closing]



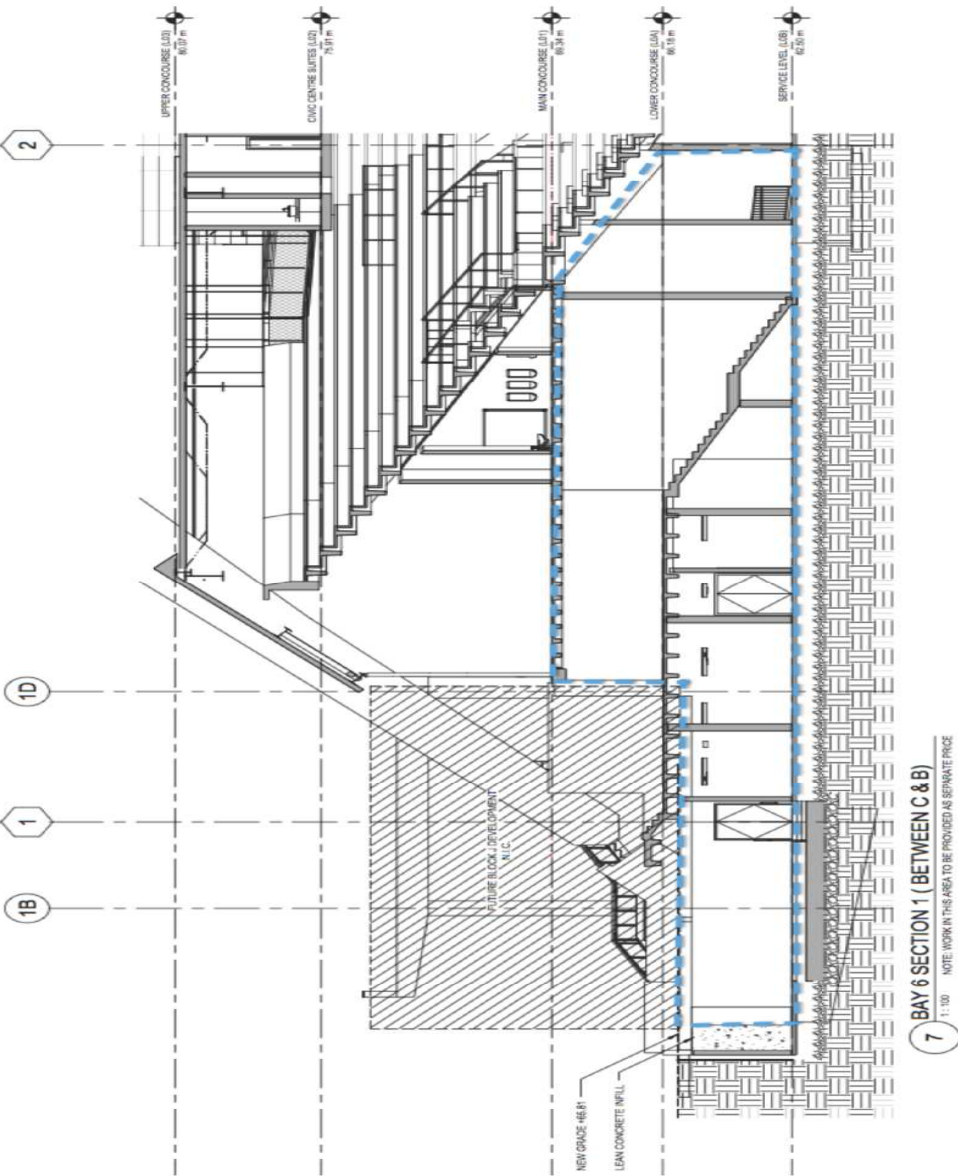
SCHEDULE B
STADIUM RETAIL PODS PARCEL (CROSS SECTION DIAGRAMS)

[NTD: Updated sketch to be provided by surveyors for closing]



SCHEDULE C
STADIUM RETAIL SALONS PARCEL (CROSS SECTION DIAGRAMS)

[NTD: Updated sketch to be provided by surveyors for closing]



SCHEDULE D
NEW OHT EASEMENT SKETCH

[NTD: Updated sketch to be provided by surveyors for closing]

SCHEDULE E
RETAIL LEASE

[NTD: Final form to be appended]

SCHEDULE F
STADIUM LEASE

[NTD: Final form to be appended]

SCHEDULE G

COST SHARING PRINCIPLES

Cost sharing between Components (as defined below) will vary depending on the nature of the expense. Some costs will be shared between all Components and some between only certain Components depending on the nature of the cost and who benefits/needs it to occur.

“Components” in this Schedule means: Stadium, Retail Component (in this Schedule, “Retail”), Residential Component (in this Schedule, “Residential”), Office Component (in this Schedule, “Office”), Parking Structure (in this Schedule, “Garage”) and Urban Park (which includes the Horticultural Building). The party who pays the costs attributed to a particular Component is described elsewhere.

1. GARAGE:

a) Soft Costs

The parties agree to divide the soft costs incurred by OSEG for the Garage between the Stadium, Retail, Residential and Office based upon their respective parking space allocation. This will include design fees for structural, architectural, M&E and other consultants retained by OSEG or by the prime structural consultant for the Garage and the costs for project management. This cost sharing method does not apply to any redesign or additional design work required by a specific Component, which will be attributed to that Component.

b) Capital Costs

Basic Principles

The parties agree to start with a basic garage for 1370 spaces that would be the Basic Garage (See Appendix A to this Schedule for definition). Any additions or changes to that basic design would be attributed to the Component which is causing the change. That Component will pay not only for the physical requirement but the corresponding effect that requirement has on Garage design. By way of example, if the Retail needs an elevator shaft, Retail pays for the cost of the shaft but also the effect that shaft location has on the Garage. Therefore, by way of example, if the shaft means a loss of 4 parking spaces or circulation space and the Garage has to expand or alter its design to accommodate that loss of space, the Retail pays for that consequential increase to the Basic Garage design/cost. Certain changes to the design of the Basic Garage are as a result of design requirements for all Components and thus form a part of the Basic Garage cost.

Step 1

Define “Basic Garage”.

“Basic Garage” means the definition, assumptions and design specifications set out in **Appendix A to this Schedule**.

Appendix A to this Schedule includes:

- i. The Memorandum from MHPM Project Managers dated April 27, 2012.
- ii. The drawings and specifications titled Iteration # 1 numbered G.A200 to G.A204 (inclusive) and dated March 30, 2012 drawn by IBI Group Architects.
- iii. The BASELINE GARAGE - LANSDOWNE PARK Class D Iterations Cost Estimate (Order of Magnitude) dated APRIL 24, 2012 (R.0) prepared by A.W. Hooker Associates Ltd. Cost Consultants.

The Basic Garage capital cost shall be shared between Components (save for the Urban Park) based upon allocated parking spaces.

The Basic Garage capital cost includes excavation and soil removals (save for those that are solely the cost of the City as per the Project Agreement section 2.12 –the parties have agreed that with respect to excavation, it is the premium in cost of handling contaminated soils compared to clean soils that is borne by the City), and the cost of removal of existing services within the proposed underground Garage etc. as articulated in Appendix A to this Schedule.

Step 2

Individually layer the incremental design requirements of the Retail, Residential, Office, Stadium and, if any, the Urban Park on top of that. Detail the incremental design requirements of each Component to the Basic Garage and calculate the incremental costs to the Basic Garage as a result of those Component requirements. The consequent effect on design and size of the Garage is allocated directly to that Component. The basic principle being all non-Basic Garage costs shall be borne by the Component(s) who requires the change either directly or consequently. These items will be things like transfer slabs, increases in numbers of columns, increased columns sizes, changes to the garage roof design, stairs, elevator shafts, garbage and electrical rooms, private parking and circulation and any loading areas for specific Components, as well as:

- i. all intrusions and areas servicing exclusively a particular Component or Components.
- ii. the consequential effect of the foregoing areas on the size, layout and cost of the Garage.
- iii. all costs caused by the existence of the vertical Components i.e. column size or spacing or roof slabs, transfer slabs.
- iv. all increased costs of the Garage caused by the PFS public realm design (the Urban Park Improvements) shall be borne by the Urban Park.

Appendix B to this Schedule includes:

- i. The cost sharing methodology as more specifically described in a letter from Adjeleian, Allen and Rubeli Limited (AAR) to MHPM Project Managers dated April 4, 2012
- ii. Drawings and specifications titled Iteration # 2, 3 and 4, numbered G.A200 to G.A204 (inclusive) and dated March 30, 2012 drawn by IBI Group Architects.

2. SITE SERVICES

a) Soft Costs

The parties have agreed that the design fees for DSEL and Smith and Anderson and costs of project management and any other soft costs incurred by OSEG for site services will be divided between the Components equally.

b) Capital Costs

Basic Principles

Infrastructure to support the development of Lansdowne will be shared on use and will include the following elements:

- Existing Service Removals
- Watermains including main trunks and laterals
- Sanitary sewers including main trunks and laterals
- Storm sewers including main trunks and laterals
- Hydro supply including primary and secondary feeds
- Gas supply including main trunks and laterals

See DSEL cost sharing rationale report dated May 31, 2011 with respective cost sharing plans and rationales (attached as **Appendix C** to this Schedule). DSEL has provide updated flow tables.

Note:

- i) Urban Park water and sanitary usage is based upon specifications provided by PFS to DSEL.

c) Operating Costs and Maintenance

Once those percentages are determined the ongoing operating costs or capital requirements should be shared in the same way as the attached cost sharing tables for the respective element.

3. ELECTRICAL SERVICES

See **Appendix D** to this Schedule.

4. ABOVE GROUND/SURFACE SITE MATTERS

a) Site Matters means:

All roadways, sidewalks, lighting, electrical distribution for lighting or other public realm needs, way-finding signage, landscaping, street furniture, bike racks along Aberdeen Way (from Bank until it intersects with Lansdowne Way) and Lansdowne Way (from Bank Street through to the QED) plus the entrance alleys from Holmwood to Lansdowne Way, the landscaped and sidewalk areas around Building I, Building K and facing onto Holmwood, and the South Stadium Service pathway.

b) Cost sharing:

The design and capital costs shall be shared between the Components for the above Site Matters in accordance with the Base Cost Analysis, Revision 4, January 27, 2012 prepared by Corush Sunderland and Wright attached as **Appendix E** to this Schedule.

All ongoing utilities and ongoing operating and maintenance costs shall be shared in accordance with the cost sharing plan attached to the Base Cost Analysis, Revision 4, January 27, 2012 above.

5. RETAIL BUILDING FORM

The increased cost of using concrete versus steel for those buildings with residential on top shall be paid for by the Residential/Office above.

6. REQUIREMENTS TO ACCOMMODATE RESIDENTIAL AND OFFICE ABOVE.

The City shall reimburse OSEG for the requirements it made of OSEG under the provisions of its Tender terms with the air rights developers (RFO) including the items it is to reimburse OSEG articulated in Table 1 of the RFO “Estimates for Hard and Soft Costs Incurred by others Benefitting Air rights Development” in accordance with the actual costs incurred by OSEG as those costs are incurred.

In addition, any other requirements of the Residential Developer or Office Developer to be made by any of the other Components to accommodate the Residential or Office development shall be borne by the Residential Developer or Office Developer, unless it is a cost articulated in the RFO documentation as being at the expense of the City.

7. FURTHER AMENDMENTS

All attached cost calculations which are based on previous designs shall be amended to reflect the final designs and construction costs in accordance with this methodology.

[NTD: Appendices to be attached to final form]

SCHEDULE H
COMPLETION GUARANTEE

THIS AGREEMENT is made as of the [●] day of [October], 2012, among **OTTAWA SPORTS AND ENTERTAINMENT GROUP** (“**OSEG**”), a general partnership established under the laws of the Province of Ontario, and **LANSGREEN INVESTMENTS INC., SHENKMAN LANSDOWNE LTD., TRINITY LANSDOWNE LTD., KELJAY LTD. and FRIARMERE HOLDINGS INC.** (collectively, the “**Members**”, and OSEG and the Members, collectively, the “**Obligors**” and each, an “**Obligor**”), to and in favour of **City of Ottawa** (the “**City**”).

WHEREAS:

1. The City, OSEG and the Members entered into the Project Agreement on the [●] day of [October], 2012;
2. The Project Agreement provides that the construction of the Stadium Improvements and the Parking Structure shall be by way of the Comprehensive Construction Contract, and the City shall bear the Hard Costs and Soft Costs of the construction of the Stadium Improvements and the City’s Cost Share of Parking up to the Maximum City Cost, subject to and in accordance with the Project Agreement;
3. The Project Agreement provides that the City shall have no responsibility for payment of any change orders in respect of the Comprehensive Construction Contract, except for City Change Orders;
4. The Project Agreement provides that the Members jointly and severally covenant (i) to ensure the Total Completion of the Stadium Improvements and the Parking Structure in accordance with the Final Plans and Specifications for the Stadium Improvements and the Parking Structure, respectively, subject to the payment by the City of the Maximum City Cost; and (ii) with OSEG to provide Completion Funds for any Total Excess Costs as necessary to cause Total Completion of the Stadium Improvements and the Parking Structure; and (iii) to provide the City with this Agreement; and
5. Capitalized terms used in this Agreement and not defined herein have the meaning as defined in the Project Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the foregoing and the respective covenants, agreements and obligations set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, each of the parties hereto, intending to be legally bound, jointly and severally agrees to and in favour of the City as follows:

1. The parties acknowledge and agree that the recitals to this Agreement are true and correct in all respects and form an integral part of this Agreement.
2. The Members jointly and severally covenant to ensure Total Completion of the Stadium Improvements and the Parking Structure in accordance with the Final Plans and Specifications for the Stadium Improvements and the Parking Structure, respectively, subject to the payment by the City of the Maximum City Cost.
3. The Obligors jointly and severally covenant to provide funds from time to time pursuant to Section 4 hereof and Section 10.3(b) of the Project Agreement for any Total Excess Costs as necessary to cause Total Completion of the Stadium Improvements and the Parking Structure.
4. Each of the Obligors, upon becoming aware that any Total Excess Costs shall be incurred in order to cause Total Completion of the Stadium Improvements and the Parking Structure, whether by way of a Notice from the City notifying the same or otherwise, shall make the payments required, or provide funds to OSEG to make the payments required, to satisfy the Total Excess Costs in accordance with the procedure set out in Section 10.5 of the Project Agreement, and shall notify the City in writing of the same and provide the City with relevant details regarding, and the reasons for, the Total Excess Costs.
5. For clarity, the determination of the potential for Total Excess Costs and the obligation arising on account of this Cost Overrun Guarantee shall be determined on a monthly basis prior to the Total Completion of the Stadium Improvements and the Parking Structure, based upon Hard Costs and Soft Costs incurred from time to time and an analysis of the Cost to Complete, as determined by the Payment Certifier. If Total Excess Costs are incurred, the City agrees to consider in good faith suggestions by OSEG for value engineering that will reduce the Cost to Complete, as determined by the Payment Certifier, and in the event that on any Relevant Payment Date subsequent to the payment of Total Excess Costs by any of the Obligors, the Cost to Complete is less than the difference between (i) the aggregate amount contemplated in Section 10.5(b)(vi)(B) of the Project Agreement, and (ii) the aggregate amount contemplated in Section 10.5(b)(vi)(A) of the Project Agreement, then the Obligors that funded the Total Excess Costs shall be paid on that Relevant Payment Date an amount equal to the lesser of such difference or the Total Excess Costs paid by such Obligors that have not previously been repaid to them in accordance with the foregoing and so on from time to time.
6. The City shall not be obligated to seek any recourse against any of the Obligors or the Stadium Security before being entitled to demand payment from another Obligor or Obligors of any amount on account of Total Excess Costs.
7. For greater certainty, nothing in this Agreement shall impair the City's rights against any of the Obligors in respect of any of the obligations of such Obligor and any security provided in connection with the Project Agreement, the Stadium Lease, and/or the Project Management Agreement.

8. No change in the name, objects, capital stock or constitution of any of the Obligors, as applicable, shall in any way affect the liability of any of the other Obligors, either with respect to transactions occurring before or after any such change, and the City shall not be concerned to see or inquire into the powers of any of the Obligors or any of their respective directors or other agents, acting or purporting to act on its behalf. If any of the Obligors shall amalgamate with one or more other corporations, as applicable, the covenants herein contained shall continue to be binding upon the corporation continuing from the amalgamation.
9. The City, without consent of any of the Obligors and without exonerating in whole or in part any of the Obligors, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from, or from perfecting securities of, may accept compositions from, and may otherwise deal with any of the Obligors (and any other Person) and any Stadium Security which the City holds, all as the City may see fit.
10. This Agreement is in addition to and not in substitution for any guarantees, agreements and security given by any of the Obligors to the City in respect of the Project, including the Stadium Security.
11. This Agreement shall not be modified, amended or terminated except by written agreement of the parties hereto and the City.
12. This Agreement shall be governed exclusively by, and shall be enforced, construed and interpreted exclusively in accordance with, the law of Ontario and the law of Canada applicable in Ontario, which will be deemed to be the proper law of this Agreement.
13. Any Notice to a party must be given in writing. A Notice may be given by delivery to an individual or electronically by fax or electronic mail, and will be validly given if delivered to the following address or if transmitted by fax or electronic mail to the following fax number or email address, addressed to the following party:

If to the City:

Real Estate Partnership and Development Office
110 Laurier Avenue West

Ottawa, Ontario

K1P 1J1

Attention: Gordon MacNair, Director
Fax: 613-560-6051
Email: gordon.macnair@ottawa.ca

with a copy to:

City Clerk & Solicitor Department
110 Laurier Avenue West
Ottawa, Ontario
K1P 1J1

Attention: M. Rick O'Connor, City Clerk & Solicitor
Fax: 613-580-2416
Email: rick.oconnor@ottawa.ca

If to OSEG:

Ottawa Sports and Entertainment Group
300-180 Kent Street
Ottawa, Ontario
K1P 0B6

Attention: Bronwen Heins
Fax: 613-788-2758
Email: bronwenheins@oseg.ca

with a copy to:

Soloway Wright LLP
366 King Street East
Suite 510
Kingston, ON K7K 6Y3

Attention: Beth Gearing
Fax: 800-263-4213
Email: bgearing@solowaywright.com

If to the Members:

c/o Ottawa Sports and Entertainment Group
300-180 Kent Street
Ottawa, Ontario
K1P 0B6

Attention: Bronwen Heins

Fax: 613-788-2758

Email: bronwenheins@oseg.ca

with a copy to:

Soloway Wright LLP
366 King Street East
Suite 510
Kingston, ON K7K 6Y3

Attention: Beth Gearing

Fax: 800-263-4213

Email: bgearing@solowaywright.com

or to any other address, fax number, email address or individual that the party designates. Any Notice:

- (i) if validly delivered or if validly transmitted electronically and received before 5:00 p.m. (Ottawa time) on a Business Day, will be deemed to have been given on that Business Day; and
 - (ii) if validly delivered or if validly transmitted electronically and received after 5:00 p.m. (Ottawa time) on a Business Day or if validly delivered or if validly transmitted electronically and received on a day that is not a Business Day, will be deemed to have been given on the first Business Day after the date of delivery or transmission.
14. This Agreement may be executed in one or more counterparts with the same effect as if all parties had signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement. Signatures delivered by telefax or portable document format shall be treated as originals for all purposes.
15. This Agreement enures to the benefit of and binds each of the parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any party without the consent of the other parties.
16. No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by a duly authorized representative of each party to this Agreement.
17. Except where the parties agree to arbitration of a particular matter under the Dispute Resolution Procedure that is provided for in the Project Agreement, the courts of the Province of Ontario and Canada shall have exclusive jurisdiction to entertain and determine all Actions, and each of the parties does and shall irrevocably submit to the

exclusive jurisdiction of such courts and hereby waives, and will not assert by way of motion, as a defence or otherwise in any Action, any claim that: (i) such party is not subject to the jurisdiction of such courts; (ii) the Action is brought in an inconvenient forum; or (iii) any subject matter of the Action may not be enforced in or by such courts. In any suit, action or proceeding brought to obtain a judgment for the recognition or enforcement of any judgment rendered in any Action, no party will seek any review with respect to the merits of any Action, whether or not that party appears in or defends that Action.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date hereof.

CITY OF OTTAWA

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the corporation.

The Members:

**LANSGREEN INVESTMENTS
INC., in its own capacity and in its
capacity as a partner in Ottawa
Sports and Entertainment Group**

**SHENKMAN LANSDOWNE LTD., in its
own capacity and in its capacity as a
partner in Ottawa Sports and
Entertainment Group**

By: _____

Name: **Roger Greenberg**

Title: **President**

By: _____

Name: **Kevin McCrann**

Title: **President**

By: _____

Name: **Robert Greenberg**

Title: **Vice President**

TRINITY LANSDOWNE LTD., in its own capacity and in its capacity as a partner in Ottawa Sports and Entertainment Group

By: _____
Name: **John Ruddy**
Title: **President**

KELJAY LTD., in its own capacity and in its capacity as a partner in Ottawa Sports and Entertainment Group

By: _____
Name: **Jeff Hunt**
Title: **President**

FRIARMERE HOLDINGS INC., in its own capacity and in its capacity as a partner in Ottawa Sports and Entertainment Group

By: _____
Name: **John Pugh**
Title: **President**

SCHEDULE I
OFF-SITE PARKING MEMORANDA OF UNDERSTANDING

	Spaces (#)	Property Address
Canada Post	1500	2701 Riverside Drive
Carleton University	1500	1125 Colonel By Drive
Public Works & Government Services	600	Heron Road at Riverside Drive
RA Centre	300	2451 Riverside Drive
Brookfield High School	180	824 Brookfield Road

SCHEDULE J

METHODOLOGY FOR CALCULATING RETAIL VALUE

The Retail Value for the purposes of determining the City's Deemed Equity is determined having consideration for the following principles.

1. LEASABLE AREA:

The leasable ground area of the Retail Lands having an approximate area of ● acres.

2. MARKET VALUE DEFINITION

The definition of Fair Market Value is to be interpreted for consistency with the definition of market value as provided in the Canadian Uniform Standards of Professional Appraisal Practice (Appraisal Institute of Canada).

3. HIGHEST AND BEST USE

The Retail Value is to be based on the permitted use for the Retail Lands in accordance with the zoning by-law in effect on the date of execution and delivery of the Retail Lease.

4. VALUATION ASSUMPTIONS

- The value is to be determined for a fee simple interest in the land.
- There are full municipal services to the lot line of the Retail Lands and the Retail Lands are ready for development.
- The Retail Lands are vacant; the valuation excludes existing improvements (except for the salon space described below), leases and other encumbrances.
- The valuation is to consider parts ● on the plan attached as Schedule B to the Retail Lease, being the salon space, separately. The salon space is to be valued in a base building condition requiring complete refurbishment.
- The valuation is to exclude parts ● on the plan attached as Schedule B to the Retail Lease, being the office air rights.
- The valuation is to exclude parts ● on the plan attached as Schedule B to the Retail Lease, being the residential air rights.

5. VALUATION METHODOLOGY

The Direct Sales Comparison Approach to Value (as provided in the Canadian Uniform Standards of Professional Appraisal Practice (Appraisal Institute of Canada)) is to be used.

6. VALUATION RATIONALE

The valuation is to be based on typical investor attitude for similar grade investments (land). Value is to be established based on a per sq. ft. unit of comparison of developable density as per the zoned use and type of space within the Project. (Reference the following table)

LAND VALUATION MATRIX – LPP			
Type of Space	Area (Approx*. Size in sq. ft.)	Estimate Unit Rate (Per sq.ft.)	Value Estimate
1 st Floor Commercial	220,000	\$ [Current rate at time of determination]	\$ [Product of Area and Estimated Unit Rate]
2 nd Floor Commercial	120,000	\$ [Current rate at time of determination]	\$ [Product of Area and Estimated Unit Rate]
Salon space	20,000	\$ [Current rate at time of determination]	\$ [Product of Area and Estimated Unit Rate]
Total Retail Value at time of determination			\$ [Sum of Value Estimates]

*Areas approximated based upon 360,000 sq .ft. as per the Zoning By-Law and actually based upon the as built plans and specifications for the Retail Component.

SCHEDULE K
DISPUTE RESOLUTION PROCEDURE

Except as otherwise provided in this Agreement, any Dispute in respect of this Agreement shall be resolved as follows:

- (1) the affected Parties shall attempt to resolve such Dispute by negotiations, which shall be initiated by one of them giving to the other(s) written Notice containing details of the Dispute and the other(s) shall provide written reply thereto within ten (10) Business Days;
- (2) if, for any reason, the Dispute remains unresolved after the expiration of the aforesaid ten (10) Business Day period, any affected Party may provide a written request to the other affected Parties that the Dispute be resolved by referral to arbitration between the Parties pursuant to the *Arbitration Act, 1991* (Ontario). The arbitration shall be conducted by a single arbitrator, the place of arbitration shall be Ottawa, Ontario, and the language of the arbitration shall be English. If the Parties cannot agree upon the appointment of the single arbitrator within ten (10) Business Days of receipt of the request to arbitrate, either Party may apply to a Judge of the Ontario Superior Court of Justice in Ottawa, Ontario, to appoint same. A decision of the arbitrator shall be final and binding on the Parties and there shall be no appeal therefrom; and
- (3) the time limits referred to in this Schedule may be abridged or extended by mutual agreement of the Parties.

Except for any action necessary to enforce the award of the arbitrator, or any actions initiated by the insurer of a Party, and subject to the provision of paragraph (2), the provisions of this Schedule are a complete defence to any Action instituted in any court or before any administrative tribunal with respect to any Dispute arising under or in connection with this Agreement.

The Parties shall continue to fulfill their respective obligations in respect of this Agreement

SCHEDULE L
HORTICULTURE BUILDING LEASING GUIDELINES

The leasing of any retail space within the Horticulture Building shall comply with the following guidelines:

- The retail space within the Horticulture Building will not be offered for lease by the City until the earlier of (a) the Retail Partnership having received commitments to sublease eighty percent (80%) of the rentable area of the Retail Component, and (b) one (1) year following the Operating Term Commencement Date;
- The maximum rentable area in the Horticulture Building offered for lease for retail uses is 6,000 square feet on two floors;
- There is not to be restaurant use in the pavilion portion of the Horticulture Building, except for a use associated with a “community kitchen” or a catering kitchen;
- The net effective rental rate for leases with retail uses in the Horticulture Building shall be no less than \$35.00/sq.ft. (for clarity, the rate shall be calculated on a basis that tenant inducements or rent free periods shall be added to the actual rental rate) provided that the City may, with OSEG’s prior approval, such approval not to be unreasonably withheld or delayed, be relieved from this requirement on a case by case basis; and
- The uses of the Horticulture Building must be consistent with the image and reputation of retail area contained in the Retail Component.

SCHEDULE M
TERMINATION COMPENSATION PRINCIPLES

Calculation of Payments Pursuant to Section 22.1

1. Where the effective date of such termination is prior to the twenty-fifth (25th) Anniversary (as such term is defined in the Retail Lease), the aggregate of (but excluding any duplication between):
 - (a) the amount of the outstanding Equity, other than Equity constituted by letters of credit or funds in the bank accounts of OSEG or its Members, or equivalent security or funds, as of the effective date of such termination;
 - (b) the cumulative and unpaid return on Equity at eight percent (8%) per annum, pursuant to Section 13.4(a)(ii), calculated up to the date of termination pursuant to Section 22.1;
 - (c) the Present Value as of the date of termination pursuant to Section 22.1 of the payment that would be made by the City upon exercise of its Termination Option (as such term is defined in the Retail Lease) pursuant to Article XVIII of the Retail Lease; and
 - (d) the Present Value as of the date of termination pursuant to Section 22.1 of the aggregate of all payments which would otherwise reasonably have been expected to be made to OSEG pursuant to the Waterfall, based upon Existing and Anticipated Project Activities, during the period between the date of termination pursuant to Section 22.1 and the thirtieth (30th) Anniversary (as such term is defined in the Retail Lease).
2. Where the effective date of such termination is on or following the thirtieth (30th) Anniversary (as such term is defined in the Retail Lease), the aggregate of (but excluding any duplication between):

- (a) the Fair Market Value (as such term is defined in the Retail Lease) of the Retail Lease, based upon the remaining balance of the Term, the First Extension Term and Second Extension Term (as such terms are defined in the Retail Lease) thereof as of the effective date of such termination;
- (b) the Fair Market Value (as such term is defined in the Stadium Lease) of the Stadium Lease, based upon the remaining balance of the Term (as such term is defined in the Stadium Lease) thereof as of the effective date of such termination; and
- (c) The Fair Market Value of each Material Agreement between the City and OSEG and/or a Component Partnership, other than the Retail Lease and the Stadium Lease.

3. Where the effective date of such termination is on or following the twenty-fifth (25th) Anniversary (as such term is defined in the Retail Lease) but before the thirtieth (30th) Anniversary (as such term is defined in the Retail Lease) and the City has not exercised its Termination Option (as such term is defined in the Retail Lease), the aggregate of (but excluding any duplication between):

- (a) the amount of the outstanding Equity, other than Equity constituted by letters of credit or funds in the bank accounts of OSEG or its Members, or equivalent security or funds, as of the effective date of such termination;
- (b) the cumulative and unpaid return on Equity at eight percent (8%) per annum, pursuant to Section 13.4(a)(ii), calculated up to the date of termination pursuant to Section 22.1;
- (c) the Present Value as of the date of termination pursuant to Section 22.1 of the payment that would be made by the City upon exercise of its Termination Option (as such term is defined in the Retail Lease) pursuant to Article XVIII of the Retail Lease;

- (d) the Present Value as of the date of termination pursuant to Section 22.1 of the aggregate of all payments which would otherwise reasonably have been expected to be made to OSEG pursuant to the Waterfall, based upon Existing and Anticipated Project Activities, during the period between the date of termination pursuant to Section 22.1 and the thirtieth (30th) Anniversary (as such term is defined in the Retail Lease);
- (e) the Fair Market Value (as such term is defined in the Retail Lease) of the Retail Lease, based upon the First Extension Term and the Second Extension Term (as such terms are defined in the Retail Lease) thereof, but not any part of the Term (as such term is defined in the Retail Lease); and
- (f) the Fair Market Value (as such term is defined in the Stadium Lease) of the Stadium Lease, based upon the duration of any extension term pursuant to Section 2.2 of the Stadium Lease, but not any part of the Initial Term (as such term is defined in the Stadium Lease).

4. Where the effective date of such termination is on or following the twenty-fifth (25th) Anniversary (as such term is defined in the Retail Lease) but before the thirtieth (30th) Anniversary (as such term is defined in the Retail Lease) and the City has exercised its Termination Option (as such term is defined in the Retail Lease), the aggregate of (but excluding any duplication between):

- (a) the amount of the outstanding Equity, other than Equity constituted by letters of credit or funds in the bank accounts of OSEG or its Members, or equivalent security or funds, as of the effective date of such termination;
- (b) the cumulative and unpaid return on Equity at eight percent (8%) per annum, pursuant to Section 13.4(a)(ii), calculated up to the date of termination pursuant to Section 22.1;

- (c) the Present Value as of the date of termination pursuant to Section 22.1 of the payment that would be made by the City upon exercise of its Termination Option (as such term is defined in the Retail Lease) pursuant to Article XVIII of the Retail Lease; and
- (d) the Present Value as of the date of termination pursuant to Section 22.1 of the aggregate of all payments which would otherwise reasonably have been expected to be made to OSEG pursuant to the Waterfall, based upon Existing and Anticipated Project Activities, during the period between the date of termination pursuant to Section 22.1 and the thirtieth (30th) Anniversary (as such term is defined in the Retail Lease).

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