

September 25, 2012

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RETAIL LEASE

CITY OF OTTAWA

- and -

LANSLOWNE RETAIL LIMITED PARTNERSHIP, a limited partnership established under the laws of the Province of Manitoba having as its General Partner, Lansdowne Retail GP Inc.

October [●], 2012

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RETAIL LEASE

THIS LEASE made as of the ● day of October, 2012.

BETWEEN:

CITY OF OTTAWA
(the “**Landlord**”)

- and -

LANSDOWNE RETAIL LIMITED PARTNERSHIP, a limited partnership established under the laws of the Province of Manitoba having as its General Partner, Lansdowne Retail GP Inc.
(the “**Tenant**”)

ARTICLE I **INTERPRETATION**

1.1 Definitions

In this Lease, unless otherwise stated, the following terms shall have the following respective meanings:

“**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 Lease occurs, divided by the Inflation Index for the month in which the Commencement Date occurs;

“**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;

“Anniversary” means an anniversary of the Operating Term Commencement Date;

“Annual Loss Carry Forward” means the amount, if any, of the negative number resulting from the calculation of the Annual Net Cash Flow in a Relevant Lease Year (excluding any amount in subparagraph (g) thereof);

“Annual Net Cash Flow” means, with respect to a Relevant Lease Year, an amount (which may be positive or negative) calculated as follows:

- (a) Revenues; minus
- (b) Base Rent; minus
- (c) Operating Expenses; minus
- (d) that portion of Leasing Costs paid which are allocable to the Relevant Lease Year, based on a straight line amortization of the amount of the Leasing Costs with respect to each Sublease over the initial term of each such Sublease; minus
- (e) that portion of Capital Expenditures paid which are allocable to the Relevant Lease Year, based on a straight line amortization of the amount of the Capital Expenditures over the useful life thereof, together with interest at the Prime Rate plus one percent (1%) per annum on the unamortized portion thereof; minus

- (f) amounts paid by the Tenant on account of annual principal and interest payments with respect to the Tenant Mortgage (provided that if the Tenant has entered into a Tenant Mortgage described in Section 16.1(j)(iii), to the extent that proceeds of such Tenant Mortgage are not used for tenant improvements or other capital improvements, the principal and interest payments for the portion of such Tenant Mortgage not so used shall be excluded from these amounts); minus
- (g) the amount of the Permitted Loss Carry Forward, if any;

“**Approved**” means approved in writing by the relevant Party in accordance with Section 26.11 unless expressly provided in an alternative manner in this Lease and “**Approval**” has a corresponding meaning;

“**Architect**” means the architectural firm or firms proposed by the Tenant;

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

“**As Built R-Plan**” means a strata reference plan reflecting the boundaries of the “as built” Retail Project;

“**Audit Records**” has the meaning given to it in Section 5.1(b);

“**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;

“**Base Rent**” shall be determined pursuant to Section 3.1 or Section 3.3, as may be applicable;

“**Base Rent Increase Event**” has the meaning given to it in Section 3.3(a);

“**Building Codes**” means all codes and Law applicable to the design, construction, building requirements and standards of the Retail Component, including the *Building Code Act* (Ontario);

“**Building Damage**” means any damage to the Retail Component or the Stadium Component, as applicable in the context, by any cause;

“**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;

“**Capital Expenditures**” means amounts paid of a capital nature relating to the repair, operation and maintenance of the Retail Component or a capital expenditure to improve demised premises to accommodate the requirements of a Sublease or an agreement to Sublease which is not included within Leasing Costs, including: (i) the cost of all replacements, additions and modifications to equipment serving the Retail Component, (ii) the cost of all replacements, additions and modifications to the Retail Component required to maintain the Retail Component at the Standard, and (iii) costs incurred in installing energy conservation equipment or systems and life safety systems and any equipment and systems designed to control Operating Expenses, all to the extent the costs are of a capital nature and provided that all amounts paid to Persons not at Arm’s Length to the Tenant shall not exceed reasonable prevailing market rates;

“**CFL Partnership**” means Capital Gridiron Limited Partnership, a limited partnership formed under the Law of the Province of Manitoba, having as its general partner Capital Gridiron GP Inc.;

“Change of Control” means:

(a) 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;

(b) 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 (a), above) of any corporation comprising the Business Entity, if such corporation Controls the Business Entity; or

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

provided that no Change of Control shall be deemed to have occurred under subparagraph (a), (b) or (c), 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 Lease 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**” means the City of Ottawa in its capacity as a municipal corporation pursuant to Section 26.8;

“**City’s Share of Cost of Parking**” has the meaning given to it in the Project Agreement;

“**Civic Centre**” means the arena currently known as the Civic Centre in the City of Ottawa.

“**Commencement Date**” means the date of execution and delivery of this Lease by the Parties hereto, as indicated on the first page hereof;

“**Commencement of Construction**” means the earliest to occur date on which a general contractor commences, in a bona fide manner, construction of the Retail Component Building, the Stadium Retail Component or the Office Retail Component and “**Commence Construction**” and “**Commenced Construction**” have a corresponding meaning;

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

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

“**Comprehensive Construction Contract**” has the meaning given to it in the Project Agreement;

“**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 Lease), 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 Term**” means that part of the Term of this Lease commencing on the Commencement Date and ending on the earliest of:

- (a) forty-eight (48) months following the Commencement of Construction, subject to extensions resulting from a Relief Event;
- (b) twelve (12) months following Substantial Completion of the Retail Component;
or
- (c) the Stabilization Date;

“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 (b) above,

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

“**Cooperative Integration**” has the meaning given to it in Section 2.5;

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

“**Cure Period**” has the meaning given to it in Section 15.5;

“**Default Amount**” has the meaning given to it in Section 18.3(a);

“**Default Interest Rate**” means the greater of ten percent (10%) per annum or five percent (5%) over the Prime Rate;

“**Default Notice**” means a Notice from the Landlord to the Tenant that an Event of Default has occurred and providing details thereof;

“**Design and Plan Requirements**” means (i) the Design Guiding Principles, (ii) the Site Plan, and (iii) the Design Solutions (to the extent that those design solutions relate to the Retail Component);

“**Design Guiding Principles**” means the design guiding principles for the Site as are agreed by the City and OSEG, currently being the design guiding principles established by the Design Review and Advisory Panel established by Motion 77/5 approved by Council at its meeting on

November 16, 2009, as contained in a document headed “Guiding Principles for the Lansdowne Transformation” dated January 2010;

“**Design Solutions**” means the design solutions in respect of the Urban Park resulting from a design competition undertaken by the City, the National Capital Commission and Parks Canada in conformity with the Design Guiding Principles;

“**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 this Lease 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 Lease;

as the context requires, or the grant of an option or the entering into of an agreement to effect any of the foregoing;

“**Dispute**” means any disagreement, failure to agree or other dispute between the Landlord and the Tenant arising out of or in connection with this Lease, 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 A (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;

“**Easements**” means those easements to be granted and received by (i) the Landlord and/or the Tenant, (ii) the owner, tenant and/or subtenant of one or more other Components, and/or (iii) the City, as the owner of the Urban Park, in order to implement and achieve Cooperative Integration;

“**Emergency**” means any condition which exists that may, or has the potential to, adversely affect the safety of a Person or has the potential to adversely 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 “**Encumbering**”, “**Encumbered**” and “**Encumbrance**” have a corresponding meaning;

“**Environmental Laws**” means all applicable Law 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**” has the meaning given to it in the Project Agreement;

“**Event**” means an event or performance at the Stadium, including a sporting event;

“**Event of Default**” has the meaning given to it in Section 15.1;

“**Excluded Dispute**” means:

- (a) any Dispute concerning the payment of Rent, except as otherwise specifically provided in this Lease; and
- (b) any Dispute concerning the matters set out in Article XV,

which matters shall be determined by action or application of any Party to the Superior Court of Justice of Ontario;

“**Excluded Expenses**” means those expenses (otherwise included in Operating Expenses) to be excluded from Operating Expenses, being:

- (a) depreciation or capital cost allowance;
- (b) expenditures which are Capital Expenditures and/or Leasing Costs; and
- (c) costs of head office personnel and other administrative, overhead and off-site costs of the Tenant;

“**Existing Improvements**” has the meaning given to it in Section 11.5(a);

“**Expropriate**” means to expropriate or take under the power of eminent domain pursuant to applicable Law and “**Expropriates**”, “**Expropriated**” and “**Expropriation**” have corresponding meanings;

“**Expropriating Authority**” means any Authority having legal authority to Expropriate;

“**Fair Market Value**” means the most probable price estimated in terms of money which the Tenant’s interest in the Retail Component 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 Retail Component is adapted and for which it is capable of being used in accordance with this Lease and the physical premises constructed, and both exercising intelligent judgement, but taking into account all 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;

“Fair Market Value Rent” means the annual fair market net rental rate of the Retail Lands, being the most probable annual rent estimated in terms of money that a willing landlord reasonably would be capable of obtaining by leasing the Retail Lands to a willing tenant on the terms set out in this Lease for the balance of the Term remaining, taking into account any extension terms remaining under Section 2.3, if exposed for rental in the open market, allowing for a reasonable period of time to find a tenant, neither landlord nor tenant acting under compulsion, both having knowledge of the highest and best use of the Retail Lands within the scope of restrictive uses permitted by this Lease and taking into account the requirements of Cooperative Integration, and both exercising intelligent judgement, in circumstances where no inducements, rent free periods, special improvements for the benefit of the tenant or other inducements are provided by the landlord and without taking into account the value of any improvement on the Retail Lands constructed and paid for by the Tenant;

“Fee Limitations” has the meaning given to it in Section 9.8;

“Final Retail Component Plans and Specifications” means the detailed plans and specifications commonly referred to as the construction drawings in respect of the construction of the Retail Component;

“First Extension Term” has the meaning given to it in Section 2.3;

“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 Lease;
- (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 services performed or goods supplied by the Party delayed in the performance of an obligation under this Lease, its employees, agents or independent contractors (including subcontractors of a general contractor);
- (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 Lease;
- (i) the shortage of materials or inability to procure materials, where (i) in circumstances related to the initial construction of the Retail Project, 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 matter beyond the reasonable control of the Party delayed in the performance of an obligation under this Lease, 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
 - (iii) 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 Lease 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;

“GFA” means gross floor area as determined in accordance with the applicable zoning by-law of the City;

“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 Retail Lands for which the Landlord is responsible under this Lease;
- (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;

“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” forming part of the Urban Park;

“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;

“Institutional Lender” means:

- (a) a bank included under Schedule “1” or Schedule “2” to the *Bank Act* (Canada);
- (b) an insurance company or a pension fund or other financial institution having a net asset value of not less than \$2.5 billion, Adjusted for Inflation; or
- (c) such other financial institution as may be approved by the Landlord in its Discretion;

“Insurance Trustee” has the meaning given to it in Section 12.9;

“Landlord” means the City of Ottawa in its capacity as landlord under this Lease and its successors and permitted assigns pursuant to this Lease;

“Landlord Indemnified Parties” means the Landlord, its successors and assigns, its Mayor, Councillors, elected or appointed officials, officers, directors, employees, independent contractors, agents or advisors, including the Landlord’s Representative and any delegate of the Landlord’s Representative;

“Landlord’s Auditors” means the firm of professional accountants or other Persons permitted by applicable Law at the relevant time to conduct audits which is from time to time retained by the Landlord for any purpose in connection with this Lease;

“Landlord’s Representative” means the Representative appointed by the Landlord;

“Landlord’s Security Interest” means the Landlord’s rights pursuant to Section 4.13(b)(iv);

“**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 Authority having the force of law;

“**Lease**” means this lease agreement between the Landlord and the Tenant respecting the Retail Component;

“**Leasing Costs**” means (i) amounts expended by the Tenant on account of tenant inducements and tenant improvements for Subtenants; (ii) changes or improvements made to accommodate special requirements of a specific Subtenant; and (iii) leasing commissions with respect to Subleases, provided that all amounts paid to Persons not at Arm’s Length to the Tenant shall not exceed reasonable prevailing market rates;

“**Manager**” has the meaning given to it in Section 9.8;

“**Members**” those Persons who are partners of OSEG from time to time, currently being:

- (a) Lansgreen Investments Inc.;
- (b) Shenkman Lansdowne Ltd.;
- (c) Trinity Lansdowne Ltd.;
- (d) Keljay Ltd.; and
- (e) Friarmere Holdings Inc.;

“**Minimum Equity Requirement**” has the meaning given to it in the Project Agreement;

“**Mortgagee**” means the holder of any mortgage, charge, debenture or other security interest with respect to the fee simple interest of the Landlord in the Retail Lands or any part thereof;

“**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;

“**New OHT Easement**” has the meaning given to it in Section 22.2(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-Disturbance Agreement**” has the meaning given to it in Section 13.4(a);

“**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 Lease;

“**Office Component**” means a three-dimensional envelope consisting of that portion of the Total Lands described as Parts ● on the plan attached as Schedule B, together with the improvements constructed on such lands from time to time and including associated parking, but excluding the Office Retail Component;

“**Office Retail Component**” means a three-dimensional envelope consisting of that portion of the Total Lands described as Parts ● on the plan attached as Schedule B;

“**OHT Easement**” has the meaning given to it in Section 22.2(a);

“**Operating Expenses**” means, for any Relevant Lease Year, expenses, other than Excluded Expenses, paid in respect of the operation, maintenance, leasing and management of the Retail Component, including, without duplication:

- (a) janitorial, security, lighting, mechanical and electrical, marketing, leasing, accounting and auditing expenses, insurance premiums and Utility Charges;
- (b) Taxes;

- (c) salaries, wages and other amounts paid or payable for on-site personnel, including fringe benefits, employment and workers' compensation insurance premiums, pension plan contributions and other employment costs;
- (d) fees paid to the property manager, provided that such fees are at market rates for comparable agreements providing similar services;
- (e) a deemed management fee equal to the deemed administration fee recovered from Subtenants under Subleases (and, for clarity, there shall be no management or administration fees included in Operating Expenses other than the management fees provided in subparagraph (d) and this subparagraph (e));
- (f) landscaping, window cleaning, garbage removal and snow removal services;
- (g) legal and consulting fees and disbursements;
- (h) the cost of the leasing or rental of any equipment and signs;
- (i) the cost of supplies used in maintaining or operating the Retail Component;
- (j) the cost of repair and maintenance of the Retail Component, including: (i) the cost of replacements, additions and modifications to equipment serving the Retail Component, (ii) the cost of replacements, additions and modifications to the Retail Component required to maintain the Retail Component at the Standard, and (iii) costs incurred in installing energy conservation equipment or systems and life safety systems and any equipment and systems designed to control Operating Expenses, all to the extent such costs are not Capital Expenditures; and
- (k) all costs required to be paid by the Tenant under each Reciprocal Agreement,

provided that all amounts paid to Persons not at Arm's Length to the Tenant (other than amounts payable under each Reciprocal Agreement) shall not exceed reasonable prevailing market rates;

“Operating Lease Year” means, with respect to the first Operating Lease Year, the period commencing on the Operating Term Commencement Date and ending on the day immediately preceding the first Anniversary thereof and means, with respect to each subsequent Operating Lease Year, the period commencing on the day next following the last day of the immediately preceding Operating Lease Year and ending on the day immediately prior to the next Anniversary of the Operating Term Commencement Date, except that the last Operating Lease Year of the Term shall end on the day on which the Term ends;

“Operating Term” means that part of the Term commencing on the Operating Term Commencement Date and expiring fifty (50) years following the Operating Term Commencement Date, subject to the Operating Term Condition;

“Operating Term Commencement Date” means, in the event the Operating Term Condition is satisfied, the date immediately following the expiry of the Construction Term. For clarity, “Construction Term”, “Operating Term Commencement Date” and “Stabilization Date” are intentionally differentiated terms in this Lease;

“Operating Term Condition” means the Substantial Completion by the Tenant of the Retail Component prior to the expiry of the Construction Term;

“OSEG” means Ottawa Sports and Entertainment Group, a general partnership formed under the Law of the Province of Ontario;

“Ottawa 67’s Partnership” means Ottawa 67’s Limited Partnership, a limited partnership formed under the laws of the Province of Manitoba, having as its general partner Ottawa 67’s GP Inc.;

“Overholding Rent” has the meaning given to it in Section 20.1;

“Parking Funding Agreement” has the meaning given to it in Section 16.1(f);

“Parking Operator” means a competent operator engaged by OSEG from time to time, as Approved by the City, responsible for the Parking Structure and surface parking pursuant to this Lease, the Stadium Lease and the lease for the Office Component;

“Parking Reciprocal Agreement” means the Reciprocal Agreement to be entered into amongst OSEG, the City, the Tenant, the tenant of the Stadium Component, the developer of the Residential Component and the developer of the Office Component 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, the use of the Parking Structure (excluding any parking spaces allocated to the Residential Component) to the maximum on days that Events are being held in the Stadium and the use of the Parking Structure by the public and the invitees of each of the relevant Components;

“Parking Structure” means the parking structure constructed on or within that portion of the Total Lands described as Parts ● on the plan attached as Schedule B, containing the Parking Unit and parking facilities for each of the other Components;

“Parking Unit” means the three hundred and sixty (360) parking spaces to be contained within the Parking Structure for use by the Retail Component and contained within the portion of the demise of this Lease within the Parking Structure, 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;

“Participation Period” has the meaning given to it in Section 3.5(a);

“Participation Rent” has the meaning given to it in Section 3.5(a);

“Parties” means the Tenant and the Landlord and **“Party”** means either of the Tenant or the Landlord;

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

“Permitted Loss Carry Forward” means, with respect to a Relevant Lease Year, the lesser of:

- (a) the remaining Total Loss Carry Forward; or
- (b) that portion of Total Loss Carry Forward, when deducted in calculating the Annual Net Cash Flow for the Relevant Lease Year, will result in the Annual Net Cash Flow for the Relevant Lease Year being equal to zero;

“Permitted Tenant Mortgage” has the meaning given to in Section 16.1(d);

“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);

“Permitted Uses” has the meaning given to it in Section 9.1(a);

“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;

“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;

“Prime Rate” on any day means the annual rate of interest announced by the Royal Bank of Canada (or its successor), or any other Canadian chartered bank agreed by the Parties from time to time, as its reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

“Prohibited Use” means any use or conduct, activity, Signage, video or audio broadcast, advertisement or matter or act of any nature or kind which in the opinion of the Landlord, acting reasonably, is, or would have the probable effect of being, contrary to applicable Law or the moral, ethical or reputational standard appropriate to a first class retail complex located within the Site taking into account the requirement of Distinctive Uses;

“Project Agreement” means the project agreement entered into by the City, OSEG and the Persons listed in subparagraphs (a) to (e) of the definition of Members dated on October [●], 2012 respecting the redevelopment of the Site and the Urban Park;

“Project Documents” has the meaning given to it in Section 15.6(c);

“Receiver” means a receiver or receiver/manager appointed by the Landlord by instrument in writing;

“Reciprocal Agreement” means an agreement (including the Parking Reciprocal Agreement) among (i) the Landlord and/or the Tenant, (ii) the owner, tenant and/or subtenant of one or more other Components, and/or (iii) the City, as the owner of the Urban Park, dealing with matters required to implement and achieve Cooperative Integration, including:

- (a) Easements;
- (b) the use of, and the equitable sharing of certain costs (including incremental costs) related to, Shared Facilities;
- (c) other matters of mutual interest and concern respecting the interrelationship of two (2) or more Components or the interrelationship of one (1) or more Components and the Urban Park; and
- (d) a dispute resolution procedure among the parties thereto;

“Redevelop” means, with respect to the Retail Component following Total Completion of the Retail Component:

- (a) a material change to the exterior cladding or to the massing of the Retail Component Building;
- (b) a change to the interior of the Retail Component which materially alters the roof, exterior walls, stairwells, structural subfloors, columns or any other load bearing elements of the Retail Component structure, as constructed in accordance with the Final Retail Component Plans and Specifications;
- (c) any matter included within the matters listed in section 41 of the *Planning Act* (Ontario); and
- (d) any material change to the Retail Component which conflicts with, or may conflict with, the Design and Plan Requirements,

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

“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 Lease Year” means the Operating Lease Year for which a calculation is made;

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

“Renovation” means any construction, renovation, addition, improvement, installation, alteration, change, reconstruction or other similar work performed with respect to the Retail Component following Total Completion of the Retail Component which is not a Redevelopment of the Retail Component;

“Rent” means:

- (a) Base Rent;
- (b) Participation Rent (when applicable); plus
- (c) any and all other sums, costs or other amounts from time to time due and payable by the Tenant to the Landlord under the provisions of this Lease, except as expressly excluded from Rent herein;

“Rent Valuation Date” means each of the fifth Anniversary, tenth Anniversary, fifteenth Anniversary, twentieth Anniversary, twenty-fifth Anniversary, thirtieth Anniversary, thirty-fifth Anniversary, fortieth Anniversary and forty-fifth Anniversary (and in the event the Operating Term is extended by either of or both of the First Extension Term and/or the Second Extension Term, the fiftieth Anniversary, fifty-fifth Anniversary, sixtieth Anniversary and sixty-fifth Anniversary, as applicable);

“Representative” means the Person appointed to represent a Party under Section 26.15;

“Required Contracts” has the meaning given to it in Section 4.13(b)(i);

“Required Equity” has the meaning given to it in Section 4.13(a)(i);

“Residential Component” means a three-dimensional envelope consisting of that portion of the Total Lands described as Parts ● on the plan attached as Schedule B, together with the improvements constructed on such lands from time to time, including associated parking;

“Restoration Work” has the meaning given to it in Section 14.4;

“Retail Component” means the Retail Lands, together with the following, without duplication: (i) the Retail Component Building, (ii) the Stadium Retail Component, (iii) the Parking Unit, (iv) the Office Retail Component, and all other improvements and structures associated therewith;

“Retail Component Building” means all buildings from time to time constructed on or within the Retail Lands (excluding the Stadium Retail Component, the Parking Unit and the Office Retail Component) to be used for commercial/retail purposes, subject to the restrictions on use contained in this Lease;

“Retail Component’s Share of the Cost of Parking” has the meaning given to it in the Project Agreement;

“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;

“Retail Fees” has the meaning given to it in Section 9.8;

“Retail Lands” means a three-dimensional envelope consisting of the lands described as Parts ● on the plan attached as Schedule B hereto;

“Retail Project” means the development of the Retail Component in accordance with the Final Retail Component Plans and Specifications and this Lease;

“Revenues” means the total of all amounts received by the Tenant during the Relevant Lease Year, including, without duplication:

- (a) revenue derived from rents, parking, licensing, advertising, websites and any other revenue or other amounts received of any nature or kind whatsoever, interest or imputed interest on deposits received from Subtenants after deduction of interest payable to such Subtenants in accordance with their relevant Sublease, operating cost recoveries, capital cost recoveries together with any imputed interest thereon, interest on outstanding loans made by the Tenant to Subtenants as an inducement to enter into Subleases and property tax recoveries; and

(b) net proceeds received from insurance or an Expropriation,

but excluding the proceeds from any financing or sale of the Retail Component or any part of it;

“**Safety Requirements**” means requirements of applicable Law relating to safety of persons or property;

“**Second Extension Term**” has the meaning given to it in 2.3(b);

“**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;

“**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 Facilities**” means the improvements which are facilities or elements (including structural elements) to be shared between the Retail Component and one or more other Components and/or the Urban Park governed by a Reciprocal Agreement;

“**Signage**” has the meaning given to it in Section 9.2(a);

“**Signage Policy Amendment Notice**” has the meaning given to it in Section 9.2(d);

“**Significant Damage**” means Building Damage to the Stadium Component that renders the Stadium unfit for use or occupancy for the purposes permitted under the Stadium Lease for a period of at least two hundred and eighty (280) days, as determined in accordance with the Stadium Lease;

“**Site**” means that area described as Parts ● on the plan attached as Schedule B;

“**Site Plan**” means the overall site plan for the Site approved by Council at its meeting on November 22, 2010 and any subsequent separate site plan approved by Council or its delegate with respect to the Retail Component or a portion of it;

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

“**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 any construction bonding;

“Stabilization Date” means the first day of the month immediately following the earlier of:
(i) the month in which the first anniversary of the Substantial Completion of the Retail Component occurs, or (ii) the month in which ninety percent (90%) of the rentable area (as mutually agreed on by the Parties, each acting reasonably) of the Retail Component is subject to a Sublease and either occupied for the purpose of carrying on business with the public or base rent is payable therefor pursuant to the rental rate set out in the applicable Sublease;

“Stabilization Date Notice” has the meaning given to it in Section 2.6;

“Stadium” means the Frank Clair Stadium and the Civic Centre;

“Stadium Component” means a three-dimensional envelope consisting of that portion of the Total Lands described as Parts ● on the plan attached as Schedule B, together with the improvements constructed on such lands from time to time, including the Stadium (but excluding the Stadium Retail Component) and associated parking;

“Stadium Lease” means the lease agreement dated October ●, 2012 between City of Ottawa and Lansdowne Stadium Limited Partnership respecting the Stadium Component;

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

“Stadium Retail Pods Parcel” means a three dimensional envelope consisting of that portion of the Total Lands described as Parts ● on the Plan attached as Schedule B, together with the improvements constructed on such lands from time to time;

“**Stadium Retail Salons Parcel**” means a three dimensional envelope consisting of that portion of the Total Lands described as Parts ● on the Plan attached as Schedule B, together with the improvements constructed on such lands from time to time;

“**Standard**” means the standard of maintenance and repair of the Retail Component, which shall be the standard of maintenance and repair as would be effected by a prudent and conscientious owner of a first class retail complex (containing a minor office component) in downtown Ottawa, Ontario, taking into account its location, size, age and the requirement for Distinctive Uses;

“**Sublease**” has the meaning given to it in Section 13.2;

“**Substantial Completion**” means completed to the same extent as a “contract” being “substantially performed” in accordance with the *Construction Lien Act* (Ontario);

“**Subtenant**” means a subtenant, occupant, licensee or concessionaire pursuant to a Sublease;

“**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 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 tenant under the Stadium Lease 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 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 being 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;

“Tenant” means Lansdowne Retail Limited Partnership or any successor or permitted assign;

“Tenant Mortgage” means any instrument evidencing a loan or loans made to the Tenant by an Institutional Lender or otherwise at any time during the Term by which the amount of such loan or loans is secured in whole or in part by a mortgage of the leasehold interest of the Tenant under this Lease or any part thereof and includes all renewals, modifications, consolidations, replacements and extensions thereof and, without limiting the generality of the foregoing, shall be deemed to include each and every debenture, mortgage, deed of trust or other evidence of security given by way of assignment of lease, sublease or charge upon the leasehold interest of the Tenant hereunder or an assignment of Subleases and/or the rents or other monies payable under Subleases;

“Tenant Mortgagee” means the mortgagee, assignee or trustee under the Tenant Mortgage;

“Tenant Mortgagee Notice” has the meaning given to it in Section 16.2(a)(i);

“Tenant Mortgagee Rent” has the meaning given to it in Section 3.3(b)(i);

“Tenant Mortgagee Retail Lands Mortgage Value” means Three Million, Two Hundred Fifty Thousand Dollars (\$3,250,000);

“Tenant Mortgagee’s Service Address” means the address at which notices may be delivered by the Landlord to the Tenant Mortgagee as set out in the Tenant Mortgagee Notice or such replacement address as may subsequently be furnished by the Tenant Mortgagee to the Landlord for such purpose;

“Term” means the term of this Lease, being the Construction Term plus, upon and subject to satisfaction of the Operating Term Condition, the Operating Term, together with any extension thereof in accordance with Section 2.3;

“Termination Amount” means the total of:

- (a) the Fair Market Value (but for the exercise of the Termination Option) calculated as of the Termination Date;
- (b) the amount of the outstanding Equity as of the Waterfall Expiry Date, other than Equity constituted by letters of credit or funds in the bank accounts of OSEG or its Members or equivalent security or funds; and
- (c) the cumulative and unpaid return on Equity at eight percent (8%) per annum, pursuant to Section 13.4(a)(ii) of the Project Agreement, calculated up to the Waterfall Expiry Date; and

“Termination Closing” means, in the event that the Landlord exercises the Termination Option, the termination of this Lease upon the Termination Date and the payment by the Landlord to the Tenant of the Termination Amount as consideration therefor, all in accordance with Article XVIII;

“Termination Date” means the later of (i) the thirtieth Anniversary, or (ii) the Waterfall Expiry Date;

“Termination Notice” means a written Notice from the Landlord to the Tenant exercising the Termination Option;

“**Termination Option**” has the meaning given to it in Section 18.1(a);

“**TMA**” means the transportation management association that is established and led by the TDM Coordinator and of which the Tenant, the Subtenants, the tenant under the Stadium Lease, the developer of the Office Component and all subtenants of the Office Component are members;

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

“**Total Lands**” means the Site and the Urban Park;

“**Total Loss Carry Forward**” means the aggregate of all Annual Loss Carry Forwards, minus the aggregate of all Permitted Loss Carry Forwards utilized in the calculation of Annual Net Cash Flow;

“**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 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 Tenant and a Subtenant implementing matters provided for in the Transportation Plan relevant to the Retail Component and set out as ongoing obligations in the Site Plan Agreement, including participation in the TMA, which agreement or Sublease shall have the City as a party for the purposes of enforcing 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 Site 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 set out as ongoing obligations in the Site Plan Agreement;

“**Urban Park**” means the public open space to be created in the area described as Parts ● on the plan attached as Schedule B;

“**Utility Charges**” means charges for gas, electricity, heat, power, telephone, water, steam and other utilities used in or supplied to the Retail Component; and

“**Waterfall Expiry Date**” means December 31, 2044.

Except as provided to the contrary in the definitions set out above, all determinations, calculations and interpretations of the provisions contained in the definitions set out above shall be in accordance with GAAP. For greater certainty, notwithstanding any provision of this Lease providing for certain costs or expenses to be borne by the Tenant, such costs and expenses shall still be included in the determination of Operating Expenses, Capital Expenditures or Leasing Costs, as applicable.

1.2 Construction and Interpretation

In this Lease, including the Schedules and appendices to this Lease, 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 Lease;
- (b) each reference in this Lease to “Section”, “Article” or “Schedule” is to a Section or Article of, or a Schedule to, this Lease;

- (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 Lease 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) reference 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) except as specifically provided to the contrary in this Lease, 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 Lease 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 Lease; and
- (m) all references herein to any agreement (including this Lease), 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), each provision of this Lease is severable. If any provision of this Lease 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 Lease or the legality, validity or enforceability of that provision in any other jurisdiction, except that if:

- (a) on the reasonable construction of this Lease 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 Lease is illegal, unenforceable or invalid, the basic intentions of the Parties in this Lease are substantially frustrated, the Parties will use reasonable efforts to amend, supplement or otherwise vary this Lease to confirm their mutual intention in entering into this Lease.

1.4 Governing Law

This Lease and each of the documents contemplated by or delivered under or in connection with this Lease 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 Lease.

1.5 Time of Essence

Time shall be of the essence of this Lease.

1.6 Entire Agreement

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

1.7 Schedules

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

SCHEDULE	SCHEDULE #	SECTION REF.
Dispute Resolution Procedure	A	1.1 and 25.1
Urban Park, Site and Components	B	1.1
Surrender Schedule	C	19.1
Heritage Easement Matters	D	1.1 and 22.2
Tenant Mortgagee Retail Lands Mortgage Value Principles	E	3.3
Horticulture Building Leasing Guidelines	F	2.7

ARTICLE II
DEMISE AND TERM

2.1 Demise for Construction Term

In consideration of the Rent, covenants and agreements reserved and contained on the part of the Tenant in this Lease, the Landlord demises and leases to the Tenant the Retail Component and all rights, easements, privileges and appurtenances belonging to or in any way appertaining to the Retail Component, to have and to hold for the Construction Term, subject to the extension of the Term of this Lease in accordance with Sections 2.2 and 2.3 and subject to the rights of earlier termination provided for by the provisions of this Lease.

2.2 Demise for Operating Term

Upon the satisfaction of the Operating Term Condition, the Term of this Lease shall be extended for the Operating Term, subject to the rights of earlier termination provided for by the provisions of this Lease.

2.3 Extension Options

- (a) Provided that no more than two (2) Events of Default which were not cured within their respective Cure Periods have occurred within any five (5) year period during the Term, the Tenant shall have the option, exercisable upon providing no less than twelve (12) months' written Notice to the Landlord prior to the expiry of the Operating Term, to extend the Operating Term for a further ten (10) year period (the "**First Extension Term**") upon the same terms and conditions as contained herein.

- (b) Provided that no more than two (2) Events of Default which were not cured within their respective Cure Periods have occurred within any five (5) year period during the Term, as extended by the First Extension Term, the Tenant shall have the option, exercisable upon providing no less than twelve (12) months' written Notice to the Landlord prior to the expiry of the First Extension Term, to extend the Operating Term for a further ten (10) year period (the "**Second Extension**

Term”) upon the same terms and conditions as contained herein. Notwithstanding the foregoing, following the exercise or expiry of the Tenant’s right to extend the Operating Term pursuant to this Section 2.3(b), the Tenant shall have no further right to extend the Operating Term.

- (c) The Parties shall execute a lease extension acknowledgement prepared by the Landlord confirming the terms of the First Extension Term and the Second Extension Term, as applicable.

2.4 Adjustment of Boundaries

- (a) Upon the Substantial Completion of the Retail Project, the Parties shall cooperate so as to create an As Built R-Plan. The cost of the As Built R-Plan as reasonably allocated to the Retail Component (excluding those portions of the Parking Structure included within the demise of this Lease) in accordance with Section 2.13 of the Project Agreement, shall be borne by the Tenant. The As Built R-Plan shall be prepared by a third party Ontario Land Surveyor Approved by the Parties. The As Built R-Plan shall be deposited in the applicable Land Titles Office as soon as possible after Substantial Completion of the Retail Project.
- (b) Upon the registration of the As Built R-Plan, the Parties, the tenant and/or owners of the other Components and the City, as the owner of the Urban Park, shall effect such reconveyances as shall be necessary to readjust boundaries of the Retail Component and the Easements to reflect the boundaries set forth in the As Built R-Plan. For this purpose, such reconveyances may include deletions from the Retail Lands demised by this Lease, the granting of additional lands to be included within the Retail Lands demised by this Lease and additions or deletions to Easements, and the Parties, the tenants and/or owners of the other Components and the City, as the owner of the Urban Park, shall make corresponding necessary amendments to the description of the various Components and the Urban Park.

2.5 Cooperative Integration

The Parties acknowledge and agree that as a result of the inter-relationship of the Retail Component with other Components and the Urban Park, both physically and functionally, various Easements and licences, potential reasonable rules and regulations and cost sharing matters will be required to be resolved between the Retail Component and such other Components and/or the Urban Park, and the Parties and each of the Subtenants shall cooperate and act reasonably to effect the cooperative integration, subject to the Approval of the City and the Approval of OSEG under the Project Agreement (the “**Cooperative Integration**”). For this purpose, the Landlord and/or the Tenant shall, contemporaneously with the execution of this Lease, enter into:

- (a) the Parking Reciprocal Agreement;
- (b) one or more other Reciprocal Agreements with the owner, tenant and/or subtenant of one or more other Components and/or the City, as the owner of the Urban Park, as required to implement and achieve the Cooperative Integration, including with respect to the Stadium Retail Component, the Office Retail Component and for the development of the Residential Component and the Office Component above portions of the Retail Component; and
- (c) one or more construction procedures agreements with the owner, tenant and/or subtenant of one or more other Components and/or the City, as the owner of the Urban Park, respecting construction related matters among one or more Components and/or the Urban Park, including licences and/or temporary Easements to be contemplated therein and a dispute resolution procedure among the parties thereto.

2.6 Stabilization Date Notice

The Tenant shall provide Notice to the Landlord forthwith upon the occurrence of the Stabilization Date (the “**Stabilization Date Notice**”). The Tenant shall provide the Landlord with reasonable information and documentation as shall permit the Landlord to verify the

Stabilization Date, as proposed by the Tenant in the Stabilization Date Notice. The Stabilization Date as proposed by the Tenant in the Stabilization Date Notice shall not be binding on the Landlord and in the event that the Landlord and the Tenant shall be unable to agree upon the Stabilization Date, the Stabilization Date shall be determined through the Dispute Resolution Procedure.

2.7 Horticulture Building

In the leasing of the space within the Horticulture Building, the Landlord shall comply with the leasing guidelines set out in Schedule F.

ARTICLE III RENT

3.1 Base Rent

- (a) Provided that the Tenant is and remains Lansdowne Retail Limited Partnership, Base Rent payable during the Construction Term and each Operating Lease Year (or part thereof) prior to the Waterfall Expiry Date shall be one dollar (\$1.00) for each year of the Construction Term and for each Operating Lease Year (or part thereof).

- (b) Beginning on the Waterfall Expiry Date and continuing for the balance of the Operating Term (including the First Extension Term and the Second Extension Term, if applicable), Base Rent during an Operating Lease Year will be the then-prevailing Fair Market Value Rent, as determined pursuant to Section 3.2, subject to section 5.8(a)(ii) of the Master Limited Partnership Agreement dated contemporaneously with this Lease among the Landlord, OSEG and the Members.

3.2 Rent Valuation Date

- (a) The Fair Market Value Rent shall be determined as of each Rent Valuation Date in accordance with the procedure set out in subparagraph (b) and the Fair Market

Value Rent so determined shall be deemed to be the Fair Market Value Rent for the period ending on the next following Rent Valuation Date.

- (b) Prior to each Rent Valuation Date, the Landlord and Tenant, acting reasonably, shall agree to the then-prevailing Fair Market Value Rent as of such Rent Valuation Date. If the Landlord and Tenant are unable to agree to the then-prevailing Fair Market Value Rent on or before the date that is three (3) months prior to a Rent Valuation Date, then the Fair Market Value Rent as of such Rent Valuation Date shall be determined through the Dispute Resolution Procedure.

- (c) In the event a Base Rent Increase Event described in Section 3.3(a)(iv) shall occur prior to the fifth Anniversary, the Landlord and Tenant, acting reasonably, shall agree to the then-prevailing Fair Market Value Rent as of the date upon which such Base Rent Increase Event shall occur. If the Landlord and Tenant are unable to agree to the then-prevailing Fair Market Value Rent on or before the date that is thirty (30) days following the occurrence of a Base Rent Increase Event described in Section 3.3(a)(iv), then the Fair Market Value Rent as of the date upon which such Base Rent Increase Event shall occur shall be determined through the Dispute Resolution Procedure. The Fair Market Value Rent determined pursuant to this subparagraph (c) shall be deemed to be the Fair Market Value Rent for each Operating Lease Year (or part thereof) from and after the date upon which such Base Rent Increase Event shall occur until the Rent Valuation Date on the fifth Anniversary.

3.3 Base Rent Increase Event

- (a) Notwithstanding Section 3.1(a), but subject to Section 3.3(c), upon the first to occur of the following events prior to the Waterfall Expiry Date, if any (each a “**Base Rent Increase Event**”):
 - (i) a Tenant Mortgagee taking possession of the Tenant’s leasehold interest in this Lease;

- (ii) a Tenant Mortgagee appointing a receiver or receiver-manager in respect of the Tenant's leasehold interest in this Lease (whether or not such receiver or receiver-manager is described as an agent of the Tenant Mortgagee or of the Tenant);
- (iii) a Tenant Mortgagee assigning, transferring or otherwise conveying this Lease (but excluding, for greater certainty, any assignment of this Lease that is an assignment of the Tenant Mortgage); or
- (iv) a Disposition by the Tenant of its interest in this Lease or a Disposition of Securities by or of the Tenant that results in a Change of Control of the Tenant,

the Base Rent shall increase as of the date of the occurrence of a Base Rent Increase Event in the manner set out in Section 3.3(b).

(b) In the case of a Base Rent Increase Event described in:

- (i) Section 3.3(a)(i), Section 3.3(a)(ii) or Section 3.3(a)(iii):
 - (A) which occurs prior to a refinancing or amendment permitted in Section 16.1(j), the Base Rent as of the date on which such Base Rent Increase Event occurs shall be five percent (5%) of the Tenant Mortgagee Retail Lands Mortgage Value; or
 - (B) which occurs upon or following a refinancing or amendment permitted in Section 16.1(j), the Base Rent as of the date on which such Base Rent Increase Event occurs shall be five percent (5%) of the fair market value of the Retail Lands at the time of such refinancing or amendment (calculated using the same principles as were used for the determination of the Tenant Mortgagee Retail Lands Mortgage Value as set out in Schedule E),

and such Base Rent shall be the “**Tenant Mortgage Rent**”, provided that:

- (1) if the Landlord and Tenant Mortgagee are unable to agree to the Tenant Mortgagee Rent on or before the date that is thirty (30) days following the occurrence of the applicable Base Rent Increase Event, then the Tenant Mortgagee Rent as of the date upon which such Base Rent Increase Event shall occur shall be determined through the Dispute Resolution Procedure as if the Tenant Mortgagee was the Tenant; and
- (2) upon the Tenant Mortgagee assigning, transferring or otherwise conveying this Lease:
 - a) the Base Rent thereafter payable by the assignee/transferee/conveyee shall be the Tenant Mortgagee Rent until the Waterfall Expiry Date occurs and thereafter the Base Rent for each Operating Lease Year (or part thereof) after the Waterfall Expiry Date will be the then-prevailing Fair Market Value Rent, as determined pursuant to Section 3.2;
 - b) the Tenant Mortgagee may recover from the proceeds of sale the outstanding and unpaid principal amount of the Tenant Mortgage, with outstanding interest thereon, and its reasonable costs of enforcement; and

- c) after the making of the payment in Section 3.3(b)(i)(B)(2)b), the balance of the proceeds of sale, if any, shall be remitted to the Tenant;

- (ii) Section 3.3(a)(iv), the Base Rent for the Operating Lease Year in which such Base Rent Increase Event occurs shall increase as of the date of the occurrence of the Base Rent Increase Event to the then-prevailing Fair Market Value Rent, as determined pursuant to Section 3.2, and thereafter the Base Rent for each subsequent Operating Lease Year will be the then-prevailing Fair Market Value Rent, as determined pursuant to Section 3.2.

- (iii) Notwithstanding the foregoing, for any Base Rent Increase Event which is a Disposition of a part interest in this Lease, the Base Rent shall increase in respect of the proportion that the part of the interest in the Lease which was the subject of the Disposition bears to the entire Lease.

- (c) If, prior to the Waterfall Expiry Date, the Tenant:
 - (i) regains possession of its leasehold interest in this Lease from a Tenant Mortgagee following its loss of possession thereof; and/or
 - (ii) resumes its operations from the Retail Component after a receiver or receiver-manager in respect of the Tenant's leasehold interest in this Lease is discharged,

then the Tenant shall thereupon resume paying Base Rent in accordance with Section 3.1(a), rather than paying Base Rent pursuant to Section 3.3(b)(i).

3.4 Payment of Base Rent

Base Rent shall be paid as follows:

- (a) Base Rent payable in respect of each year of the Construction Term shall be paid by the Tenant to the Landlord in advance on the Commencement Date and on each anniversary of the Commencement Date during the Construction Term;
- (b) Base Rent payable in respect of an Operating Lease Year (or part thereof) pursuant to Section 3.1(a) shall be paid by the Tenant to the Landlord in advance on the Operating Term Commencement Date and each Anniversary thereafter;
- (c) Base Rent payable in respect of an Operating Lease Year pursuant to Section 3.1(b) and Section 3.3(b) shall be payable as follows:
 - (i) in respect of the Operating Lease Year in which a Base Rent Increase Event occurs, the Tenant shall pay to the Landlord the *pro rata* Base Rent for such Operating Lease Year as follows:
 - (A) for that part of the Operating Lease Year before the Base Rent Increase Event, by multiplying the then-prevailing Base Rent by the quotient of the number of days elapsed in such Operating Lease Year as of the date of the Base Rent Increase Event and the total number of days in such Operating Lease Year; and
 - (B) for that part of the Operating Lease Year after the Base Rent Increase Event, by multiplying the then-prevailing Base Rent by the quotient of the number of days remaining in such Operating Lease Year as of the date of the Base Rent Increase Event and the total number of days in such Operating Lease Year,

and the amount determined in accordance with subparagraph 3.4(c)(i)(B) shall be payable in advance, in equal consecutive monthly instalments on the first day of each and every month during such Operating Lease Year following the Base Rent Increase Event;

- (ii) in respect of each Operating Lease Year following that in which the Base Rent Increase Event occurs, Base Rent shall be paid by the Tenant to the Landlord in advance in equal consecutive monthly instalments on the first day of each and every month during that period;
- (iii) in respect of the Operating Lease Year in which the Waterfall Expiry Date occurs, the Tenant shall pay to the Landlord the *pro rata* Base Rent for such Operating Lease Year as follows:
 - (A) for that part of the Operating Lease Year before the Waterfall Expiry Date, by multiplying the then-prevailing Base Rent by the quotient of the number of days elapsed in such Operating Lease Year as of the Waterfall Expiry Date and the total number of days in such Operating Lease Year; and
 - (B) for that part of the Operating Lease Year after the Waterfall Expiry Date, by multiplying the then-prevailing Base Rent by the quotient of the number of days remaining in such Operating Lease Year as of the Waterfall Expiry Date and the total number of days in such Operating Lease Year,and the amount determined in accordance with subparagraph 3.4(c)(iii)(B) above shall be payable in advance, in equal consecutive monthly instalments on the first day of each and every month following the Waterfall Expiry Date; and
- (iv) in respect of each Operating Lease Year following that in which the Waterfall Expiry Date occurs, Base Rent shall be paid by the Tenant to the Landlord in advance in equal consecutive monthly instalments on the first day of each and every month during that period.

3.5 Participation Rent

- (a) Commencing on the Waterfall Expiry Date and thereafter (the “**Participation Period**”), in addition to Base Rent, the Tenant shall pay fifty percent (50%) of the Annual Net Cash Flow during each Operating Lease Year, or part thereof (the “**Participation Rent**”) to the Landlord.
- (b) Payments on account of Participation Rent shall be based on the actual net cash flow for each and every month during the Participation Period (calculated in the same manner as Annual Net Cash Flow, *mutatis mutandis*), and shall be paid to the Landlord monthly in arrears during the Participation Period.
- (c) Within ninety (90) days after the end of each Operating Lease Year during the Participation Period, the Landlord shall deliver to the Tenant a statement from the Landlord’s Auditors as to the Annual Net Cash Flow and a calculation of the actual Participation Rent payable by the Tenant to the Landlord in respect of such Operating Lease Year and a calculation of the amount by which such Participation Rent varies from the aggregate instalments previously paid by the Tenant on account of the Participation Rent for such Operating Lease Year pursuant to Section 3.5(b). Within thirty (30) days after the receipt of such statement, either:
 - (i) the Tenant shall pay to the Landlord the amount by which the actual Participation Rent payable by the Tenant with respect to such Operating Lease Year exceeds the aggregate of the monthly payments made by it under Section 3.5(b); or
 - (ii) the Landlord shall pay to the Tenant the amount by which the aggregate of the monthly payments made by the Tenant under Section 3.5(b) exceeds the actual Participation Rent payable by the Tenant with respect to such Operating Lease Year.

The Tenant shall have the right to dispute the Landlord's Auditors' determination of the Annual Net Cash Flow under this Section 3.5(c) through the Dispute Resolution Procedure and the Landlord and the Tenant shall effect any necessary readjustment of amounts previously paid on account of Participation Rent that are required as a result of the determination of the Annual Net Cash Flow through the Dispute Resolution Procedure.

- (d) In respect of the Operating Lease Year in which the Waterfall Expiry Date occurs, the Tenant shall pay to the Landlord the pro rata Participation Rent for such Operating Lease Year, determined by multiplying the Annual Net Cash Flow for such Operating Lease Year by the quotient of the number of days remaining in such Operating Lease Year as of the Waterfall Expiry Date and the total number of days in such Operating Lease Year.

3.6 Net Lease

- (a) All Rent provided to be paid by the Tenant pursuant to this Lease shall be paid in lawful money of Canada in the manner provided in this Lease without any deduction, abatement or set off whatsoever, it being the intention of this Lease that all expenses, costs, payments, outgoings, obligations or liabilities incurred with respect to the Retail Component shall be borne by the Tenant, except as otherwise provided in this Lease, and that the Rent shall be absolutely net to the Landlord and free of all deduction, abatement, set-off, Taxes (except as provided in Section 3.6(c) and except for that part of Taxes for which the Landlord receives an input tax credit), charges, rates, assessments, expenses, costs, payments or outgoings of every nature arising from or related to the Retail Component, except as otherwise provided in this Lease.
- (b) Not included in Rent, but payable in addition to it, shall be all Taxes or other fees that are levied, charged or imposed on the Tenant in respect of Rent payable under this Lease.

- (c) Where applicable, any income, capital or other similar Taxes of the Landlord (which, for clarity, does not currently apply where the City or a Municipal Services Corporation is the Landlord) and any amounts payable under any mortgage, charge or debenture or pursuant to some other security interest with respect to the fee simple interest of the Landlord in the Retail Lands (or any part thereof) shall be borne by the Landlord.

3.7 Deemed Rent

- (a) Any sums, costs or other amounts from time to time due and payable by the Tenant to the Landlord under the provisions of this Lease, whether by way of indemnity or otherwise, and whether or not expressed to be Rent, shall be treated as and deemed to be Rent, and the Landlord will have all remedies for the collection of such amounts when in arrears as are available to the Landlord for the collection of Rent in arrears, subject to Section 3.6(b) and Section 3.7(b).
- (b) Any and all amounts due and payable by the Tenant under the provisions of this Lease which are payable to the City in its capacity as an Authority referred to in Section 26.8 and not in its capacity as Landlord shall not be deemed to be, and shall be excluded from, Rent.

3.8 Accrued Rent

All Rent reserved and all other amounts due or to become due or payable under this Lease (excepting those amounts excluded from Rent pursuant to Section 3.7(b)) shall be deemed, where applicable, to accrue from day to day.

3.9 Pro Rata Adjustment

If for any reason it shall become necessary to calculate any amount due under this Lease (excepting those amounts excluded from Rent pursuant to Section 3.7(b)) for an irregular period of less than one (1) year or one (1) calendar month, as the case may be, then an appropriate pro

rata adjustment of such amount shall be made based on the number of days of the calendar year or the calendar month, as the case may be, in such irregular period.

ARTICLE IV
CONSTRUCTION, RENOVATION OR REDEVELOPMENT OF RETAIL
COMPONENT

4.1 Development of Plans and Specifications

Commencing on the Commencement Date, the Tenant shall cause the completion of the Final Retail Component Plans and Specifications sufficient to obtain all Permits, including all building permits required in accordance with the Building Codes, as may be required to construct the Retail Component:

- (a) in conformity with the plans and specifications respecting the Retail Project;
- (b) in conformity with the Design and Plan Requirements, the Retail Design Strategy and the Distinctive Uses;
- (c) as Approved by the Landlord; and
- (d) to implement 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.

4.2 Amendments to Final Retail Component Plans and Specifications

In the event that the Tenant wishes to amend the Final Retail Component Plans and Specifications prior to Total Completion of the Retail Component,

- (a) so as to construct any portion of the Retail Component in a manner which differs from the Final Retail Component Plans and Specifications; or

- (b) for any amendment other than as provided in subparagraph (a), in any manner that would materially alter the Final Retail Component Plans and Specifications,

the proposed amendment shall be submitted to the Landlord for its Approval. Without limiting the generality of the foregoing, any matter that would require approval by a municipality pursuant to section 41 of the *Planning Act* (Ontario) shall be deemed to be material for the purposes hereof. In no event shall the Final Retail Component Plans and Specifications be amended except in accordance with the Design and Plan Requirements, the Distinctive Uses and the Retail Design Strategy.

4.3 Construction of the Retail Component

The Tenant shall cause the Total Completion of the Retail Component substantially in accordance with the Final Retail Component Plans and Specifications, with such amendments thereto as may be Approved by the Landlord in accordance with this Lease. The Tenant shall Commence Construction within six (6) months of the Completion of the Slab. Having Commenced Construction, the Tenant shall construct the Retail Component diligently, continuously and in a good worker like manner, and cause:

- (a) the Substantial Completion of the Retail Component within forty-eight (48) months from the Commencement of Construction, subject to extensions resulting from a Relief Event; and
- (b) the Total Completion of the exterior and all exterior landscaping of the Retail Component within twenty-four (24) months following Substantial Completion of the Retail Component.

4.4 Infrastructure and Other Upgrades

- (a) The Tenant shall be responsible for the construction and expense of the infrastructure upgrades to all services and utilities, including water, sewer, storm sewer, gas and, if necessary, hydro electricity services, within the Retail Lands required to be constructed as part of the Retail Project, as Approved by the

Landlord. The Tenant shall remit to the Landlord, on behalf of OSEG as a project management fee, three percent (3%) of the Hard Costs and Soft Costs of such infrastructure upgrades.

- (b) Notwithstanding subparagraph (a), the Tenant shall not be responsible for (i) alleviating downstream capacity issues in the City's water management system that result from the construction of infrastructure upgrades pursuant to this Section 4.4 and the costs incurred in connection therewith; and (ii) the incremental cost of any electricity transformer to be located on the Retail Lands to the extent that it has additional capacity not directly required for the Retail Project.
- (c) The City shall reimburse the Tenant for incremental design and construction costs of the Retail Component resulting from (i) the Design Solutions, including any increase in the cost of infrastructure upgrades pursuant to this Section 4.4 that results from the Design Solutions, (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 and 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.

4.5 Renovations

During the Operating Term, subject to the exceptions hereinafter specified, any Renovations the Tenant is to make to the Retail Component shall require the Approval of the Landlord, except for minor Renovations in an aggregate yearly amount of less than \$250,000, Adjusted for Inflation, and non-structural tenant improvements that do not result in a material change to the GFA of the retail premises, provided that such minor Renovations comply with the Design and Plan Requirements, the Retail Design Strategy and the Distinctive Uses.

4.6 Redevelopment

During the Operating Term (including the First Extension Term and the Second Extension Term, if applicable), the Tenant shall be permitted to Redevelop the Retail Component, subject to the Approval of the Landlord, provided however, that it shall not be unreasonable for the Landlord to withhold its Approval if in the opinion of the Landlord:

- (a) the Redevelopment may adversely affect distributions of Net Cash Flow to the Landlord in accordance with the Waterfall provisions of Article XIII of the Project Agreement, whether because of an increase of Outflows (as such term is defined in the Retail Limited Partnership Agreement) as a result of the costs of the Redevelopment, or a decrease in Gross Receipts (as such term is defined in the Retail Limited Partnership Agreement) as a result of the time required to complete the Redevelopment, or any other reason;
- (b) the Redevelopment may adversely affect a determination of the fair market value of the Retail Lands in accordance with the principles that were used for the determination of the Tenant Mortgagee Retail Lands Mortgage Value as set out in Schedule E, when a determination thereof is imminent or reasonably anticipated within a reasonable time thereafter; or
- (c) a material aspect of the Redevelopment is for the benefit of a Component other than the Retail Component, or a Person dealing at non-Arm's Length with the Tenant, OSEG, a Member or a Permitted Transferee of a Member.

4.7 Prerequisites for Renovations and Redevelopment

- (a) Where required by applicable Law or where the Tenant has prepared any plans and specifications for any Renovation of the Retail Component or any Redevelopment of the Retail Component, prior to commencing such Renovation or Redevelopment of the Retail Component, the Tenant shall:

- (i) provide copies of proposed plans and specifications with respect to the intended Renovation or Redevelopment to the Landlord for review by the Landlord; and
 - (ii) have received the Approval of the Landlord for such plans and specifications (except plans and specifications for any Renovation for which the Approval of the Landlord is not required under Section 4.5).
- (b) Prior to commencing construction of any Renovation or Redevelopment of the Retail Component, the Tenant shall have procured all Permits and delivered copies of same to the Landlord.
- (c) There shall be no demolition of all or any part of the Retail Component except for purposes of a Renovation and Redevelopment of the Retail Component in accordance with the provisions of this Lease.
- (d) The Tenant shall pay the reasonable third party costs of the Landlord in connection with the professional and/or consulting advice required by the Landlord with respect to consideration and the Approval of plans and specifications regarding the Renovation (except any Renovation for which the Approval of the Landlord is not required under Section 4.5) or Redevelopment of the Retail Component or its potential impact on Shared Facilities.
- (e) The Tenant shall comply with each applicable Reciprocal Agreement in undertaking any Renovation or Redevelopment.

4.8 Compliance with Plans and Specifications – General

- (a) No construction, renovation, repair, addition or reconstruction of the Retail Component, inclusive of any Renovation or Redevelopment, may occur at any time during the Term, except in substantial conformity with the Final Retail Component Plans and Specifications or with the Approval of the Landlord, or as

otherwise permitted by the provisions of this Article IV, and in conformity with the Design and Plan Requirements, the Distinctive Uses and the Retail Design Strategy.

- (b) No right of Approval of the Landlord, or Approval granted by the Landlord, for any plans and specifications, including the Final Retail Component Plans and Specifications, shall entail any responsibility on the part of the Landlord as to the accuracy or sufficiency of any of the plans and specifications or their compliance with applicable Law.

4.9 Construction Activities During Operating Term

During any construction activities, which for clarity includes the initial construction of the Retail Component or any Redevelopment or Renovation, which occur during the Operating Term:

- (a) the Tenant will, prior to commencing construction, take such steps as are necessary to ensure Safety Requirements with respect to the Retail Component;
- (b) construction will be carried on in accordance with applicable by-laws of the City; and
- (c) the Tenant agrees to make reasonable efforts to reduce construction noise and activities as much as is feasible.

4.10 Inspection

Subject to the rights of the Subtenants, the Landlord and its authorized representatives, including any architect or engineer duly licensed in the Province of Ontario or other consultant from time to time retained by the Landlord, shall have the right to enter onto or upon the Retail Component at any reasonable time on reasonable notice to the Tenant during the Term for the purpose of inspection and ascertaining whether any Renovation or Redevelopment conforms with the Final Retail Component Plans and Specifications (or other plans and specifications Approved by the

Landlord in accordance with this Lease or as otherwise permitted by the provisions of this Article IV) and with all other provisions of this Lease.

4.11 Construction Liens

- (a) In connection with any construction activities, which for clarity include any Redevelopment or Renovation, and all other work made by or for the Tenant with respect to the Retail Component, the Tenant shall comply with every applicable Law affecting the same as a result of the actions of the Tenant, including the *Construction Lien Act* (Ontario) (including any provision requiring or enabling the retention by way of holdback of portions of any sums payable) and, except as to any such holdback, shall promptly pay all accounts relating thereto.
- (b) Whenever any construction or other lien for work, labour, services or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or liens therefor shall be filed or any Encumbrance related thereto shall attach, the Tenant shall, within fifteen (15) days after receipt of Notice thereof, procure and register the discharge thereof, including any certificate of action registered in respect of any lien, by payment or in such other manner as may be required or permitted by applicable Law, and failing which the Landlord may make any payments required into a Court of competent jurisdiction pursuant to applicable Law to procure and register the discharge of any such liens or Encumbrances, including any certificate of action registered in respect of any lien. The Landlord shall be entitled to be reimbursed by the Tenant and its right to reimbursement shall not be affected or impaired if the Tenant shall then or subsequently establish or claim that any lien or Encumbrance so discharged was without merit or excessive or subject to any abatement, set-off or defence.
- (c) The Landlord and the Tenant agree that any work done in, on or about the Retail Component during the Term by or on behalf of the Tenant shall not be done and shall be deemed not to have been done at the request of the Landlord.

4.12 Construction Insurance

The Tenant covenants and agrees that it shall, at all times during the Construction Term and prior to commencing and during any Renovation or Redevelopment having a reasonably estimated cost in excess of \$500,000, Adjusted for Inflation, depending on the size and complexity of the Renovation or Redevelopment, at the Tenant's cost and expense unless otherwise stated, take out and keep in full force and effect the following insurance coverages (in the case of a Renovation or Redevelopment, without derogating from the insurance coverage requirements under Article XII, but without duplication of any of those requirements):

- (a) builders "all-risk" insurance coverage including earthquake and flood, for the full replacement cost of the construction project, including the existing structure. Such insurance shall include hard costs; soft costs; expediting expenses; transit; unnamed storage locations; debris removal; professional fees; fire fighting expenses; blanket by-laws; delayed opening; and testing and commissioning. The policy shall be issued in the name of the contractor, the Landlord and the Tenant. The policy, at the option of the Tenant, shall be maintained by the contractor and at the contractor's sole expense. The deductible shall be no greater than \$25,000 for direct damage; \$50,000 for flood; and three percent (3%) of the property insured or \$100,000, whichever is greater, for earthquake (or five percent (5%) of the property insured or \$250,000, whichever is greater if the foregoing deductible option is not available on commercially reasonable terms). In lieu of the foregoing insurance coverage, depending on the size and nature of the Renovation or Redevelopment, the Landlord will accept an installation floater insurance policy covering materials (including labour) and supplies being intended for installation in connection with a Renovation or Redevelopment, while such materials and supplies are in transit and during the Renovation or Redevelopment;
- (b) boiler and machinery coverage issued on a comprehensive form for all objects, including production machinery (if applicable), for the full replacement cost of such construction project, including the existing structure. Such insurance shall include soft costs; expediting expenses; water damage; hazardous substances;

delayed opening; professional fees; and testing and commissioning. The policy shall be issued in the name of the contractor, Landlord and the Tenant. The deductible shall be no greater than \$25,000 for direct damage, and shall be the sole responsibility of the contractor;

- (c) project specific or general wrap-up liability or, for a Renovation or Redevelopment having a reasonably estimated cost equal to or less than \$1,000,000, Adjusted for Inflation, commercial general liability insurance issued on an occurrence basis, for an amount of not less than \$10,000,000 per occurrence and \$10,000,000 annual aggregate for all sums which the Tenant or the contractor shall become obligated to pay by reason of liability imposed by Law for damages arising out of or in connection with the operations of the Tenant or contractor, its agents, officers, employees or other Persons for whom the Tenant or contractor is legally responsible relating to their obligations with respect to such construction project. Such insurance shall include bodily injury and property damage, including loss of use; products, broad form completed operations; premises, property and operations; personal injury; blanket contractual liability; non-owned automobile; broad form property damage; owners and contractors protective; occurrence property damage; medical payments; employees as additional insured(s); contingent employer's liability and voluntary compensation for employees not covered by the *Workplace Safety and Insurance Act, 1997* (Ontario); and cross liability and severability of interest clauses. Such insurance:
 - (i) shall include twenty-four (24) month completed operations;
 - (ii) shall not contain any exclusions or limitations in respect of shoring, underpinning, raising or demolition of any building or structure, pile driving, caisson work or collapse of any structure or land from any cause;
 - (iii) shall cover the use of explosives, if applicable, and the contractor shall be solely responsible for all damage, loss or costs resulting directly or indirectly from such use;

- (iv) shall have a deductible not exceeding \$25,000, which shall be the sole responsibility of the Tenant or contractor. The policy, at the option of the Tenant, shall be maintained by the contractor and at the contractor's sole expense;
 - (v) shall add the Tenant, its agents, officers and employees and the Landlord, its elected officials, agents, officers and employees as additional insured with respect to the operations of the contractor; and
 - (vi) shall be non-contributing and apply as primary and not as excess of any insurance available to the Landlord and shall contain a waiver of subrogation in favour of the Landlord;
- (d) automobile liability insurance with respect to owned or leased vehicles used directly or indirectly in the performance of such construction project covering liability for bodily injury, death and damage to property with a limit of not less than \$5,000,000 inclusive for each and every loss;
- (e) where applicable, professional liability (errors and omissions) insurance coverage to a limit of not less than \$5,000,000. If such insurance is written on a claims made basis, the coverage shall be maintained for a period of two (2) years subsequent to the Construction Term or the Substantial Completion of the Renovation or Redevelopment, as applicable. The deductible shall be no greater than \$25,000;
- (f) environmental impairment liability insurance with a limit of not less than \$5,000,000 per incident and annual aggregate, including third party bodily injury and property damage, including on-site and off-site clean-up and including new conditions only. If such insurance is issued on a claims made basis, such insurance shall be maintained for a period of two (2) years subsequent to the Construction Term or the Substantial Completion of the Renovation or Redevelopment, as applicable. The deductible shall be no greater than \$25,000.

Such insurance shall add the Tenant, its agents, officers and employees and the Landlord, its elected officials, agents, officers and employees as additional insureds with respect to the operations of the contractor. Such insurance shall be non-contributing and apply as primary and not as excess of any insurance available to the Landlord and Tenant and shall contain a waiver of subrogation in favour of the Landlord and the Tenant;

- (g) such additional insurance as the Landlord reasonably requires to insure against any added risks attendant during the Construction Term or in connection with the Renovation or Redevelopment, as applicable. The Landlord shall be an additional insured or beneficiary in any such coverage. Such requirement shall be in addition to those set out in this Lease; and
- (h) the insurance policies prescribed in this Section 4.12 shall not be cancelled, unless the insurer notifies the Landlord and the Tenant in writing at least thirty (30) days prior to the effective date of the cancellation.

4.13 Construction, Renovation and Redevelopment Security

- (a) So long as the Tenant is Lansdowne Retail Limited Partnership, the initial construction of the Retail Component or the construction of any Redevelopment or Renovation having a reasonably estimated cost exceeding \$250,000, Adjusted for Inflation, shall not be commenced by, for or on behalf of the Tenant unless and until the Landlord is satisfied in its Discretion that the following have been satisfied:
 - (i) the amount of Equity available for initial construction of the Retail Component or the Redevelopment or Renovation, as applicable, (the “**Required Equity**”), together with financing pursuant to one or more Tenant Mortgages obtained by the Tenant complying with the terms of this Lease, shall be sufficient for the Hard Costs and Soft Costs of

constructing the Retail Component or the Redevelopment or Renovation, as applicable;

- (ii) the Required Equity has been deposited in the Members', OSEG's or the Tenant's accounts by way of cash or its equivalent (including letters of credit);
 - (iii) the Required Equity has been charged in favour of the Landlord by way of security pursuant to the *Personal Property Security Act* (Ontario); and
 - (iv) in the case of the initial construction of the Retail Component, the agreement contemplated in Section 16.1(f) has been executed and delivered by the parties thereto.
- (b) Where either the Tenant is not Lansdowne Retail Limited Partnership or the Tenant is Lansdowne Retail Limited Partnership but it has not fulfilled the terms and conditions of Section 4.13(a), the initial construction of the Retail Component or the construction of any Redevelopment or Renovation having a reasonably estimated cost exceeding \$250,000, Adjusted for Inflation, shall not be commenced by, for or on behalf of the Tenant unless and until the Landlord is satisfied in its Discretion that the following have been satisfied:
- (i) the Tenant or contractor shall obtain a surety and performance bond or bonds for fifty percent (50%) of labour and materials and fifty percent (50%) of performance issued by a duly licensed company authorized to transact the business of suretyship in the Province of Ontario or other financial guarantees or assurances satisfactory to the Landlord, acting reasonably, to cover the Hard Costs and Soft Costs of completing the initial construction of the Retail Component or the Redevelopment or Renovation, as applicable. The Landlord shall be named as joint obligee in any bond and shall have the right to Approve the form of bond and identity of its issuer. The bond shall be referenced to the Required

Contracts, which must provide for the completion of the work in accordance with any Final Retail Component Plans and Specifications (or other plans and specifications Approved by the Landlord in accordance with this Lease). The Architect or another qualified professional shall certify that the work can be done for the amount of the Required Contracts, which certificate may rely upon the certificate of a quantity surveyor as to costs, and if it does not, the Tenant shall retain a quantity surveyor to verify the costs as estimated and contained in the Required Contracts. Any performance bond may also name a Tenant Mortgagee as joint obligee and such Tenant Mortgagee, subject to and in accordance with this Lease, including Article XVI, may assume carriage of completion of construction with the benefit of such bond in the event of the Tenant's default. Unless otherwise agreed in writing by the Landlord, before commencing the initial construction of the Retail Component or a Renovation or Redevelopment, as applicable, there must exist one or more construction contracts which in the aggregate provide for all aspects of the initial construction of the Retail Component or the Renovation or Redevelopment, as applicable, including the completion of shoring and excavation, all structural elements, cladding and plumbing, electrical and mechanical systems of the Retail Component Building (the "**Required Contracts**");

- (ii) the Tenant shall furnish to the Landlord evidence satisfactory to the Landlord, acting reasonably, of the terms and conditions of financing to cover such estimated cost of the initial construction of the Retail Component or the Renovation or Redevelopment, as applicable, which financing may be in the form of equity and/or debt financing or any combination thereof, provided that the financing is obtained on commercially reasonable terms and conditions and is in accordance with the requirements and provisions of this Lease;

- (iii) the Tenant shall furnish to the Landlord a contract or contracts constituting the Required Contracts in assignable form and made with a reputable and responsible contractor(s), in accordance with the Final Retail Component Plans and Specifications (or other plans and specifications Approved by the Landlord in accordance with this Lease);

- (iv) as security for the Tenant's obligations, the Tenant shall furnish to the Landlord an assignment of the Required Contracts furnished in accordance with Section 4.13(b)(iii), by its terms to be effective at the option of the Landlord upon any termination of this Lease or upon the Landlord's re-entry upon the Retail Component following an Event of Default by the Tenant prior to the complete performance of such Required Contracts. Such assignment shall become operative at the option of the Landlord by Notice in writing to the Tenant upon the termination of this Lease or upon the commencement of re-entry and shall include the benefit of all payments made on account of the Required Contracts (including payments made prior to the effective date of such assignment) and, in the case of such action by the Landlord, if requested by the contractor thereunder, the Landlord shall assume all obligations accruing under the Required Contract from and after the effective date thereof. The rights of any Tenant Mortgagee in respect of the Required Contracts shall be recognised pursuant to Section 16.6 and such Tenant Mortgagee may, in accordance with this Lease, including Article XVI, assume carriage of the completion of construction with the benefit of the Required Contracts in the event of the Tenant's default;

- (v) the Tenant shall furnish to the Landlord an agreement from the Architect to continue to perform for the benefit of the Landlord its obligations under its contract with the Tenant, subject to the rights of any Tenant Mortgagee, in the event of termination of this Lease or upon the Landlord's re-entry upon the Retail Component following an Event of Default by Tenant,

provided such Architect is paid for its ongoing services in accordance with such contract; and

- (vi) the Tenant shall furnish to the Landlord an agreement from the Architect or other preparer that the Final Retail Component Plans and Specifications (or other plans and specifications Approved by the Landlord in accordance with this Lease) may be used by the Landlord, following an Event of Default by the Tenant, without payment or claim by the Tenant or Architect, subject to the rights of any Tenant Mortgagee pursuant to Section 16.6.

4.14 Parking

- (a) The Tenant agrees that it shall use and permit others to use the Parking Unit only for the parking of motor vehicles.
- (b) The Tenant shall be a party to the Parking Reciprocal Agreement which, *inter alia*, shall provide that OSEG shall be the parking manager, until it resigns or is removed in accordance therewith, and in such capacity may on its own behalf, or may enter into a parking management agreement with a Parking Operator to, operate and maintain all of the parking spaces within the Parking Structure and surface parking, as Approved by the City.

ARTICLE V **TENANT'S GENERAL COVENANTS**

5.1 Covenants

The Tenant covenants with the Landlord as follows:

- (a) to pay to the Landlord or to its order in lawful money of Canada the Rent in the manner provided in this Lease;

- (b) to maintain for a period of seven (7) Operating Lease Years, all books, records, invoices and other documents and papers (“**Audit Records**”) in respect of any Operating Lease Year as shall be reasonably necessary to enable the Landlord to audit and confirm the accuracy and completeness of any calculation or part thereof made or required to be made for any of the purposes of this Lease, provided that the Landlord shall give the Tenant ten (10) Business Days’ Notice of the Landlord’s intention to exercise its right to examine the Audit Records. Without limiting the generality of the foregoing, the Landlord’s Auditors shall have full and complete access to the Audit Records of the Tenant (including the right to make copies at the Landlord’s expense) at any time prior to the Termination Date, during reasonable business hours, for the purpose of verifying the calculation of the Termination Amount;
- (c) not to make any Disposition of this Lease except as permitted by Article XIII;
- (d) not permit any use of the Retail Component other than the Permitted Uses; and
- (e) during the Operating Term, subject to construction during a Renovation or Redevelopment and such other circumstances as Approved by the Landlord from time to time, to use commercially reasonable efforts:
 - (i) to ensure that the Retail Component or a substantial part thereof remains continuously and uninterruptedly available for occupancy by Subtenants; and
 - (ii) to enter into Subleases of the Retail Component or a substantial part thereof.

ARTICLE VI
TAXES AND UTILITY SERVICES

6.1 Taxes

- (a) The Tenant covenants and agrees to pay during the Term when due, and before any fine, penalty, interest or cost may be charged for the non-payment thereof, all Taxes (including all land transfer taxes (if any) which are payable pursuant to the *Land Transfer Tax Act* (Ontario)) and all rates, duties, licence fees, assessments and all other similar or substitute charges of any kind and nature whatsoever, which shall during the Term be levied, rated, charged, assessed or imposed upon or become due and payable in respect of the Retail Component or any part thereof or against or in respect of any property on the Retail Component owned or brought thereon by the Tenant or any Subtenant, arising by reason of the occupancy, use or any business carried on thereon or therein during the Term.
- (b) The Tenant will indemnify and keep indemnified the Landlord throughout the Term from and against payment of all losses, costs, charges and expenses occasioned by or arising from the Taxes and other charges referred to in this Section 6.1.
- (c) The Tenant shall pay the Taxes and other charges referred to in this Section 6.1 to the appropriate Authority.

6.2 Contestation of Taxes

The Tenant shall have at any time the right to contest any Taxes, rates (including local improvement rates), duties, licence fees, assessments and other similar or substitute charges against the Retail Component, provided that (i) such contestation will not involve any forfeiture, foreclosure, escheat, sale or termination of the Landlord's title to the Retail Component or any part thereof or constitute a bona fide risk to the Landlord's title, (ii) all such proceedings shall be prosecuted with all due diligence and dispatch, and (iii) the amount in dispute shall be paid to the applicable Authority or into a court having proper jurisdiction, as the Tenant may elect, unless

the postponement of the payment of the amount in dispute is permitted under applicable Law until the dispute is determined. The Tenant will pay the cost of any such contestation and also pay all proper costs, penalties, interest or other charges payable as a result of or incidental to such contestation.

6.3 Utility Charges

- (a) The Tenant covenants with the Landlord to pay, or to require Subtenants to pay, throughout the Term all Utility Charges when due.
- (b) The Tenant will indemnify and keep indemnified the Landlord from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all Utility Charges, provided that the Tenant shall not be required to indemnify the Landlord with respect to Utility Charges payable directly by Subtenants unless unpaid Utility Charges form a lien against the Landlord's title to the Retail Component under applicable Law.

6.4 Evidence of Payment

Upon written request of the Landlord in any calendar year (which request shall be operative for the calendar year in respect of which the request is made), the Tenant shall forward to the Landlord, within thirty (30) days after the respective due dates, or such longer period as is reasonable in the circumstances, official receipts, photocopies thereof or other reasonably satisfactory evidence of the payments required to be paid by the Tenant in accordance with Section 6.1 and Section 6.3.

ARTICLE VII REPAIRS AND MAINTENANCE

7.1 Standard of Repair and Maintenance

Subject to the responsibility of the Landlord to repair damage caused by its own act as prescribed in Section 7.2, the Tenant shall maintain and repair the Retail Component (which, for greater certainty includes the Stadium Retail Component, the Office Retail Component and the Parking

Unit) to ensure that the Standard is maintained throughout the Term, at the Tenant's cost and expense. For clarity, the obligation contained in this Section 7.1 shall be applicable to the entire Retail Component, including both the interior and the exterior thereof.

7.2 No Repair by Landlord

The Landlord shall not be required at any time during the Term to make any repairs or replacements of any nature whatsoever to or on any part of the Retail Component, whether interior or exterior, structural or otherwise, except in circumstances where a repair or replacement is necessary solely as a direct or indirect result of the negligence or a wilful act of the Landlord.

7.3 Maintenance of Site

The Tenant further covenants at its expense throughout the Term of this Lease:

- (a) to keep sidewalks in, on or adjoining the Retail Component in a clean and orderly condition, free of accumulation of dirt, rubbish, ice or snow; and
- (b) to maintain the Retail Component, including the exterior of the Retail Component Building, in accordance with the Standard.

7.4 Fixtures and Equipment

The Tenant shall keep all fixtures and equipment used in the operation and maintenance of the Retail Component in good order and repair and shall replace the same when necessary with items of similar utility and value.

7.5 Site Plan and Landscaping

The Tenant shall maintain all landscaping and exterior planting, installations and improvements (including, for greater clarity, all areas accessed by pedestrian and vehicular traffic and all passive open space) on the Retail Component in accordance with the Final Retail Component Plans and Specifications, the Design and Plan Requirements, the Site Plan Agreement and the

Standard. Any plans and specifications for landscaping and exterior planting, installations and improvements on the Retail Component which are not in conflict with, but are not provided for by, the Site Plan and/or the Final Retail Component Plans and Specifications, shall be deemed to be Final Retail Component Plans and Specifications for the purposes of this Section and shall be subject to the same rights of Approval by the Landlord and the other terms and conditions applicable to Final Retail Component Plans and Specifications as specifically provided in this Lease. Any material change to landscaping and surface exterior improvements following Substantial Completion of the Retail Component is subject to Approval by the Landlord. Notwithstanding the foregoing, the Landlord shall implement, at its expense, the landscape plan described in section 18 of the Holmwood Group Minutes of Settlement.

ARTICLE VIII
RIGHT OF ENTRY TO INSPECT

8.1 Inspection

- (a) The Tenant agrees to permit the Landlord and its agents or employees to enter on the Retail Component at all reasonable times to view the state of repair thereof, subject to the rights of Subtenants. The Landlord agrees to provide the Tenant with reasonable Notice in writing of such inspection of the Retail Component, excepting in the event of Emergency on which occurrence the Landlord shall be entitled to enter on the Retail Component without notice to the Tenant.
- (b) In the event that the Landlord or its agents or employees, acting reasonably, shall find any material failure to repair in accordance with Section 7.1, the Tenant agrees that on the receipt of written Notice of same, the Tenant shall, within a reasonable period of time and no later than thirty (30) days thereafter, make such repairs and replacements as the Landlord may reasonably require in such Notice in conformity with the obligations of the Tenant pursuant to Section 7.1, provided that if such repairs cannot reasonably be completed within the said thirty (30) day period, the Tenant will not be in breach of this provision or of Section 7.1 if it commences such repair within the said thirty (30) day period and proceeds diligently thereafter to complete such repair.

8.2 Failure to Repair

- (a) The Tenant's failure or neglect to repair as required by a Notice given under Section 8.1 within the time specified in Section 8.1 shall constitute an Event of Default.

- (b) In the event that the Landlord exercises its right under Section 15.7 to perform and carry out the repairs or replacements specified in a Notice delivered pursuant to Section 8.1, the Landlord's exercise of such right shall be subject to the rights of the Subtenants and the Landlord shall use commercially reasonable efforts to minimize any disruption to the business of the Subtenants. In exercising its right, the Landlord shall not be liable for any inconvenience, disturbance, loss of business or other damage resulting therefrom unless due to the Landlord's negligence, and all payments and costs incurred by the Landlord thereby shall be recoverable by the Landlord as Rent reserved and in arrears under this Lease. Nothing herein shall imply any duty upon the part of the Landlord to do any such repairs or any work and the performance thereof by the Landlord shall not constitute a waiver of the Tenant's default in failing to perform the same.

ARTICLE IX USE, NUISANCE AND WASTE

9.1 Use

- (a) Subject to Sections 4.14(a), 9.1(c), 9.1(d) and 9.1(e), the permitted uses of the Retail Component shall be all retail and office uses, including ancillary uses thereto, as are permitted in accordance with applicable Law (the "**Permitted Uses**").

- (b) The Tenant agrees that it shall use, and permit others to use, the Retail Component only for the Permitted Uses and shall ensure that the Distinctive Uses are maintained.

- (c) No part of the Retail Component may be used for any purpose other than the Permitted Uses without the Landlord's prior written Approval. The Landlord, in considering a request for its Approval of any other or additional purposes, shall be entitled to take into account the nature of the Retail Component, the uses permitted in applicable zoning by-laws and the need to maintain a distinctive and unique character in the Ottawa retail market.
- (d) The Permitted Uses of the Retail Component must at all times be in accordance with the Distinctive Uses and the Signage policy (or City by-law) described in Section 9.2.
- (e) Notwithstanding anything contained in this Lease to the contrary, the Tenant shall not use or occupy, nor suffer or permit the use or occupation of, any portion of the Retail Component for any Prohibited Use nor shall it engage in any media advertising with respect to the Retail Component for any Prohibited Use.

9.2 Signage

- (a) The Landlord shall have the right to Approve the following with respect to design, extent and location: (i) exterior signage on the Retail Component, including the Retail Component Building, (ii) any permanent interior signage within the Retail Component which is observable from the sidewalk adjoining the Retail Component, and (iii) the naming of all or part of the Retail Component and any signage associated therewith (collectively, the "**Signage**").
- (b) All Signage shall be subject to compliance with applicable language Laws and other applicable Laws of any Authority in existence from time to time relating to public signage.
- (c) All Signage in connection with the Retail Component shall be in accordance with the Signage policy that is approved as part of the fulfilment of the Site Plan conditions, as amended from time to time by agreement between the City and

OSEG or pursuant to subparagraph (d). In the event that no Signage policy shall be approved as part of the Site Plan conditions, the City's Signage by-law of general application governing signage in the City of Ottawa shall prevail.

- (d) In the event of the occurrence of a material circumstance or event (including a Redevelopment), either Party shall be entitled to initiate a proposed amendment to the Signage policy approved as part of the fulfilment of the Site Plan conditions by Notice to the other Party identifying the nature of the proposed amendment ("**Signage Policy Amendment Notice**"). In the event that a Party delivers a Signage Policy Amendment Notice, the Parties shall endeavour to reach mutual agreement on the provisions of an amended Signage policy, each acting reasonably, and failing agreement with respect to any matters therein within a period of one (1) month following the Signage Policy Amendment Notice (or such shorter or longer period as may be agreed among the Parties, acting reasonably), any such matters shall be determined through the Dispute Resolution Procedure.
- (e) Notwithstanding this Section 9.2:
 - (i) the naming of the Retail Component shall be subject to Sections 2.14 and 5.6 of the Project Agreement;
 - (ii) the Landlord acknowledges that there is no requirement for "Lansdowne" to be used in the naming of all or part of the Retail Component, provided that any gateway signage with respect to the Total Lands shall indicate the name "Lansdowne Park" or such other name as the Landlord may determine in its Discretion, as a reference to the Urban Park;
 - (iii) each of the Components and/or any part of the Site 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;

- (iv) the Stadium Retail Component, the Office Retail Component and the each building forming part of the Retail Component Buildings shall be permitted to have its own name or names; and
- (v) the naming of private roads within the Retail Component shall be in compliance with the City's relevant by law.

9.3 Nuisance

The Tenant covenants and agrees that it will not use or occupy the Retail Component, or suffer or permit the same to be used or occupied, for:

- (a) any unlawful purpose;
- (b) any dangerous or noxious trade or business; or
- (c) any purpose which constitutes a public nuisance which may endanger the general public or neighbouring properties, tenants or tenements.

9.4 Waste

The Tenant further agrees not to commit or knowingly suffer to be committed any waste, damage, disfigurement or injury to the Retail Component or any part thereof nor to knowingly permit or suffer any overloading of the floors in any part of the Retail Component Building. Notwithstanding the foregoing, nothing in this Section shall derogate from the Tenant's rights and obligations expressed herein with respect to Redevelopment and Renovations.

9.5 Vacancy

In the event the Retail Component or a portion thereof shall have been abandoned, have become vacant or shall have remained unoccupied for a period of twenty-one (21) consecutive days by a Subtenant during the Operating Term, the Tenant shall implement reasonable measures to ensure that the appearance of the Retail Component is maintained in accordance with the provisions of

this Lease, including taking steps to minimize any negative impact on the exterior streetscape and vitality of the Site and surrounding area.

9.6 Safety Requirements

The Tenant shall comply with Safety Requirements requested by the Landlord from time to time.

9.7 Transportation Impact Matters

The Tenant shall implement and comply with all Transportation Impact Matters in relation to the Retail Component at its own expense, including participation in the TMA. In connection therewith, the Tenant shall require each Subtenant to implement and comply with applicable Transportation Impact Matters in relation to the Retail Component at all times during the term of its Sublease at its own expense, and shall enter into a Transportation Management Agreement with each Subtenant.

9.8 Leasing and Property Management

The Tenant 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 a Member or a Permitted Transferee of a 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:

- (a) prior to the Waterfall Expiry Date 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 relevant Manager (collectively, the “**Fee Limitations**”); and
- (b) after the Waterfall Expiry Date such Retail Fees are at market rates for comparable agreements providing similar services.

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.

ARTICLE X
COMPLIANCE WITH LAWS, ORDERS AND REGULATIONS

10.1 Compliance with Laws

The Tenant covenants that it will throughout the Term and at its own cost and expense:

- (a) promptly comply with and observe the provisions of all applicable Laws; and
- (b) observe and comply with the requirements of all policies of public liability, fire and other insurance at any time in force with respect to the Retail Component and any equipment used in connection therewith.

ARTICLE XI
INDEMNIFICATION AND LIABILITY OF LANDLORD

11.1 Tenant Indemnity

The Tenant shall indemnify and keep the Landlord Indemnified Parties, in their capacity as Landlord, indemnified at all times from and against all claims, liabilities, damages, losses, demands, causes of action, suits, judgments and costs (including legal fees) of any nature or kind whatsoever at any time suffered by, incurred by, brought against or made against the Landlord Indemnified Parties or any of them out of or in the course of or in connection with the construction, use or occupation of the Retail Component, including the use, occupation or construction, demolition and removal of structures or improvements from time to time located on the Retail Lands, or any act or omission of the Tenant, its employees, agents, occupants, contractors, invitees or those for whom it is in law responsible, or any breach of any representation, warranty or covenant of the Tenant (including by its employees, agents, occupants, contractors, invitees or those for whom it is in law responsible) under this Lease or any document, instrument or agreement delivered pursuant to this Lease, except to the extent

arising out of or resulting from the wilful acts or negligence of the Landlord (or its employees, agents, contractors or those for whom it is in law responsible), including:

- (a) any damage to or loss of property occasioned by the use or occupation of the Retail Component;
- (b) any injury to any Person or Persons, including death resulting at any time therefrom, occurring in or about the Retail Component or any part thereof and arising from or occasioned by any cause whatsoever, except where such injury results from any wilful act or negligence of the Landlord;
- (c) any failure on the part of the Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with; and
- (d) any failure on the part of the Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in any Tenant Mortgage or in the Subleases or other contracts and agreements affecting the Retail Component, on Tenant's part to be kept, observed or performed, whether solely or jointly with the Landlord.

11.2 Indemnity on Default

Without limitation of the rights of the Landlord under this Lease and at Law, the Tenant covenants and agrees to pay, and to indemnify the Landlord against, all legal costs and charges, including counsel fees on a solicitor and his own client basis, which are incurred by the Landlord:

- (a) in obtaining possession of the Retail Component after an Event of Default by the Tenant hereunder;

- (b) in obtaining vacant (except as otherwise expressly provided by the provisions of this Lease) possession of the Retail Component upon expiration or other termination of the Term; or
- (c) in enforcing any covenant or agreement of the Tenant herein contained.

11.3 Indemnity for Utilities and Works

In addition to and without derogation from Section 11.1, and except to the extent arising out of or resulting from the wilful acts or negligence of the Landlord, its employees, agents, contractors or those for whom it is in law responsible, the Landlord shall not be liable for any injury or damage to any property of any Person, or to any Person, happening on, in or about the Retail Component, for any injury or damage to the Retail Component, for any failure of water supply, gas or electric current or any other utility or service, nor for any injury or damage to any property or any Person or to the Retail Component caused by or resulting from any such failure, nor for interference with light or other incorporeal hereditaments by any Person or caused by any public or quasi-public work.

11.4 Liability of Landlord

The liability of the Landlord under this Lease, all other Material Agreements (as defined in the Project Agreement) and the Project Agreement shall be subject to the provisions of Article XIX of the Project Agreement, including the limitation of the Landlord's total aggregate liability thereunder to the amount of fifty million dollars (\$50,000,000), Adjusted for Inflation, during the entire Term, subject to the exclusions from such limitation on liability as are provided in the Project Agreement.

11.5 No Representation by Landlord

- (a) Subject to subparagraph (d), the Tenant acknowledges and agrees that it has entered into this Lease on an "as is where is" basis and that the Landlord has made no representations or warranties of any nature or kind whatsoever to the

Tenant with respect to the Retail Lands or otherwise and the Tenant is relying solely on its own investigation with respect thereto, including:

- (i) their environmental condition, state of repair, deficiencies and encroachments from and onto the other parts of the Total Lands; and
 - (ii) all existing buildings, fixtures, structures, infrastructure, equipment, improvements, installations or inclusions of any kind, whether below grade or above grade, and whether apparent on a visual inspection of the Retail Lands or otherwise, and whether or not within the knowledge or imputed knowledge of the Landlord, its officers, employees, agents, representatives, contractors or elected and appointed officials (collectively, the “**Existing Improvements**”).
- (b) The Landlord has not made, does not make and shall not be required to provide any warranty or representation with respect to the physical or environmental condition of the Retail Lands or with respect to the condition or existence of any improvements thereon, including the condition of the soil or groundwater, both surface and subsurface, or the existence of any Hazardous Substance in, on, under or in the vicinity of the Retail Lands, or with respect to any deficiencies or encroachments affecting the Retail Lands (including in respect of environmental matters or Hazardous Substance).
- (c) Subject to subparagraph (d), the Landlord shall have no liability or obligation with respect to the value, state or condition (including in respect of environmental matters or Hazardous Substance) of the Retail Lands or with respect to the existence, location, value, state or condition (including in respect of environmental matters or Hazardous Substance) of any Existing Improvements on the Retail Lands.
- (d) Notwithstanding the foregoing, the Landlord shall be responsible for (i) all remediation costs relating to environmental conditions on or in the Retail Lands

(including within Existing Improvements) in existence prior to Commencement of Construction (as defined in the Project Agreement), whether discovered before or after the Commencement of Construction (as defined in the Project Agreement), together with any delay costs resulting therefrom, and (ii) all costs relating to archaeological conditions on or in the Retail Lands in existence prior to Commencement of Construction (as defined in the Project Agreement), whether discovered before or after the Commencement of Construction (as defined in the Project Agreement), together with any delay costs resulting therefrom.

ARTICLE XII **INSURANCE**

12.1 Tenant's Insurance

- (a) The Tenant covenants and agrees that it shall, at all times during the Operating Term and any renewal thereof, at the Tenant's cost and expense, in the name of the Tenant and in respect of the Retail Component including the Retail Component Building, take out and keep in full force and effect the following insurance policies:
 - (i) all risks (including sewer back up, flood and earthquake) property insurance in an amount equal to one hundred percent (100%) of the full replacement cost, with the same site limitation deleted. Such insurance shall be written on a stated amount co-insurance basis and shall include:
 - (A) the Retail Component, including the foundation;
 - (B) all property owned by the Tenant or for which the Tenant is legally liable located on the Retail Component, including leasehold improvements, chattels, furniture, all internal and external plate glass, stock, office equipment, equipment, fixtures, contents and signs, but excluding all property of any Subtenant;

- (C) extra expense insurance in such amounts as will reimburse the Tenant for extra expense incurred arising out of prevention of access to the Retail Component or any part of it;
 - (D) coverage for contingent liability from the enforcement of building by-laws, including the demolition and replacement of undamaged portions of the buildings or structures, cost of demolition and clearing of site and increased costs of construction, which coverage shall be in excess of and not included in the limit of liability applicable to building debris removal; and
 - (E) debris removal;
- (ii) business interruption insurance in an amount sufficient to cover any and all obligations to the Landlord respecting Rent for a period of not less than twenty-four (24) months;
 - (iii) professional fees insurance in the amount of not less than \$100,000;
 - (iv) comprehensive equipment breakdown coverage on all objects, including production machinery which are under the Tenant's care, custody and control. Basis of loss settlement shall be repair and replacement cost, with the same site limitation deleted. Coverage shall include business interruption, extra expense to the extent indicated in Section 12.1(a)(i)(C) and 12.1(a)(ii) and blanket by-laws. Coverage shall also include water damage; hazardous substances; ammonia contamination; and professional fees;

with deductible with regards to the policies in subparagraphs (i) to (iv) no greater than \$25,000 for direct damage; \$50,000 for flood; and three percent (3%) of the property insured or \$100,000, whichever is greater, for earthquake; and shall be the sole responsibility of the Tenant;

- (v) commercial general liability insurance issued on an occurrence basis for an amount of not less than \$10,000,000 per occurrence and \$10,000,000 annual aggregate for any negligent act or omission by the Tenant or for those whom the Tenant is legally liable. Such insurance shall include bodily injury and property damage, including loss of use; premises, property and operations; personal and advertising injury; owners' and contractors' protective; occurrence property damage products liability; broad form completed operations; incidental medical malpractice; non-owned automobile; broad form property damage; employer's liability, including volunteer compensation; blanket contractual liability; liquor liability (if applicable); and cross liability and severability of interests clauses. The deductible shall be no greater than \$25,000 and shall be the sole responsibility of the Tenant; and
- (vi) if applicable, automobile liability insurance with respect to owned or leased vehicles used directly or indirectly by the Tenant covering third party liability for bodily injury, death and damage to property with a limit of not less than \$5,000,000 inclusive for each and every loss.
- (b) The insurance in Section 12.1(a)(v) shall add the Landlord and its elected officials, agents, officers and employees as additional insured with respect to the operations of the Tenant. This insurance shall be non-contributing and apply as primary and not as excess of any insurance available to the Landlord.
- (c) The forgoing insurance shall name the Landlord and the Tenant Mortgagee as loss payee with respect to the insurance stipulated in Sections 12.1(a)(i), 12.1(a)(ii) and 12.1(a)(iv), as the interest of the Landlord or of the Tenant Mortgagee may appear.
- (d) Notwithstanding Section 12.1(a) hereof, upon receiving the Approval of the Landlord, the Tenant may choose to self insure or to underinsure the Retail

Component, if any insurance required hereunder is not available on commercially reasonable terms.

- (e) Property, boiler and machinery insurance policies shall contain provisions for settling joint loss disputes.

12.2 Failure to Maintain Insurance

- (a) The Tenant shall provide the Landlord not less than thirty (30) days' prior Notice of any cancellation of any policies of insurance required under this Article XII. If the Tenant fails to obtain and keep in force the aforesaid policies of insurance, or should any such insurance not be Approved by the Landlord, the Landlord shall provide a written Notice to the Tenant specifying a period of time for the Tenant to obtain and keep in force such insurance policies as required by this Article XII, except where payments must be made in order to maintain any of such insurance policies, in which case the Landlord may proceed to obtain such policies without giving the Tenant such Notice. If the Tenant fails to obtain such policies within the period of time as specified in the Notice, or payments must be made in order to maintain such policies, the Landlord may obtain such policies and shall give the Tenant a written Notice setting out the amount and dates of payment of all costs and expenses incurred by the Landlord in connection therewith to the date of such Notice. Any sum so expended by the Landlord shall be due and payable on demand without prejudice to any other rights or recourse of the Landlord hereunder.
- (b) No such insurance taken out by the Landlord shall relieve the Tenant of its obligation to insure hereunder and the Landlord shall not be liable for any loss or damage suffered by the Tenant in connection therewith.
- (c) If the Tenant fails to obtain and keep in force the insurance required by this Lease and if any similar insurance maintained by the Landlord shall be called into contribution at either or both of their option and, as a consequence thereof, the

Landlord's cost of effecting such insurance increases, any such additional cost shall be payable by the Tenant to the Landlord forthwith upon production of reasonable proof of such additional cost, without prejudice to any other rights of the Landlord as a result of Tenant's failure to keep such insurance in place.

12.3 Increase in Insurance Premiums and Cancellation of Insurance

The Tenant agrees that it will use commercially reasonable efforts to cause its employees, agents, occupants and invitees not to keep in or upon the Retail Component any article or substance which may be prohibited by the insurance policies mentioned above or do or omit, or permit to be done or omitted, anything which will cause the cancellation of any insurance policy. If any insurance policy should be cancelled or the coverage reduced or a threat of cancellation or reduction of coverage made by reason of anything arising out of the use or occupation of the Retail Component by the Tenant, whether or not the first sentence of this Section has been complied with, and if Tenant fails to remedy the condition giving rise to such cancellation, reduction or threat upon ten (10) days' Notice thereof by the Landlord, the Landlord may enter the Retail Component and remedy the condition at the sole cost and expense of Tenant, which cost and/or expense shall be payable to the Landlord forthwith on demand as Rent in arrears, and in addition or in the alternative, may exercise any other remedy available to it.

12.4 Payment of Premiums

The Tenant shall duly and punctually pay all premiums under the aforesaid insurance policies as they become due and payable. In the event of default of payment by the Tenant, the Landlord may pay same and the amount so paid shall be forthwith payable as Rent.

12.5 Evidence of Insurance

Upon execution of this Lease, the Tenant shall deliver to the Landlord evidence of the insurance required hereby in the form of certificates of insurance, in form and detail satisfactory to the Landlord, acting reasonably, signed by an authorized representative of the insurer. Certificates of insurance evidencing renewal or replacement of policies shall be delivered to the Landlord fifteen (15) days prior to the expiration of the current policies, without demand having to be

made therefor by the Landlord. If, due to unusual circumstances, the Tenant is delayed in renewal of insurance policies, it shall keep the Landlord closely informed as to its efforts and progress in achieving renewal or replacement insurance.

12.6 Fire Protection Systems

The Tenant shall ensure that the Retail Component is equipped with fire protection systems in compliance with applicable Building Codes, the *Fire Protection and Prevention Act, 1997* (Ontario) and all other applicable Laws governing same, subject to any “grandfathering” permitted by such Laws. The Tenant shall permit the Landlord to inspect the Tenant’s records relating to fire safety and compliance with applicable Building Codes and the *Fire Protection and Prevention Act, 1997* (Ontario) during regular business hours upon forty-eight (48) hours’ advance Notice.

12.7 Additional Insurance

- (a) The Tenant shall also, at the Tenant’s cost and expense, take out and maintain, without duplication of coverage, any other form of insurance (i) as the Landlord should reasonably require from time to time, in form, in amounts and for insurance risks against which a prudent owner would insure, provided that such insurance is generally purchased by prudent owners of similar buildings in the City of Ottawa, or (ii) any Tenant Mortgagee should require from time to time.
- (b) The Tenant also shall be permitted to purchase such other insurance as it sees fit, provided, however, that such additional insurance shall not conflict with those required to be purchased under this Lease.

12.8 Insurance Terms and Conditions

(a) Waiver of Subrogation

The Tenant shall use its commercially reasonable efforts to ensure all policies of insurance required to be taken out by the Tenant under Section 12.1 shall contain

a waiver of any subrogation rights that the Tenant's insurers may have against the Landlord and against those for whom it is in law responsible, whether any such damage is caused by the act, omission or negligence of the Landlord or those for whom it is in law responsible.

(b) **Approval of Insurers**

All policies of insurance required to be taken out by the Tenant shall be placed with insurers licensed and authorized to do business in the Province of Ontario and having an AM Best Rating of A- or better.

(c) **Notice of Material Change or Cancellation**

Each policy of insurance required under Section 12.1 shall contain an endorsement requiring the insurers to notify the Landlord in writing, by registered mail, at least sixty (60) days prior to any cancellation of the insurance coverage. The Tenant shall additionally use its commercially reasonable efforts to have included in each policy of insurance required under Section 12.1 an endorsement requiring the insurers to notify the Landlord in writing, by registered mail, at least sixty (60) days prior to any material change in the policy that restricts or reduces the insurance coverage.

(d) **Breach of Conditions**

The Tenant shall use its commercially reasonable efforts to ensure that each policy of insurance required under Section 12.1 will contain a waiver in favour of the Landlord of any breach of a policy condition or warranty such that the insurance policy in question will not be invalidated in respect of the interest of the Landlord by reason of a breach of any condition or warranty contained in such policies.

(e) **Deductibles**

Unless otherwise specified in this Lease, the Parties agree that insurance policies may be subject to deductible amounts, such amounts to be subject to the Approval of the Landlord's Representative and which amounts shall be borne by the Tenant.

(f) **Primary Coverage**

The insurance policies required under Section 12.1 shall be primary and shall not call into contribution any insurance available to the Landlord.

(g) **Limits of Insurance**

The Landlord, acting reasonably, may require the limits of the insurance policies provided by the Tenant to be increased from time to time in accordance with generally applicable industry standards. Any change to the nature and amounts of insurance policies as specified in this Article XII shall require the Landlord's Approval and, in any event, the nature and the amounts of such insurance policies are subject to review and Approval by the Landlord every five (5) years.

(h) **Compliance with Insurance Policies**

The Tenant shall not violate or permit to be violated any of the conditions or provisions of any insurance policy and, to the extent obtainable on commercially reasonable terms, all policies required to be obtained by the Tenant shall contain agreements by the insurers that no act or omission by the Tenant shall impair or affect the rights of the insureds to receive and collect the proceeds under the policy.

12.9 Adjustment

Any loss for which recovery is made under any policies of insurance taken out pursuant to Section 12.1 shall be adjusted with the insurance company or companies:

- (a) by the Tenant, if the loss is less than twenty-five percent (25%) of the amount of insurance coverage for such losses; or
- (b) by the Landlord and the Tenant jointly, if the loss equals or exceeds twenty-five percent (25%) of the amount of insurance coverage for such losses.

The proceeds of such insurance shall be paid to the Tenant, if they are less than twenty-five percent (25%) of the amount of insurance coverage for such losses. If the proceeds of such insurance as so adjusted are equal to or greater than twenty-five percent (25%) of the amount of insurance coverage for such losses and are paid out other than on a completed cost basis, they shall be paid (i) to a trustee mutually agreed between the Parties and the Tenant Mortgagee (the “**Insurance Trustee**”), to be used by the Insurance Trustee pursuant to Section 14.4, or (ii) in accordance with such alternate arrangement for the payment of proceeds as the Parties, each acting reasonably, and the Tenant Mortgagee may mutually agree. Any policies of insurance maintained hereunder pursuant to Section 12.1 shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinbefore provided.

ARTICLE XIII DISPOSITIONS AND SUBLETTING

13.1 Dispositions

- (a) Until the Waterfall Expiry Date, without limiting the provisions of the Project Agreement:
 - (i) there shall be no Disposition of issued Securities of the Tenant or its general partner, except as permitted under and subject to the terms of the Project Agreement; and

- (ii) there shall be no Disposition of all or any material portion of the assets of the Tenant or of any interest in all or any material portion of the assets of the Tenant (including in each case, this Lease), without the approval of the Landlord, in its Discretion.

- (b) If the Landlord has not exercised its Termination Option, then from and after the Waterfall Expiry Date:
 - (i) there shall be no Disposition of issued Securities of the Tenant or its general partner which results in Change of Control of the Tenant or its general partner, without the Approval of the Landlord; and
 - (ii) there shall be no Disposition of this Lease or of an interest in this Lease, without the Approval of the Landlord.

13.2 Subletting

Subject to Article XVI, the Tenant may from time to time enter into subleases, licenses, concessions and occupancy agreements or agreements for subleases, licenses, concessions and occupancy agreements with respect to the Retail Component (collectively, “**Subleases**”) in the prudent course of the Tenant’s business in respect of the Retail Component, at rents and on such terms and conditions (including the ability of any Subtenant to assign, sublease or mortgage all or part of its interest under its Sublease) as the Tenant, acting reasonably, considers appropriate having regard to all circumstances at the time of such subletting, including market conditions at that time, provided that:

- (a) the Tenant shall not enter into a Sublease:
 - (i) the primary purpose of which is to circumvent the limitations on Disposition set out in Section 13.1; and/or

- (ii) which is in respect of more than one (1) entire building and/or other structure forming part of the Retail Component Building, the Stadium Retail Component or the Office Retail Component;
- (b) each Sublease shall be made with a Subtenant that is at Arm's Length to the Tenant or if the Sublease is not on an Arm's Length basis, it shall be on terms and conditions that are commercially reasonable and reflective of prevailing market conditions at the time it is entered into or renewed, as applicable;
- (c) the Subtenant's uses of the Premises comply with the provisions of Section 9.1;
- (d) any and all Subleases which are in existence or which the Tenant enters into prior to the Termination Date shall:
 - (i) either:
 - (A) have a term, including any renewals (other than renewals that are contingent upon the extension of this Lease for the First Extension Term and/or the Second Extension Term, as applicable), which expires no later than the fiftieth Anniversary; or
 - (B) be terminable without payment or penalty on or after the fiftieth Anniversary (in the event the Operating Term is not extended by either or both of the First Extension Term and/or Second Extension Term);

and

- (ii) have terms and conditions which are commercially reasonable and reflective of prevailing market conditions at the time the Sublease was entered into or, if applicable, renewed by the Tenant and the Subtenant, or which terms and conditions have been Approved by the Landlord;

- (e) no Sublease shall render the Tenant in default under any Tenant Mortgage;
- (f) the Tenant covenants and agrees that each Sublease shall provide that:
 - (i) it is subject to this Lease;
 - (ii) subject to Section 13.2(f)(iii), the Subtenant will not pay rent or other sums under its Sublease with the Tenant for more than three (3) months in advance (in addition to the final month's rent of the Sublease term as a security deposit), except as Approved by the Landlord; and
 - (iii) any rent or other sums payable by a Subtenant pursuant to its Sublease may be paid more than three (3) months in advance on the condition that such payments are held in a trust account. The Tenant shall not be permitted to withdraw funds from such trust account more than (3) months in advance of the date upon which such funds are due to the Tenant under the Sublease;
- (g) the Tenant shall provide the Landlord with copies of all Subleases entered into (i) on or before the Operating Term Commencement Date, upon the Stabilization Date, and (ii) during each Operating Lease Year, within a period of fifteen (15) days following such Operating Lease Year. In addition, the Landlord shall be entitled to inspect copies of all existing Subleases at the offices of the Tenant during regular business hours upon reasonable prior written Notice to the Tenant at any time prior to the expiry of the Term. The Landlord acknowledges that any and all financial information contained in the Subleases which the Tenant delivers to the Landlord in accordance with its obligation set out in this subparagraph, and any and all financial information contained in the Subleases which the Landlord may inspect pursuant to Section 5.1(b), shall be designated by the Tenant as "strictly confidential". Copies of each Sublease provided by the Tenant to the Landlord shall, at the Tenant's option, be either a signed original copy or a notarially certified true copy of such Sublease;

- (h) no Sublease shall release or impair the continuing obligations of the Tenant hereunder or purport to extend beyond the Term hereof, without the prior written consent of the Landlord; and
- (i) the Tenant shall not enter into any Sublease the terms and conditions of which are contrary to the requirements of this Section 13.2 or otherwise in this Lease.

13.3 Tenant Sublease Obligations

Upon the termination of this Lease, whether pursuant to the Termination Option, an Event of Default, expiry of the Term or otherwise, any and all financial obligations of the Tenant to a Subtenant pursuant to a Sublease which have arisen or accrued prior to the termination of this Lease shall be for the account of the Tenant and in no event shall the Landlord be responsible for the payment of such obligations.

13.4 Non-Disturbance Agreement

- (a) Subject to Sections 13.4(c) and 13.4(d), at the request of a Subtenant (excluding in respect of a Sublease for a kiosk or other similar area), the Landlord shall execute and deliver an agreement by which it recognizes the validity of the Subtenant's Sublease and covenants not to disturb the Subtenant thereunder notwithstanding any Event of Default of the Tenant under this Lease or the forfeiture of this Lease, provided that such Subtenant attorns to the Landlord in accordance with the provisions of this Section 13.4 and performs all its covenants and obligations under the Sublease (the "**Non-Disturbance Agreement**").
- (b) The Non-Disturbance Agreement shall further provide that upon early termination of this Lease, the Subtenant shall attorn to, or enter into a direct lease, occupancy, license or concession agreement on identical terms with, the Landlord (or any Mortgagee) and in consideration thereof, the Landlord shall accept such Subtenant as a direct tenant of the Landlord or enter into a direct lease, occupancy, licence or concessionaire agreement, as the case may be, on identical terms with the Subtenant.

- (c) Each Non-Disturbance Agreement entered into by the Landlord prior to the Termination Date shall refer to the Termination Option and the Subtenant shall specifically acknowledge the rights of the Landlord and the obligations of the Tenant with respect to the Termination Option as set out in this Lease, including the Landlord's rights pursuant to Article XIII and Article XVIII.
- (d) The Tenant shall pay to the Landlord any reasonable out-of-pocket expenses incurred by the Landlord in connection with the Non-Disturbance Agreement.

13.5 Liability of Tenant

In the event of a permitted Disposition of this Lease by the Tenant, whether in accordance with the provisions of the Project Agreement or that is Approved by the Landlord, the Tenant shall not be released from any obligations or liabilities hereunder for five (5) years following such Disposition, unless the Landlord, in its Discretion, elects to release the Tenant.

13.6 No Conveyance

Any Disposition contemplated in Section 13.1 which does not comply with the requirements of Section 13.1 shall not confer or convey any estate in the Tenant, the Retail Component or any interest under this Lease on or to the assignee or transferee, and shall be absolutely void.

13.7 Landlord's Assignment

- (a) Subject to Section 13.7(b), the Landlord shall not, without the prior consent of the Tenant in its Discretion, assign all or any portion of this Lease.
- (b) Notwithstanding the provisions of Section 13.7(a), the Landlord may, without the prior consent of the Tenant, assign all or any portion of this Lease to an Affiliate or to another municipal, provincial or federal entity, including a successor entity to the City.

- (c) An assignment by the Landlord pursuant to Section 13.7(b) shall relieve the Landlord from all rights, obligations and liabilities hereunder as it relates to the portion of this Lease so assigned, other than in respect of the payment of the Termination Amount, if applicable, provided that the assignee assumes such rights, obligations and liabilities. For greater certainty, no assignment relieves the Landlord from any obligations or liabilities arising pursuant to Section 18.5.

ARTICLE XIV **DAMAGE OR DESTRUCTION**

14.1 Restoration After Damage

If, during the Term, Building Damage occurs to the Retail Component, then the Tenant will promptly at its sole cost and expense repair, restore and rebuild the Retail Component as nearly as possible to the condition it was in immediately before such Building Damage.

14.2 Damage to the Retail Component

Notwithstanding Section 14.1, if any Building Damage should occur to the Retail Component:

- (i) between the twenty-fifth Anniversary and the Termination Date, if the Landlord fails to waive its Termination Option; or
- (ii) after the fifty-fifth Anniversary, in the event the Operating Term is extended by either of or both of the First Extension Term and/or Second Extension Term,

and if such Building Damage shall render twenty-five percent (25%) or more of the rentable area (for greater clarity, such rentable area does not include the Parking Unit) of the Retail Component unfit for use or occupancy for the purposes permitted hereunder for a period of at least two hundred and eighty (280) days, then the Tenant may, at its option, by written Notice to the Landlord, decline to repair, restore or rebuild the Retail Component and may thereby terminate this Lease, and this Lease shall terminate as of the date of receipt of such Notice by the Landlord. On termination of this Lease under this Section 14.2, all proceeds of insurance required hereunder to be placed by the Tenant for fire or other casualty causing such Building

Damage shall belong absolutely to the Landlord (subject to the rights of any Tenant Mortgagee) and the Tenant shall forthwith execute or obtain all necessary releases in respect of the insurance moneys and shall pay to the Landlord the amount of any deductible respecting such insurance. Notwithstanding termination of this Lease pursuant to this Section 14.2, there shall be no adjustment, abatement or refund of Rent for the period prior to the termination of this Lease. All proceeds of business interruption insurance payable for any period prior to the Waterfall Expiry Date shall be distributed in accordance with the Waterfall provisions of Article XIII of the Project Agreement.

14.3 Dispute Resolution in Respect of Damage

If, within sixty (60) days after the date of any Building Damage which occurs during either (i) the time period between the twenty-fifth Anniversary and the Termination Date (if the Landlord fails to waive its Termination Option), or (ii) the time period after the fifty-fifth Anniversary (in the event the Operating Term is extended by either of or both of the First Extension Term and/or Second Extension Term), the Landlord and the Tenant are unable to agree as to the percentage of the rentable area of the Retail Component Building which has been thereby rendered unfit for use or occupancy for the purposes permitted hereunder or the period for which it will be so unfit, then in such event the matter shall be determined through the Dispute Resolution Procedure.

14.4 Insurance Proceeds

In the event of damage or destruction of the Retail Component, the insurance proceeds, subject to Article XII and Section 14.1 and 14.2, will be paid (i) to the Insurance Trustee, or (ii) in accordance with such alternate arrangement for the payment of proceeds as the Parties, each acting reasonably, and the Tenant Mortgagee may mutually agree, in all cases for the benefit of the Landlord, the Tenant and the Tenant Mortgagee, if any, as their interests may appear. The Insurance Trustee shall hold the insurance proceeds in trust for the purpose of applying the same to the payment of the cost of repairing, restoring or rebuilding the Retail Component (the “**Restoration Work**”). Such insurance proceeds shall be disbursed by the Insurance Trustee to the Tenant as the Restoration Work progresses upon the request of the Tenant, subject to the

holdback requirements of the *Construction Lien Act* (Ontario), provided such request is accompanied by:

- (a) a certificate of the Architect stating to the reasonable satisfaction of the Insurance Trustee that the sum requested is justly due to the contractor, sub-contractors, suppliers of material, labourers, engineers, architects or other Persons rendering services or providing materials for the Restoration Work, or is justly required to reimburse the Tenant for expenditures made in connection with the Restoration Work, and when added to all sums previously paid out by the Insurance Trustee does not exceed the value of the Restoration Work on the date of such certificate, provided, however, that the Insurance Trustee shall at all times have sufficient funds to pay for the reasonably estimated cost of completing the Restoration Work; and
- (b) there shall be furnished to the Insurance Trustee evidence satisfactory to it that, as of the date thereof, there has not been filed any vendor's, construction, labourer's or material supplier's statutory or other similar lien affecting the Retail Component which has not been discharged of record, except such as will be discharged upon payment of the amount then requested to be disbursed.

Upon the completion of the Restoration Work and payment in full therefor by the Tenant, the Insurance Trustee shall, upon receipt by the Insurance Trustee of proof satisfactory to it that the Restoration Work has been paid for in full and that there are no outstanding lien claims arising from the Restoration Work, transfer to the Tenant any insurance proceeds then remaining in the possession of the Insurance Trustee. The Insurance Trustee may from time to time deduct from the insurance proceeds deposited with it such reasonable amount as it may charge as fees and disbursements for its administration of the insurance proceeds. If the insurance proceeds are insufficient to pay for the entire cost of the Restoration Work, the Tenant shall pay the deficiency. The Tenant may close and cease to operate such parts of the Retail Component, as and during the period it may deem necessary, to effect repairs and/or rebuilding to the Retail Component or those parts of it.

14.5 Damage to the Stadium

- (a) If any Building Damage should occur to the Stadium and the Stadium Lease is terminated by the tenant under the Stadium Lease pursuant to section 14.1 thereof, the Landlord may, on written Notice to the Tenant, terminate this Lease in respect of the Stadium Retail Component. On termination of this Lease under this Section 14.5(a), all proceeds of insurance required hereunder to be placed by the Tenant for fire or other casualty causing such Building Damage shall belong absolutely to the Landlord and the Tenant shall forthwith execute or obtain all necessary releases in respect of the insurance moneys and shall pay to the Landlord the amount of any deductible respecting such insurance. Notwithstanding termination of this Lease with respect to the Stadium Retail Component pursuant to this Section 14.5(a), there shall be no adjustment, abatement or refund of Rent for the period prior to such termination. All proceeds of business interruption insurance payable for the period prior to the Waterfall Expiry Date shall be distributed in accordance with the Waterfall provisions of Article XIII of the Project Agreement.

- (b) If any Building Damage should occur to the Stadium and the Stadium Lease is terminated by the landlord under the Stadium Lease pursuant to section 14.1 thereof, or if at that time the Stadium Lease has been otherwise terminated and the Building Damage to the Stadium is Significant Damage, the Landlord may, on written Notice to the Tenant, terminate this Lease in respect of the Stadium Retail Component. On termination of this Lease in respect of the Stadium Retail Component under this Section 14.5(b), the Landlord shall pay to the Tenant an amount equal to the Fair Market Value (but for such termination and the damage to the Stadium) of the Tenant's leasehold interest in the Stadium Retail Component.

ARTICLE XV
DEFAULT

15.1 Events of Default

For the purposes of this Lease, an “**Event of Default**” means any of the following events or circumstances:

- (a) the Tenant committing a breach of any of its obligations, covenants, terms or conditions contained in this Lease (not otherwise specifically referred to in this Section 15.1);
- (b) the occurrence of an event defined as an “Event of Default” in respect of the tenant under the Stadium Lease (including, for greater certainty, an act or omission by the CFL Partnership or the Ottawa 67’s Partnership which causes a default by the tenant under the Stadium Lease) or in respect of OSEG or a Member under the Project Agreement and such “Event of Default” is not cured within the applicable cure period set out in the Stadium Lease or Project Agreement (as applicable);
- (c) the Tenant fails to rebuild the Retail Component after Building Damage occurs in accordance with Article XIV, subject to the Tenant’s rights of termination under Section 14.2;
- (d) the occurrence of any of the following events in respect of the Tenant:
 - (i) any arrangement or composition with or for the benefit of creditors being entered into by or in relation to the Tenant;
 - (ii) any proceedings with respect to the Tenant being commenced under the *Companies’ Creditors Arrangement Act* (Canada) and, if not initiated by the Tenant, not being dismissed by a court of competent jurisdiction within thirty (30) days;

- (iii) a receiver, receiver manager or other 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 Tenant, subject to the right of the Tenant to dispute same;
 - (iv) the Tenant 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 Tenant under the *Bankruptcy and Insolvency Act* (Canada) or otherwise and, if commenced against the Tenant, 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 Tenant, subject to the right of the Tenant to dispute same;
- (e) the occurrence of a Disposition not permitted in accordance with this Lease;
 - (f) the occurrence of a matter defined as an event of default elsewhere in this Lease;
 - (g) the Tenant committing a breach of any of its obligations, covenants, terms or conditions contained in a construction procedures agreement contemplated by Section 2.5(c);
 - (h) the Tenant committing a breach of any of its obligations, covenants, terms or conditions contained in a Reciprocal Agreement;

- (i) the Tenant defaulting in the payment of Rent expressly reserved hereunder or any part thereof or defaulting in the payment of any other charge or amount required to be paid by the Tenant hereunder or any part thereof;
- (j) any insurance policy which the Tenant is required to maintain under this Lease is cancelled or not renewed by any insurer by reason of any particular use or occupation of the Retail Component; or
- (k) the Tenant Mortgagee committing a breach of any of its obligations, covenants, terms or conditions contained in the Parking Funding Agreement.

15.2 Other Termination

- (a) In addition to any and all other events permitting or resulting in termination of this Lease in this Lease, this Lease shall terminate upon the expiry of the Construction Term in the event that the Operating Term Condition is not satisfied.
- (b) Notwithstanding anything contained herein to the contrary, the Landlord may terminate this Lease with respect to either or both of the Stadium Retail Pods Parcel and the Stadium Retail Salons Parcel effective as of the Waterfall Expiry Date by giving not less than five-years' written Notice to the Tenant prior to the Waterfall Expiry Date and upon payment to the Tenant of an amount equal to the Fair Market Value (but for such termination) of the Tenant's leasehold interest in the Stadium Retail Pods Parcel and/or the Stadium Retail Salons Parcel, as applicable, at the date of the termination, provided that after the termination, the Landlord shall not use the Stadium Retail Pods Parcel and/or the Stadium Retail Salons Parcel, as applicable, for retail/commercial purposes to compete with the Tenant in its operation of the remaining elements of the Retail Component.

15.3 Landlord Termination Right

- (a) If an Event of Default is not remedied before the expiry of the applicable Cure Period referred to in Section 15.5, then at any time after the expiry of that

applicable Cure Period while an Event of Default is in existence, the Landlord may terminate this Lease in its entirety by Notice to the Tenant with immediate effect, and all Rent owing shall immediately become due and payable.

- (b) Following termination of this Lease in accordance with the provisions of this Lease, the Landlord shall be entitled to lawfully enter into and upon the Retail Component or any part thereof in the name of the Tenant and to re-enter the same to have, repossess and enjoy as the owner of the whole, and the Tenant shall quit and surrender the Retail Component to the Landlord. Any such termination of this Lease by the Landlord shall be wholly without prejudice to the right of the Landlord to recover arrears of Rent and damages for any antecedent Event of Default by the Tenant hereunder and for loss of Rent and any other matter whatsoever suffered by reason of this Lease having been prematurely terminated or from an Event of Default, provided that the Landlord has made commercially reasonable efforts to mitigate any such damages resulting therefrom.

15.4 Notification

The Tenant will notify the Landlord of the occurrence, and details, of any 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 Event of Default, in either case promptly on Tenant becoming aware of its occurrence. However, a failure to provide such Notice shall not derogate from the rights of the Landlord as provided in this Lease.

15.5 Cure Period

On the occurrence of an Event of Default, or any time thereafter while it is subsisting, the Landlord may serve a Default Notice on the Tenant requiring the Tenant, at the Tenant's option:

- (a) in the case of an Event of Default other than pursuant to Section 15.1(b), to remedy or cause to be remedied the Event of Default referred to in the Default Notice within the thirty (30) day period following receipt by the Tenant of the Default Notice; provided that with respect to a non-monetary Event of Default, if

such Event of Default is not capable of being remedied within such thirty (30) day period, then the period to remedy the Event of Default shall be extended to such greater period than thirty (30) days as shall be reasonable in the circumstances, as Approved by the Landlord, provided that the Tenant proceeds and continues diligently to cure the Event of Default during such extended period of time;

- (b) in the case of a non-monetary Event of Default other than pursuant to Section 15.1(b), to put forward within ten (10) days of the Default Notice a reasonable program (set out, if appropriate, in stages) for remedying the Event of Default, which program shall be subject to the approval of the Landlord in its Discretion. The program will specify in reasonable detail the manner in, and the latest date by, which such Event of Default is proposed to be remedied and during the cure period specified in the program as approved by the Landlord, the Tenant shall continually and diligently use its commercially reasonable best efforts to remedy the Event of Default; or
- (c) in the case of an Event of Default pursuant to Section 15.1(b), to remedy or cause to be remedied the Event of Default within the period provided therefor in the Stadium Lease or Project Agreement, as applicable;

(the applicable cure period determined in accordance with the foregoing provisions of this Section 15.5 being the “**Cure Period**”).

15.6 Right of Self Help

- (a) In the event that there shall be an Event of Default, upon and after the expiry of the applicable Cure Period for such Event of Default, and while such Event of Default is subsisting, the Landlord may, on ten (10) Business Days’ prior Notice enter into and upon the Retail Component or appoint an agent on behalf of the Landlord to enter upon the Retail Component to rectify the matter in default or appoint a Receiver to enter upon the Retail Component to rectify the default.

- (b) If the Landlord shall appoint a Receiver in accordance with Section 15.6(a), the Receiver shall be deemed to be the agent of Tenant and not of the Landlord and the Landlord shall not in any way be responsible for any misconduct or negligence on the part of the Receiver, save for acts of gross negligence or fraud.
- (c) In order to facilitate the rights of the Landlord contained in this Section 15.6, on the Commencement Date, Tenant shall assign to the Landlord, as collateral security subsequent to security granted to any Tenant Mortgagee, all of the right, title and interest of Tenant in and to all existing and future agreements to lease and other contracts and all plans, design drawings, documents and specifications (collectively, the “**Project Documents**”), not otherwise assigned to the Landlord, which Project Documents shall provide for the collateral assignment to the Landlord or which drawings, plans and specifications shall provide a license to the Landlord to utilize same in the event that the Landlord or its agent or Receiver requires same to enforce the collateral security provided herein.

15.7 Landlord’s Right to Perform Tenant’s Covenants

In the event that there shall be an Event of Default, upon and after the expiry of the applicable Cure Period for such Event of Default (or such shorter time period as may be expressly provided elsewhere in this Lease) and while such Event of Default is subsisting, the Landlord shall have the right, but not the obligation, and without thereby waiving or releasing the Tenant from any obligations of the Tenant in this Lease contained:

- (a) to make any payment required to be made by the Tenant pursuant to this Lease;
- (b) to effect any insurance coverage required to be obtained and maintained by the Tenant and pay premiums therefor;
- (c) to perform any other act on the part of the Tenant to be made and performed hereunder; or

- (d) in the event of an Event of Default of the Tenant pursuant to Section 8.2(a), to enter on the Retail Component and at the Tenant's expense perform and carry out the repairs or replacements specified in the Notice delivered to the Tenant pursuant to Section 8.1(b),

in such manner and to such extent as the Landlord may reasonably deem desirable, and in exercising any such rights may pay necessary and incidental costs and expenses, employ legal counsel and incur and pay legal counsel fees.

15.8 Landlord May Follow Chattels

In case of removal by the Tenant of the goods or chattels of the Tenant from the Retail Component, the Landlord may follow the same for thirty (30) days in the same manner as is provided for in the *Commercial Tenancies Act* (Ontario).

15.9 Landlord May Re-let

If the Landlord does not exercise its option under Section 15.3 to terminate this Lease, it may upon and after the expiry of the applicable Cure Period of the Event of Default, while such Event of Default is subsisting, re-enter the Retail Component without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Retail Component and re-let the Retail Component or any part thereof as agent for the Tenant, for such period or periods (which may extend beyond the Term) and at such rental or rentals and upon such other terms and conditions as the Landlord in its Discretion may deem advisable. Upon each such re-letting, all rentals received by the Landlord from such re-letting shall be applied: first, to the payment of any indebtedness other than Rent due from the Tenant to the Landlord; second, to the payment of any costs and expenses of such re-letting, including brokerage fees and solicitors' fees, and of the costs of alterations and repairs performed in connection with such re-letting; and third, to the payment of Rent due and unpaid. Notwithstanding any such re-letting without termination, the Landlord may at any time thereafter elect to terminate this Lease. No such re-entry or taking of possession by the Landlord shall be construed as an election on its part to terminate this Lease unless, at the time of or subsequent to such re-entry or taking of possession, a written Notice of

such intention has been given to the Tenant or unless the termination thereof is decreed by a court of competent jurisdiction.

15.10 Right to Distrain

The Tenant waives and renounces the benefit of any present or future statute purporting to limit or qualify the Landlord's right to distrain and agrees that upon the occurrence of an Event of Default, the Landlord shall, after the expiry of the applicable Cure Period and while such Event of Default is subsisting, in addition to the other rights reserved to it, have the right to enter the Retail Component or appoint an agent of the Landlord to enter the Retail Component, either by force or otherwise, without being liable for any prosecution therefor and to take possession of any goods and chattels whatever on the Retail Component, save and except any such goods and chattels which are owned by any Subtenant, and to sell the same at public sale without notice and apply the proceeds of such sale on account of the Rent or in satisfaction of the breach of any covenant, obligation or agreement of the Tenant under this Lease and the Tenant shall remain liable for the deficiency, if any. Notwithstanding anything contained in Law, none of the goods and chattels of the Tenant at any time during the continuance of the Term shall be exempt from levy by distress for Rent and the Tenant hereby waives all and every benefit that it could or might have pursuant to Law. Upon any claim being made for such exemption by the Tenant, or on distress being made by the Landlord, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying of distress upon any such goods.

15.11 Alternative Remedies

Except as otherwise expressly provided in this Lease, all of the rights and remedies of the Landlord under this Lease are cumulative and not alternative and all rights and powers reserved to the Landlord may be exercised by either the Landlord or its duly authorized agents or representatives. In addition to the right to terminate as a result of an Event of Default and any other rights pursuant to this Lease or at Law, upon and after the expiry of the applicable Cure Period in connection with an Event of Default and while such Event of Default is subsisting, the Landlord may, either separately or simultaneously:

- (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 be an inadequate remedy for a default or breach of this Lease; or
- (b) bring any action at Law as may be necessary or advisable in order to recover damages.

15.12 Landlord Costs

- (a) The Tenant will reimburse the Landlord for all reasonable costs incurred by the Landlord in exercising any of its rights (including any relevant increased administrative expenses and actual legal expenses) under this Article XV. All sums paid by the Landlord in accordance with Section 15.7, together with interest thereon at the Default Interest Rate from the date of the making of such expenditure by the Landlord, shall be deemed to be Rent and shall be payable and recoverable hereunder as Rent in arrears.
- (b) In addition, in the event that the Landlord exercised any of its rights contained in this Article XV, the Tenant will reimburse the Landlord for all costs incurred by the Landlord in connection therewith, together with an administrative fee of fifteen percent (15%) on costs incurred and together with the fees and expenses incurred by any Receiver appointed by the Landlord in accordance with Section 15.6.

15.13 Acceptance of Rent and Non-Waiver

No receipt of monies by the Landlord from the Tenant after the cancellation or termination of this Lease in any lawful manner shall reinstate, continue or extend the Term or affect any Notice previously given to the Tenant or operate as a waiver of the right of the Landlord to enforce the payment of Rent then due or thereafter falling due or operate as a waiver of the right of the Landlord to recover possession of the Retail Component by proper suit, action, proceedings or other remedy; it being agreed that, after the service of a Notice to terminate this Lease and the expiration of the time therein specified or after the commencement of any suit, action, proceeding or other remedy or after a final order or judgment for possession of the Retail Component, the Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such Notice, suit, action, proceeding, order or judgment; and any and all such monies so collected shall be deemed payments on account of the use and occupation of the Retail Component, or at the election of the Landlord, on account of the Tenant's liability hereunder.

15.14 Interest on Arrears

If any amount due and payable by the Tenant to the Landlord as Rent or otherwise under this Lease remains unpaid for a period of fifteen (15) days, the Tenant shall pay the Landlord interest on the amount outstanding from time to time at the Default Interest Rate. Interest will be calculated and compounded monthly from and including the day following the fifteenth day that a payment of Rent or other payment is due and payable and shall be paid monthly until payment in full is received by the Landlord. The obligation of the Tenant to pay interest in accordance with this Section is without prejudice to any of the other remedies available to the Landlord, at Law or otherwise.

ARTICLE XVI TENANT MORTGAGES

16.1 Conditions of Tenant Mortgage

- (a) The Tenant may enter into a Tenant Mortgage with a Tenant Mortgagee, subject to:

- (i) the Landlord's Approval of such Tenant Mortgage; and
 - (ii) compliance with the provisions of this Section 16.1 and any other provision of this Lease.
- (b) Every Tenant Mortgage which the Tenant enters into prior to the Termination Date, including by renewal, shall:
- (i) provide for:
 - (A) a maturity date which occurs on or before the Termination Date; or
 - (B) a right of pre-payment in accordance with normal and reasonable terms respecting pre-payment privileges (such as a pre-payment based on a yield maintenance formula) prevailing at the time such mortgage was entered into, which right of pre-payment shall be exercisable at the time that the Landlord shall be entitled to terminate this Lease pursuant to the Landlord's Termination Option;
 - (ii) be a Permitted Tenant Mortgage;
 - (iii) in the case of permanent financing, be for as long of a term as is available on commercially-reasonable terms and conditions, as determined by the Tenant, acting reasonably; and
 - (iv) contain a right of first offer in favour of the Landlord in the event of the Tenant Mortgagee assigning, transferring or otherwise conveying this Lease, on such terms and conditions as are Approved by the Landlord.
- (c) Every Tenant Mortgage which the Tenant enters into after the Termination Date and prior to the fiftieth Anniversary, including by renewal, shall:

- (i) provide for:
 - (A) a maturity date which occurs on or before the fiftieth Anniversary;
or
 - (B) a right of pre-payment in accordance with normal and reasonable terms respecting pre-payment privileges (such as a pre-payment based on a yield maintenance formula) prevailing at the time such mortgage was entered into, which right of pre-payment shall be exercisable at the time that this Lease is terminated and not extended;
 - (ii) be a Permitted Tenant Mortgage; and
 - (iii) contain a right of first offer in favour of the Landlord in the event of the Tenant Mortgagee assigning, transferring or otherwise conveying this Lease, on such terms and conditions as are Approved by the Landlord.
- (d) For the purpose of this Lease, a “**Permitted Tenant Mortgage**” is a Tenant Mortgage that:
- (i) is for a principal amount not greater than:
 - (A) in the case of construction financing, seventy-five percent (75%) of the Hard Costs and Soft Costs (which in this subparagraph only, shall include construction management fees and the cost of initial leases of space to Subtenants, including tenant inducements and leasing commissions) of construction of the Retail Component; or
 - (B) in the case of permanent financing, seventy-five percent (75%) of the Fair Market Value of the Tenant’s interest in the Retail Component at the time of entering into such Tenant Mortgage,

provided that in the case of the original permanent financing and any subsequent extension, renewal or replacement financing prior to the Waterfall Expiry Date that does not increase the principal amount then outstanding, the Retail Lands shall be deemed to have a value for mortgage purposes equal to the Tenant Mortgagee Retail Lands Mortgage Value.

- (ii) if such Tenant Mortgage is obtained to assist in the financing of the construction of the Retail Component, has a variable or fixed rate of interest, but if such Tenant Mortgage is obtained for other purposes, shall be at a variable rate of interest only if Approved by the Landlord and otherwise shall be at a fixed rate of interest; and
- (iii) the Tenant Mortgagee under it is either:
 - (A) an Institutional Lender; or
 - (B) OSEG, a Member or a Permitted Transferee of a Member, provided that:
 - (1) OSEG has contributed Equity that is not less than the Minimum Equity Requirement;
 - (2) the amount of the Tenant Mortgage shall not form part of Equity for the purposes of the Project Agreement;
 - (3) the Landlord is not obligated to assume the Tenant Mortgage, in whole or in part;
 - (4) the Tenant Mortgage shall be on terms and conditions consistent with mortgages entered into with Person's

dealing at Arm's Length and shall require the Landlord's prior Approval;

- (5) the Tenant Mortgage shall provide for no arranging or mortgagee fees or other similar fees; and
- (6) if the Tenant Mortgage is a second mortgage, then:
 - a) the second Tenant Mortgage shall bear interest at a market rate, but not greater than eight percent (8%) per annum;
 - b) the second Tenant Mortgage shall include provision for the postponement of the second Tenant Mortgage to any extension, renewal, increase or replacement of the existing first Tenant Mortgage; and
 - c) the aggregate principal amount of both Tenant Mortgages, shall be limited to the following, as applicable:
 - i) seventy-five percent (75%) of the Hard Costs and Soft Costs of construction of the Retail Component; or
 - ii) in the case of permanent financing, seventy-five percent (75%) of the Fair Market Value of the Tenant's interest in the Retail Component at the time of entering into such Tenant Mortgage, provided that prior to the Waterfall Expiry Date, the Retail Lands

shall be deemed to have a value for mortgage purposes equal to:

- 1) if such Tenant Mortgage is entered into prior to a refinancing or amendment pursuant to Section 16.1(j), the Tenant Mortgagee Retail Lands Mortgage Value; or
 - 2) if the second Tenant Mortgage is entered into in conjunction with or after a refinancing or amendment pursuant to Section 16.1(j), their fair market value at the time of such refinancing or amendment (calculated using the same principles as were used for the determination of the Tenant Mortgagee Retail Lands Mortgage Value as set out in Schedule E)
- (e) When required by the Landlord, the Tenant Mortgagee shall enter into an assumption agreement with the counter-party or counter-parties to a Reciprocal Agreement.
- (f) The Tenant Mortgagee shall enter into an agreement (a “**Parking Funding Agreement**”) with the City with respect to the mutual funding by the City of the City’s Share of Cost of Parking and by the Tenant Mortgagee of the Retail Component’s Share of the Cost of Parking, on terms mutually agreed between the Tenant Mortgagee and the City, in each party’s Discretion. A default by the Tenant Mortgagee pursuant to the Parking Funding Agreement shall be deemed to be a default by the Tenant under this Lease.

- (g) No mortgage of this Lease shall extend to or affect Landlord's fee estate in the Retail Component, which estate shall be superior in all respects to the leasehold estate granted herein. It is further agreed that nothing contained herein shall in any manner limit Landlord's right to grant deeds of trust, mortgages, debentures or other security interests covering its estate in the Retail Component.

- (h) The Tenant shall give Notice to the Landlord of each Tenant Mortgage into which it wishes to enter at least five (5) Business Days prior to the date of entering into the Tenant Mortgage. Such Notice to the Landlord shall contain the name and post office address of the proposed holder of such Tenant Mortgage and shall include delivery of a complete copy of the proposed loan agreement and form of mortgage instrument creating such Tenant Mortgage. The Landlord shall be entitled to review the proposed loan agreement and form of mortgage instrument solely for compliance with the provisions of this Lease and notify the Tenant of any respect in which the proposed loan agreement or form of Tenant Mortgage fails to so comply. In the event the Landlord deems a proposed loan agreement and form of Tenant Mortgage delivered under this Section 16.1(h) as compliant with this Lease, the Landlord shall so notify the Tenant within such five (5) Business Day period or if the Landlord fails to notify the Tenant within such five (5) Business Day period of any respect in which the proposed loan agreement or form of Tenant Mortgage is not compliant with this Lease, then the proposed loan agreement and form of Tenant Mortgage shall be deemed to be compliant with this Lease.

- (i) The validity of a Tenant Mortgage shall be subject to the delivery to the Landlord of:
 - (i) the Tenant Mortgagee Notice; and

 - (ii) a photostatic copy of the original of the loan agreement and each instrument creating such Tenant Mortgage, which copy shall be identical (save the execution thereof) to the loan agreement and form of Tenant

Mortgage that the Landlord notified the Tenant under Section 16.1(h) is compliant with this Lease or that is deemed pursuant to Section 16.1(h) to be compliant with this Lease.

- (j) The Tenant may refinance or amend a Tenant Mortgage that increases the principal amount outstanding on such Tenant Mortgage, provided that:
 - (i) such refinancing or amended Tenant Mortgage, combined with existing financings, shall be limited to:
 - (A) seventy-five percent (75%) of the Hard Costs and Soft Costs of construction of the Retail Component; or
 - (B) seventy-five percent (75%) of the Fair Market Value of the Tenant's interest in the Retail Component at the time of the refinanced or amended Tenant Mortgage, provided that if the refinancing or amendment is prior to the Waterfall Expiry Date, the Retail Lands shall be deemed to have a value for mortgage purposes equal to their fair market value at the time of such refinancing or amendment (calculated using the same principles as were used for the determination of the Tenant Mortgagee Retail Lands Mortgage Value as set out in Schedule E),

as the case may be;
 - (ii) if such Tenant Mortgage is prior to or on the Waterfall Expiry Date then such excess amount is utilized for leasehold improvements or other capital improvements to the Retail Component in accordance with an arrangement Approved by the Landlord for the holding and expending of such funds for such improvements; and

- (iii) if such Tenant Mortgage is after the Waterfall Expiry Date then to the extent that the proceeds of the Tenant Mortgage are not used for leasehold improvements or other capital improvements, the principal and interest payments for the portion of the Tenant Mortgage not so used shall be excluded from the calculation of Annual Net Cash Flow.

- (k) Notwithstanding subparagraph 16.1(j), a second Tenant Mortgage that is taken out prior to the maturity or termination of the original permanent financing, is granted to a party identified in subparagraph 16.1(d)(iii)(B) and complies with the requirements of subparagraph 16.1(d)(iii)(B) shall not be deemed to be a refinanced or amended Tenant Mortgage for the purposes of 16.1(j) on one (1) occasion during the Term, provided that such second Tenant Mortgage also complies with the following:
 - (i) the aggregate of the original principal amount of the first Tenant Mortgage (which for clarity, shall be without deduction for repayment of principal and interest thereon) and the principal amount of such second Tenant Mortgage is not greater than seventy-five percent (75%) of the lesser of:
 - (A) the Fair Market Value of the Tenant's interest in the Retail Component at the time of entering into the first Tenant Mortgage provided that the Retail Lands shall be deemed to have a value for mortgage purposes equal to the Tenant Mortgagee Retail Lands Mortgage Value; and
 - (B) the Fair Market Value of the Tenant's interest in the Retail Component at the time of entering into the second Tenant Mortgage provided that the Retail Lands shall be deemed to have a value for mortgage purposes equal to the Tenant Mortgagee Retail Lands Mortgage Value;

- (ii) if the second Tenant Mortgage includes a pre-payment penalty, such penalty does not exceed an amount equal to a yield maintenance formula based upon the yield to maturity, expressed as an annual rate of interest calculated semi-annually not in advance, of a Government of Canada bond having a maturity date closest to the maturity date of the second Tenant Mortgage, assuming that such bond was purchased on the date of prepayment, together with an interest rate spread above such Government of Canada bond rate that would be contained in a first Tenant Mortgage entered into at the time of entering into the second Tenant Mortgage; and
- (iii) any proceeds of such second Tenant Mortgage that are not utilized for leasehold improvements or other capital improvements to the Retail Component in accordance with an arrangement Approved by the Landlord for the holding and expending of such funds for such improvements, shall be distributed in accordance with the Waterfall provisions of Article XIII of the Project Agreement.

A second Tenant Mortgage that does not comply with the foregoing provisions of this subparagraph 16.1(k) shall be deemed to be a refinanced or amended Tenant Mortgage for the purposes of subparagraph 16.1(j). For greater certainty, all second Tenant Mortgages must be made to a party identified in subparagraph 16.1(d)(iii)(B) and must comply with the requirements of 16.1(d)(iii)(B).

- (l) Excluding a Tenant Mortgage, the Tenant shall not:
 - (i) Encumber or permit to be Encumbered any of its Securities or the Securities of its general partner;
 - (ii) Encumber or permit to be Encumbered its interest in this Lease or the Retail Lands or the Retail Component;

- (iii) Encumber or permit to be Encumbered any interest in or any portion of its other assets, except to enter into an arrangement with an Institutional Lender to obtain a line of credit on such terms and conditions as may be approved by the Landlord, in its Discretion acting in good faith; or
- (iv) grant any Encumbrance of the Retail Lands or the Retail Component by way of a second mortgage, except as permitted by Section 16.1(d)(iii)(B).
- (m) The Tenant shall not enter into any Tenant Mortgage the terms and conditions of which are contrary to the requirements of this Section 16.1.
- (n) In the event the Tenant Mortgagee is a Person described in Section 16.1(d)(iii)(B), the Tenant Mortgagee shall not enter into possession of the Retail Component for more than thirty (30) days, unless it otherwise commences to realize upon its security in good faith.

16.2 Rights of Tenant Mortgagee

- (a) If the Tenant enters into any Tenant Mortgage:
 - (i) the Tenant shall deliver, or shall cause the Tenant Mortgagee to deliver, to the Landlord written Notice (the “**Tenant Mortgagee Notice**”) specifying the name of the Tenant Mortgagee and the Tenant Mortgagee’s Service Address; and
 - (ii) the Tenant Mortgage shall contain the following provision:

“This mortgage is executed upon the condition that no purchaser of the mortgagor’s leasehold interest under the lease hereby mortgaged, pursuant to enforcement proceedings under this mortgage, shall acquire any right, title or interest in or to the lease hereby mortgaged, unless the said purchaser, or the person, firm or corporation to whom or to which such purchaser’s right has been

assigned, in the instrument transferring to such purchaser or to such assignee the interest of the mortgagor under said lease, assumes and agrees to perform all of the terms, covenants and conditions of said lease thereafter to be observed or performed on the part of the mortgagor, as tenant, save and except for those terms and conditions thereof which relate to the identity of the mortgagor as Lansdowne Retail Limited Partnership, as determined by the Landlord under the said lease in its sole and absolute discretion, and confirm and re-grant the Landlord's Security Interest (as defined in said lease) in the said lease, and moreover, that no further or additional mortgage or assignment of said lease shall be made except in accordance with the provisions governing same contained in said lease, and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged by such purchaser or such assignee and in recordable form, is delivered to Landlord under said lease immediately after the consummation of such sale, or, in any event, prior to taking possession of the premises demised thereby."

- (b) If the conditions set out in Section 16.2(a) are fulfilled, the following provisions will apply:
 - (i) from and after receipt by the Landlord of the Tenant Mortgagee Notice, the Landlord will not, without the prior written consent of the Tenant Mortgagee:
 - (A) accept the surrender of, modify or amend, or agree to accept the surrender of, modify or amend, this Lease in any respect; or
 - (B) terminate, or agree to terminate, this Lease except in accordance with the following provisions of this Section 16.2;

- (ii) subject to Section 16.2(b)(vi) and 16.2(b)(vii), the Landlord shall not exercise any of its rights or remedies against the Tenant consequent upon any Event of Default by the Tenant under this Lease, unless it shall first have delivered to the Tenant Mortgagee at the Tenant Mortgagee's Service Address a copy of the Default Notice given by the Landlord to the Tenant in respect of the Event of Default which entitles the Landlord to exercise such rights or remedies and unless the Tenant and the Tenant Mortgagee shall not have remedied such Event of Default as permitted by the below provisions;
- (iii) the Landlord shall allow the Tenant Mortgagee a period of thirty (30) days, or such longer Cure Period as provided in this Lease, after the date of receipt by the Tenant Mortgagee of a copy of a Default Notice for the purpose of curing the Event of Default specified in such Default Notice or causing the same to be cured and the right of the Landlord to re-enter or to forfeit or terminate this Lease as a result of such Event of Default will cease upon the Tenant Mortgagee curing such Event of Default within the period allowed to the Tenant Mortgagee hereunder for such purpose;
- (iv) the Landlord will accept performance by the Tenant Mortgagee of any covenant, condition or agreement on the part of the Tenant to be performed hereunder as having the same force and effect as though performed by the Tenant;
- (v) if the Tenant Mortgagee fails to cure any Event of Default specified in a copy of a Default Notice received by the Tenant Mortgagee within the period of time allowed for curing the same pursuant to this Section 16.2, the Landlord may exercise any of its rights hereunder without further notice to the Tenant Mortgagee;
- (vi) if the Event of Default is under Section 15.1(d) and the Tenant Mortgagee, within thirty (30) days after receipt of a copy of such Default Notice,

commences and diligently prosecutes to conclusion foreclosure or other proceedings to acquire the Tenant's leasehold interest hereunder, the Landlord will not re-enter, forfeit or terminate this Lease or exercise its rights under Section 15.9, provided that:

- (A) subject to the provisions of this Section 16.2, the Landlord will not be precluded from exercising any rights or remedies under this Lease in respect of any other Event of Default by the Tenant during such period of forbearance;
- (B) during such period of forbearance the other obligations of the Tenant arising during such period of forbearance, including the obligation of the Tenant to pay Rent, are complied with; and
- (C) upon the Tenant Mortgagee acquiring the Tenant's leasehold interest hereunder, all Events of Default that are capable of cure are cured promptly;

and any such Event of Default by the Tenant under Section 15.1(d) will be deemed to have been waived by the Landlord upon the Tenant Mortgagee acquiring the Tenant's leasehold interest hereunder; and

- (vii) if the Landlord shall become entitled to and shall terminate this Lease on account of any Event of Default or if this Lease shall be otherwise terminated by operation of Law, then the Landlord agrees that upon the request of any Tenant Mortgagee, if such request is made within the time hereinafter provided and upon the Tenant Mortgagee paying to the Landlord any amounts owing and payable under this Lease to the date of termination hereof and any amounts which would have been payable thereafter to and including the date of such payment by the Tenant Mortgagee if this Lease had not been terminated, the Landlord shall grant to such Tenant Mortgagee (or, if more than one Tenant Mortgagee shall

make such a request, grant to whichever of such Tenant Mortgagees has priority as between the Tenant Mortgagees making such request) a new lease of the Retail Component between the Landlord, as landlord, and such Tenant Mortgagee, as tenant, for a term equal in duration to the then remaining residue of the Term at, prior to the Waterfall Expiry Date, the Tenant Mortgagee Rent and, from and after the Waterfall Expiry Date, Fair Market Value Rent and otherwise upon the same terms and conditions and including the same covenants, provisos, agreements and conditions as are contained in this Lease, save and except for those terms and conditions hereof which relate to the identity of the Tenant as Lansdowne Retail Limited Partnership, as determined by the Landlord in its Discretion. Promptly upon any termination of this Lease being effective, the Landlord shall give written notice to that effect to every Tenant Mortgagee whose Tenant Mortgage is at the date of termination of this Lease registered in the appropriate Ottawa Land Registry Office. The provisions of this Section shall be enforceable by every such Tenant Mortgagee intended to be benefited thereby, notwithstanding that such Tenant Mortgagee is not a party to this Lease and notwithstanding the termination of this Lease; provided that any request by a Tenant Mortgagee hereunder shall be effective only if made in writing to the Landlord within sixty (60) days of delivery to the Tenant Mortgagee of such written notice by the Landlord of a termination of this Lease having been effected as aforesaid.

16.3 Obligations of Tenant Mortgagee

A Tenant Mortgagee shall not be bound to perform the Tenant's liabilities and obligations under this Lease, unless and until it enters into possession of the Retail Component or otherwise realizes its security in the course of exercising its remedies, or otherwise assumes such liabilities and obligations. If a Tenant Mortgagee should enter into possession of the Retail Component or any part thereof or should in any other manner realize its security in the course of exercising its remedies under a Tenant Mortgage, the Tenant Mortgagee may assign its interest in this Lease

only with the Approval of the Landlord and the Tenant Mortgagee shall give prompt written Notice of any such assignment to the Landlord and shall deliver to the Landlord:

- (a) prior to such assignment, a copy of the instrument of assignment which shall contain the assignee's assumption of the Tenant's obligations hereunder; and
- (b) on or before the effective date of such assignment, an assumption agreement in which the Landlord and the Tenant Mortgagee's assignee confirm the assignment and the provisions hereof in respect of it and in which each agrees to be bound by, entitled to the benefits of and to assume the provisions herein applicable to it;

and upon any such assignment to which the Landlord has Approved, the Tenant Mortgagee will be released from all liability for the performance of the Tenant's liabilities and obligations under this Lease which accrue after the date of the assignment. If the Tenant Mortgagee should acquire title to the leasehold interest of the Tenant by foreclosure, such Tenant Mortgagee shall enter into an assumption agreement that would be required under Section 16.3(b) as if such Tenant Mortgagee was an assignee thereunder.

16.4 Assignment of Insurance

The Landlord and the Tenant covenant and agree, upon the written request of a Tenant Mortgagee, to assign to the Tenant Mortgagee the right, title and interest of the Tenant in and to the proceeds of any insurance placed by the Tenant in accordance with Article XII, provided, however, that such Tenant Mortgagee covenants and agrees that its rights pursuant to such assignment are subject to Sections 12.9, 14.1 and 14.4.

16.5 Agreement with Tenant Mortgagee

- (a) This Lease may be assigned as collateral security to a Tenant Mortgagee, provided that as a condition precedent thereto such Tenant Mortgagee enters into an agreement with the Landlord as provided in Section 16.5(b).

- (b) Each Tenant Mortgagee shall enter into an agreement between the Landlord, the Tenant and the Tenant Mortgagee, in form mutually agreed upon among the Parties acting reasonably, providing that the Tenant Mortgagee shall assume the obligations and liabilities of the Tenant (subject to Section 16.2(b)(vii)) contained in this Lease (subject to payment of the Base Rent calculated in the manner set out in Section 3.3) and under each Reciprocal Agreement in the event the Tenant Mortgagee enters into possession of the Retail Component or otherwise commences to realize its security, which agreement shall, without limitation, give effect to the agreements and provisions contained in Sections 16.2, 16.3 and 16.4 insofar as they affect the rights and obligations of the Tenant Mortgagee and shall otherwise confirm the provisions of this Article XVI in favour of the Tenant Mortgagee. If the Tenant Mortgagee requests the amendment of any provision of this Lease, the Landlord shall consider such request in good faith but shall be under no obligation to grant such request.

16.6 Completion by Tenant Mortgagee

- (a) If a Tenant Mortgagee requires of the Tenant security in the rights or assets constituting the Landlord's Security Interest, the Landlord, acting reasonably, shall enter into an agreement with such Tenant Mortgagee in which each will acknowledge and accommodate the interests of the other, the best interests of the Retail Component itself to be the standard, subject to the paramount rights of the Tenant Mortgagee set out herein.
- (b) In respect of the Landlord's Security Interest pursuant to Sections 4.13(b)(iv), a Tenant Mortgagee and its permitted assigns will be accorded priority to the Landlord if the Tenant Mortgagee so elects, for the purpose and for so long as it is actually proceeding to complete or to cause completion of construction under the Required Contracts. In such event, the Tenant Mortgagee shall have carriage of completion of construction with the benefit of the Required Contracts upon the occurrence of an Event of Default.

16.7 Mortgage of Retail Lands

In the event that the Landlord grants any mortgage, charge, debenture or other security interest with respect to the fee simple interest of the Landlord in the Retail Lands or any part thereof (including all renewals, modifications, consolidations, replacements and extensions thereof):

- (a) the Landlord shall notify the Tenant in writing of the name and address of the Mortgagee; and
- (b) the Landlord agrees to obtain from each Mortgagee a subordination and non-disturbance agreement confirming that the Mortgagee shall not disturb the Tenant's and the Tenant Mortgagee's rights under this Lease, in consideration of the Tenant entering into an attornment agreement with the Mortgagee.

ARTICLE XVII **TERMINATION**

17.1 Termination

Upon completion of the Term or earlier termination of this Lease:

- (a) the Tenant's interest in all fixtures and in all equipment forming part of the Retail Component or required for use in connection with the structural and functional operation of the Retail Component (excluding all chattels, equipment, appliances and furniture of the Tenant relating to the Tenant's use of the Retail Component in accordance with Section 9.1 and not required for purposes of such operation) shall be delivered and conveyed to the Landlord without cost; and
- (b) all master keys, codes, passes and other systems to the Retail Component shall be provided without cost to the Landlord.

ARTICLE XVIII
LANDLORD'S TERMINATION OPTION

18.1 Termination Option

- (a) The Landlord shall have an option exercisable at its Discretion to terminate this Lease or to take assignment thereof as at the Termination Date (the “**Termination Option**”).
- (b) The Landlord may exercise the Termination Option by delivering a Termination Notice to the Tenant on or before the twenty-fifth Anniversary, stating that the Landlord has elected to either terminate or take an assignment of this Lease effective as at the Termination Date. The Landlord acknowledges and agrees that delivery of the Termination Notice shall be irrevocable.
- (c) In the event that the Landlord exercises the Termination Option, the Landlord shall pay the Termination Amount to the Tenant on the Termination Date. For greater certainty, if the Termination Option is exercised on the Waterfall Expiry Date, the Termination Amount shall be deemed to be payable after the transfer described in Section 13.6(f) of the Project Agreement.
- (d) The Landlord and Tenant shall have until the twenty-sixth Anniversary to mutually agree upon the Termination Amount, failing which the Termination Amount shall be finally determined pursuant to the Dispute Resolution Procedure. In respect of the determination of the Fair Market Value, the Parties agree that it shall not include the First Extension Term and the Second Extension Term.

18.2 Tenant Covenants –Termination Option – Termination of Lease

The Tenant covenants and agrees that:

- (a) in the event the Landlord elects to terminate this Lease in accordance with the terms of the Termination Option, such that termination of this Lease is effective as at the Termination Date:

- (i) upon the Termination Date, vacant possession of the Retail Component shall be provided to the Landlord, subject to the rights of Subtenants;
 - (ii) on the Termination Date, the Tenant shall discharge or cause to be discharged any Tenant Mortgage Encumbering the Retail Component, provided that, at the Tenant's direction, the Landlord shall pay that part of the Termination Amount required to obtain any such discharge of a Tenant Mortgage in favour of an Institutional Lender to the Tenant Mortgagee; and
 - (iii) the Tenant shall ensure that each Sublease which does not have an expiry date prior to the Termination Date requires the Subtenant under it to attorn to the Landlord upon termination of this Lease in accordance with its terms; or
- (b) in the event the Landlord elects to take assignment of this Lease in accordance with the terms of the Termination Option, such that assignment of this Lease is effective as at the Termination Date:
- (i) upon the Termination Date, the Tenant shall cause this Lease and all the Subleases to be assigned to the Landlord; and
 - (ii) on the Termination Date, the Tenant shall discharge or cause to be discharged any Tenant Mortgage Encumbering the Retail Component (i) that is with an Institutional Lender, if the Landlord, at its option, does not assume such Tenant Mortgage and provided that, at the Tenant's direction, the Landlord shall pay that part of the Termination Amount required to obtain any such discharge of a Tenant Mortgage in favour of an Institutional Lender to the Tenant Mortgagee, and (ii) that is not with an Institutional Lender.

18.3 Deduction from Termination Amount

- (a) Without derogation from the provisions of Section 18.2, if the Tenant shall be in breach of the provisions of Section 18.2(a)(ii) or 18.2(b)(ii), the Landlord shall be entitled to deduct from the Termination Amount any and all amounts payable to a Tenant Mortgagee whose Tenant Mortgage has not been discharged and for which the Tenant has not provided a direction to pay as permitted in those Sections, which amount shall be determined as of the Termination Date (the “**Default Amount**”).
- (b) In the event that the Default Amount cannot be determined prior to the Termination Date, an amount reasonably estimated by the Landlord shall be deducted from the payment of the Termination Amount and an adjustment shall be made between the Parties on the final determination of the Default Amount, as agreed between the Parties, acting reasonably, or failing agreement, as determined through the Dispute Resolution Procedure.
- (c) The Landlord shall pay from the Default Amount the amounts payable to a Tenant Mortgagee whose Tenant Mortgage has not been discharged and for which the Tenant has not provided a direction to pay as permitted in Section 18.2(a)(ii) or 18.2(b)(ii), as applicable. If the Default Amount is not sufficient to obtain a discharge of any such Tenant Mortgage, the Tenant shall remain liable for the deficiency and, if the Landlord elects to pay the deficiency in order to obtain the discharge, the Tenant shall reimburse the Landlord for the amount paid by the Landlord forthwith. In any event, the Tenant shall pay the reasonable costs incurred by the Landlord as a result of the Tenant’s default. If the Default Amount exceeds the amount required to obtain a discharge of any such Tenant Mortgage, the Landlord shall pay the excess to the Tenant, less the reasonable costs incurred by the Landlord as a result of the Tenant’s default.

18.4 Conditions of Termination Closing

(a) **Condition in Favour of Landlord**

It shall be a condition precedent to the obligation of the Landlord to complete the transaction respecting the termination of this Lease on the Termination Closing, that the Tenant shall have complied with all covenants and obligation to be performed by the Tenant in accordance with Section 18.2 on or before the Termination Closing. If any of the covenants contained in Section 18.2 are not performed or fulfilled on or before 5:00 p.m. on the Termination Date, the Landlord may, by Notice in writing to the Tenant, either:

- (i) terminate its exercise of the Termination Option; or
- (ii) postpone the Termination Date for a six (6) consecutive month period,

without prejudice to any other of its rights.

(b) **Consequences of Failure of Conditions**

The condition set forth in Section 18.4(a):

- (i) is for the sole benefit of the Landlord;
- (ii) is without prejudice to the Landlord's right to damages or any other remedies available to the Landlord pursuant to the terms of this Lease or at Law; and
- (iii) may be waived in whole or in part by the Landlord by Notice to the Tenant on or before 5:00 p.m. on the Termination Date.

If the Landlord does not notify the Tenant on or before 5:00 p.m. on the Termination Date that a condition set forth in Section 18.4(a) has not been satisfied, such condition shall be deemed to have been satisfied.

18.5 Termination Pursuant to Project Agreement

Notwithstanding anything in this Lease to the contrary, both the Landlord and OSEG may terminate this Lease in accordance with the provisions of Article XX, Article XXI and/or Article XXII of the Project Agreement.

ARTICLE XIX SURRENDER

19.1 Surrender

Subject to and in accordance with the provisions of Schedule C and subject to the rights of Subtenants, the Tenant shall at the expiration or sooner termination of this Lease peaceably surrender and yield up to the Landlord, without compensation (unless otherwise provided elsewhere in this Lease or the Project Agreement), all and every part of the Retail Component and all structures, fixtures and equipment which are then on the Retail Lands, and all appurtenances, installations, alterations, repairs, additions and replacements thereto at the time of surrender, all in the state of repair prescribed by Section 7.1, provided that any Subtenant may remove any improvements made by or for the Subtenant on or within a reasonable time after the end of the Term, provided that such removal may be effected without damage to the Retail Component and in the event of any damage resulting therefrom, the Tenant shall make or cause to be made good the same at its own cost and expense.

ARTICLE XX TENANT OVERHOLDING

20.1 Overholding

The Parties mutually covenant that if, at the expiration of the Term, the Tenant shall remain in occupation of the Retail Component, neither such occupation nor the acceptance or non-acceptance of any rental payments by the Landlord shall, in the absence of further and other

agreements in writing between the Parties, constitute the Tenant other than a tenant from month to month whose tenancy is terminable by either the Landlord or the Tenant on six (6) months' written Notice to the other; such tenancy shall be subject to all applicable terms and conditions of this Lease, except as to duration of the Term and the Rent to be paid shall be one hundred and fifty percent (150%) of the Fair Market Value Rent (the "**Overholding Rent**") payable in monthly installments in advance. The Landlord shall have the right to establish the Fair Market Value Rent, but in the event that the Tenant is in disagreement with the Fair Market Value Rent established by the Landlord, the Tenant may refer the Dispute for determination pursuant to the Dispute Resolution Procedure. Until any such Dispute has been finally determined pursuant to the Dispute Resolution Procedure, the Tenant shall pay the Overholding Rent based on the Fair Market Value Rent as established by the Landlord when due pursuant to this Section 20.1 and the Parties shall effect any necessary adjustments between them following the determination of the Dispute pursuant to the Dispute Resolution Procedure.

ARTICLE XXI
WAIVER

21.1 Waivers

No waiver of any provision of this Lease is binding unless it is in writing and signed by all the Parties to this Lease, 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 Lease will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Lease will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision. For further certainty, the failure of the Landlord or the Tenant to insist on one or more occasions upon the strict performance of any of the covenants, terms or conditions of this Lease shall not be construed as a waiver or a relinquishment for the future of such covenant, term or condition and the acceptance of Rent by the Landlord with knowledge of the breach by the Tenant of any covenant, term or condition of this Lease shall not be deemed a waiver of such breach.

ARTICLE XXII
QUIET ENJOYMENT

22.1 Quiet Enjoyment

The Landlord covenants with the Tenant that the Tenant shall and may peaceably possess and enjoy the Retail Component for the Term hereby granted without any hindrance, interruption or disturbance from the Landlord or any Person or Persons claiming by, from or under the Landlord, subject to the terms and conditions of this Lease.

22.2 Heritage Easement

- (a) The Tenant 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 Total Lands. As a condition of the Heritage Approvals (as defined in the Project Agreement), 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) The Tenant further acknowledges receipt of a copy of the New OHT Easement and the terms therein respecting regulated activities within the “Setting Lands”, the “Views” and the “Framing Lands” which form part of the New OHT Easement Lands.
- (c) The Tenant shall:
 - (i) provide, obtain and register any postponement agreements or other agreements that the Ontario Heritage Trust or the Landlord may require to ensure that the New OHT Easement is a first encumbrance on title to the New OHT Easement Lands in priority to this Lease and to all mortgages,

charges, subleases and other encumbrances or agreements related to, derived from or affecting this Lease; and

- (ii) comply with the requirements of the New OHT Easement within the Setting Lands, the Views and the 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 the Framing Lands without the prior written approval of the Landlord in its Discretion and the Ontario Heritage Trust.

ARTICLE XXIII **EXPROPRIATION**

23.1 Expropriation

- (a) If, during the Term, the Retail Component or any portion thereof shall be Expropriated by any Expropriating Authority, then the following provisions shall apply:
 - (i) the Landlord or the Tenant acting separately or together may make representations to the Expropriating Authority concerning the Expropriation and may, to the extent that it is legally possible to do so, appeal the decision of the Expropriating Authority, and if the Tenant is required by applicable Law to have the consent or permission of the Landlord in order to take advantage of the provisions of this subparagraph, then the Landlord hereby grants such consent or permission to the Tenant and shall, forthwith upon receiving a written request from the Tenant, deliver to the Tenant such written evidence of its consent or permission as may be required by the Tenant in order to take advantage of its rights under this subparagraph to the fullest extent possible;
 - (ii) if the whole of the Retail Component shall be Expropriated by the Expropriating Authority, then at the option of the Tenant signified by

written Notice to that effect delivered to the Landlord, this Lease shall cease and terminate on the day when possession of the Retail Component or any part thereof shall be taken by the Expropriating Authority and the Tenant shall be liable for Rent and for any other amounts payable hereunder only up to the day when possession of the Retail Component or any part thereof shall be taken by the Expropriating Authority;

- (iii) if only part of the Retail Component shall be taken by the Expropriating Authority and the Landlord and the Tenant, acting reasonably, agree that the remainder of the Retail Component which is not taken by the Expropriating Authority is no longer capable of being operated for the purpose for which it is operated at that time in a commercially reasonable manner, then at the option of the Tenant signified by written Notice to that effect delivered to the Landlord, this Lease shall cease and terminate on the day when possession of the Retail Component or any part thereof shall be taken by the Expropriating Authority and the Tenant shall be liable for Rent and for any other amounts payable hereunder only up to the day when such possession shall be taken by the Expropriating Authority;
 - (iv) any compensation or damages paid by the Expropriating Authority in respect of such Expropriation shall be paid to Landlord and Tenant as determined in accordance with the provisions of the *Expropriations Act* (Ontario); and
 - (v) in the event of a temporary Expropriation, the Tenant shall remain liable under this Lease.
- (b) For the purposes of Section 23.1(a), the definition of Expropriating Authority shall exclude the City, except in situations where the City Expropriates a non-material part(s) of the Retail Component for purposes such as road widening and utility pole installations.

23.2 Dispute

In the event of any Dispute between the Landlord and the Tenant as to any matter to be agreed upon by the Landlord and the Tenant in accordance with Section 23.1(a)(iii), such Dispute shall be determined through the Dispute Resolution Procedure.

ARTICLE XXIV NOTICES

24.1 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 Landlord:	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
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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
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If to the Tenant: 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, Ontario
K7K 6Y3

Attention: Beth Gearing
Fax: 1-800-263-4213
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. 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. 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.

Any Notice permitted or required to be given by the Landlord may be given by the Landlord's Representative. Notwithstanding the foregoing, the Parties acknowledge and agree that the Landlord's Representative may submit the issue of the giving of any Notice, or the contents of any Notice, to Council for its determination.

ARTICLE XXV
DISPUTE RESOLUTION PROCEDURE

25.1 Dispute Resolution Procedure

Except for any Excluded Dispute or as otherwise provided in this Lease, any Dispute arising out of or in connection with this Lease shall be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE XXVI
MISCELLANEOUS

26.1 Excavation

If any excavation shall be made or contemplated for building or other purposes upon property adjacent to the Retail Component, the Tenant either:

- (a) shall afford to the Persons causing or authorized to cause such excavation the right to enter upon the Retail Component for the purpose of doing such work as the Landlord, acting reasonably, shall consider to be necessary to preserve any of the walls or structures on the Retail Component from injury or damage and to support any of the same by proper foundations, provided such do not impair or unduly restrict construction and operation of the Retail Component, or
- (b) shall do or cause to be done all such work, at the Landlord's expense, as may be necessary to preserve any of the walls or structures of the Retail Component from injury or damage and to support the same by proper foundations.

The Landlord shall indemnify the Tenant with respect any claims against the Tenant by the Subtenants for damages to the Retail Component resulting from any such excavation or work.

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 the other Party with respect to the occurrence of the Relief Event within fifteen (15) days of its occurrence, the Party claiming the Relief Event shall be entitled to an extension of time with respect to its obligations directly and adversely affected by the Relief Event equal to the period of time during which the Relief Event occurred.

26.3 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 Lease shall constitute the Parties as partners or joint venturers nor constitute one Party as the agent of the other Party.

26.4 Landlord's Acknowledgment

Each of the Landlord and the Tenant agrees to provide to the other, within thirty (30) days after receipt of written request from the Tenant or its Tenant Mortgagee, or the Landlord, as the case may be, a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect, or if there have been modifications of this Lease, that this Lease is in full force and effect as modified and identifying the modifications;
- (b) the dates to which the Rent has been paid hereunder; and
- (c) that, so far as the maker of the statement knows, the Party who requested the statement is not in default under the provisions of this Lease or, if in default, the particulars thereof.

26.5 No Right of Set-Off

The Tenant expressly waives the benefits of section 35 of the *Commercial Tenancies Act* (Ontario) permitting the Tenant to claim a set-off against Rent for any cause whatsoever.

26.6 Registration

All registration costs required to be paid in order to cause this Lease to be properly registered in the appropriate Land Registry Office in Ontario shall be paid by the Tenant. Any such registration shall be in a form Approved by the Landlord. The Tenant shall not register this Lease on title to any portion of the Total Lands other than the Retail Component, as the latter is described in the R-Plan deposited in the applicable Land Titles Office.

26.7 Amendments

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

26.8 City as Municipality

- (a) Nothing in this Lease derogates from, interferes with or fetters the exercise by the City of all of its rights and responsibilities as a municipality or imposes any obligations on the City in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities (whether discretionary or mandatory). Nothing contained in this Lease derogates from, interferes with or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights and responsibilities or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Lease.

- (b) No communication or dealing between the Tenant and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City shall be deemed to be a communication or dealing under the

provisions of this Lease between the Tenant and the Landlord as Parties to this Lease, or to effect the Landlord with notice of any such communication or dealings. It is intended and agreed that the Landlord acts solely in its capacity as landlord under this Lease and any communication or dealing between the Landlord and the Tenant as Parties to this Lease will only be effective if delivered in accordance with the Notice provisions set out in this Lease. No communication or dealing between the Landlord as a Party to this Lease and the Tenant as a Party to this Lease will relieve the Tenant from the responsibility of discharging its lawful obligations to the City imposed by Law or in any other lawful manner separate and apart from the obligation of the Tenant imposed by this Lease.

- (c) Nothing contained in this Lease shall derogate from the obligations of the Tenant and the rights of the City as a planning authority pursuant to the *Planning Act* (Ontario), including obligations of the Tenant to enter into agreements respecting Section 41 of the *Planning Act* (Ontario).

26.9 Collective Agreements

- (a) In connection with the Retail Component, the Tenant shall not be bound by collective agreements to which the Landlord is bound.
- (b) The Tenant shall not be responsible for the compliance of any Subtenant with the collective agreements to which the Landlord is bound.

26.10 Confidentiality and Access to Information

- (a) 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, professional advisors, an assignee pursuant to Article XIII or, in the case of the Tenant, a Tenant Mortgagee to the extent necessary to enable such Party to perform (or to cause to be performed) or to enforce such Party's rights or obligations under this Lease, provided such Affiliates, advisors, assignee or Tenant Mortgagee, as applicable, are subject to

similar confidentiality obligations. The provisions of this Section will not restrict the Tenant from providing Confidential Information to contractors and sub-contractors and actual or potential lenders and insurers to enable the Tenant to perform (or cause to be performed) its rights and obligations under this Lease, provided such Persons are subject to similar confidentiality obligations as provided herein.

- (b) The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
- (i) which the other Party confirms in writing is not required to be treated as Confidential Information;
 - (ii) which is or comes into the public domain otherwise than through any disclosure prohibited by this Lease;
 - (iii) 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
 - (iv) to the extent consistent with any City policy the details of which have been provided to the Tenant in writing prior to the disclosure of the Confidential Information to the City and subject to the Tenant's confirmation in writing that the Confidential Information is not required to be treated as such.

- (c) Unless otherwise required by any Law or any Authority, neither Party shall make or publish any press release respecting the Retail Project, except as otherwise mutually agreed upon between the Parties.
- (d) The Tenant acknowledges that information provided to the Landlord is subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and that any confidential, proprietary, commercial, scientific or similar information, the disclosure of which would reasonably cause the Tenant injury, should be identified as such when provided to the Landlord. In respect of such information, the Tenant shall also provide the City with the rationale setting forth reasons why such information should not be released under this legislation or successor legislation in the event that the City receives a request to release such information under this legislation or successor legislation.

26.11 Approvals

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

- (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 26.11(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 Lease shall be resolved through the Dispute Resolution Procedure.

26.12 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 Lease.

26.13 Successors and Assigns

- (a) This Lease enures to the benefit of and binds the Parties and their respective successors and permitted assigns according to the purport and intent of their respective covenants and agreements.
- (b) If at any time or from time to time, except in the case of Tenant Mortgages (other than as provided in Section 16.3 or Section 16.5), the Tenant makes any Disposition of this Lease in accordance with Article XIII, the Tenant shall ensure that the assignee enters into an agreement in form and in substance satisfactory to the Landlord, and subject to the Landlord's Approval, whereby it assumes all liabilities and obligations of the Tenant hereunder and acknowledges the Landlord's Security Interest.

26.14 Bilingualism

The City of Ottawa recognizes both official languages as having the same rights, status and privileges, and is committed to providing equal treatment to people with respect to the use and benefit of City services, programs and goods in a manner that respects their linguistic preferences. The Tenant acknowledges the importance of recognizing the equality of both official language groups and the Tenant agrees to use commercially reasonable efforts to fulfil the spirit of the City's bilingualism policy as set out above in the direct delivery by it of its services to its customers.

26.15 Representatives

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

- (a) each Party shall appoint a Representative to exercise the functions and powers of such Party in relation to the Retail Project which are identified in this Lease as functions or powers to be carried out by such Party's Representative and will also exercise such other functions and powers of the Party under this Lease as such Party may notify the other Party in writing from time to time;
- (b) the Landlord's Representative will be entitled at any time by Notice to the Tenant's Representative to authorize any other Person to exercise the functions and powers delegated to the Landlord's Representative pursuant to this Section 26.15, either generally or specifically, and the Tenant will be entitled at any time by Notice to the Landlord's Representative to authorize any other Person to exercise the functions and powers delegated to the Tenant's Representative pursuant to this Section 26.15, either generally or specifically. Any act of any such Person will, for the purposes of this Lease, constitute an act of the applicable Representative and all references to such Representative in this Lease (apart from this Section) will be taken as reference to such Person so far as they concern matters within the scope of such Person's authority;

- (c) a Party may by Notice to the other Party change its 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 other Party in the execution of its obligations under this Lease);
- (d) during any period when no Representative has been appointed in respect of a Party (or when the Representative is unable through illness, incapacity or other reason whatsoever to carry out or exercise the Representative's functions under this Lease), the Party will carry out the functions which would otherwise be performed by the Representative; and
- (e) except as previously notified in writing before such act by a Party to the other Party, a Party will be entitled to treat any act of the other Party's Representative in connection with this Lease within the scope of such Person's authority as being expressly authorized by the Party and will not be required to determine whether an express authorization has in fact been given.

26.16 Review, Approval, Inspection or Audit by the Landlord

If any review, approval, inspection, examination or audit is provided, performed or made by or on behalf of the Landlord under, pursuant to or in respect of this Lease, then with the exception of any express written consent or approval by the Landlord of a specific act or conduct by the Tenant that, in the absence of such consent or approval, would constitute a breach by the Tenant of any of its obligations under this Lease:

- (a) such review, approval, inspection, examination or audit will be for general compliance only; and
- (b) no such review, approval, inspection, examination or audit now or in the future, and whether or not negligent on the part of the Landlord (including the Landlord Indemnified Parties):

- (i) shall relieve or exempt the Tenant from any of its obligations under this Lease or at Law; or
- (ii) shall constitute a waiver or release by the Landlord of any duty or liability owed by the Tenant to the Landlord under this Lease or of any indemnity given by the Tenant to the Landlord under this Lease.

26.17 Non-Arm's Length Contracts

Notwithstanding anything contained in this Lease to the contrary, and without derogation from specific provisions contained in this Lease, any agreement or arrangement entered into by the Tenant with a Person not at Arm's Length shall contain terms and conditions consistent with agreements entered into with Persons dealing at Arm's Length and shall require the Landlord's prior Approval with respect to conformity with such terms and conditions that would be applicable to an Arm's Length transaction in similar circumstances, provided that any non-Arm's Length transaction in which both the revenue and expense sides of the non-Arm's Length transaction are included in the "Closed System" pursuant to the Project Agreement, copies of the agreements for which have been (or will, as they are entered into, be) provided to the Landlord, shall not be required to be on terms and conditions that would be applicable to an Arm's Length transaction in similar circumstances.

26.18 Counterparts

This Lease and all documents contemplated by or delivered under or in connection with this Lease 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.

26.19 Delivery by Fax or Electronic Mail

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

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

CITY OF OTTAWA
(Landlord)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

**LANSDOWNE RETAIL GP INC. in its
capacity as General Partner of
LANSDOWNE RETAIL LIMITED
PARTNERSHIP**
(Tenant)

Per: _____
Name: John Ruddy
Title: President

Per: _____
Name: Roger Greenberg
Title: Executive Vice-President

I/We have authority to bind the Corporation

Schedule A
Dispute Resolution Procedure

Except as otherwise provided in this Lease, any Dispute in respect of this Lease shall be resolved as follows:

- (a) the Parties shall attempt to resolve such Dispute by negotiations, which shall be initiated by one of them giving to the other written Notice containing details of the Dispute and the other shall provide written reply thereto within ten (10) Business Days;
- (b) if, for any reason, the Dispute remains unresolved after the expiration of the aforesaid ten (10) Business Day period, either Party may provide a written request to the other Party 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
- (c) 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 (b), the provisions of this Schedule are a complete defence to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any Dispute arising under or in connection with this Lease.

The Parties shall continue to fulfill their respective obligations in respect of this Lease during the Dispute Resolution Procedure.

This Schedule shall survive any termination of this Lease.

Schedule B
Urban Park, Site and Components

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

Schedule C
Surrender Schedule

1. Transition and Close Out of Agreement

- 1.1. All documents, legal or otherwise, requiring transfer as part of the reversion phase will be delivered to the Landlord on or before the termination of this Lease.
- 1.2. The Landlord will require that the Tenant conduct a pre-transfer condition audit to ensure the Standard has been maintained and identify any deficiencies requiring rectification. The audit shall be conducted one (1) year prior to the expiry of the Term and will allow for the correction of any deficiencies and the completion of all related documentation.
- 1.3. The Tenant shall arrange for the stand-alone operation of the Retail Component's building automation system not less than thirty (30) days prior to the transfer of ownership. For the purposes of this Schedule, stand-alone operation means:
 - 1.3.1. the building automation system is disconnected from any off-premises network, not owned and operated by the City;
 - 1.3.2. the building automation system is capable of controlling and monitoring the Retail Component consistent with the established profile of operation implemented during this Lease;
 - 1.3.3. an appropriate operator workstation interface has been provided by the Tenant on-site and is operating normally; and
 - 1.3.4. the Landlord has been provided with unrestricted access (including password authority at the system administrator level) to the Retail Component's building automation system and to the full range of system features and capabilities associated with the installed hardware and software on the site.

2. Reversion Phase

2.1. Retail Component Reversion

2.1.1. The reversion of the Retail Component will be conducted through typical legal channels on the date agreed upon by the Parties. The Landlord's and the Tenant's legal representatives will be required to co-ordinate the activity to ensure completion of the transfer by the due date taking into consideration all required Landlord approval processes.

2.2. Responsibility for Building Operations Staff

2.2.1. The Tenant's building operations staff will not be transferred to any City-owned facility as part of this Lease. Nothing herein constitutes an offer of employment to any staff or contractor employed/contracted by the Tenant.

2.2.2. The Tenant's building operations staff will be required to familiarize and train a minimum of two (2) Landlord employees in the entire operation of the Retail Component. The Tenant's staff will be required to familiarize Landlord staff with all aspects of the site, including contracts, maintenance agreements, policies, procedures, obligations, upcoming work and items requiring attention. The Tenant hereby commits to a thirty (30) day commitment to training and orientation for Landlord staff.

2.2.3. With the Landlord's designated staff in attendance, the Tenant shall spend twenty-four (24) hours (three (3) eight (8) hour days) of continuous supervision of plant operations. During this period, the Landlord's representatives will be in attendance for instruction in operation and maintenance under the Tenant's supervision.

2.3. Code Compliance and Due Diligence Inspection

2.3.1. Prior to the expiry of the Lease, the Landlord shall, at its expense, arrange for a comprehensive due diligence inspection of the Retail Component by an appropriate consultant or team of consultants retained for that purpose. The due diligence inspection shall be conducted not less than ninety (90) days prior to the date of termination of this Lease and shall include, but not be limited to, the following elements:

- Architectural/Structural/Envelope Systems
- Accessibility Compliance
- Site Condition and Landscape
- Mechanical Systems
- Electrical Systems
- Life-safety Systems
- Vertical Transportation Systems

2.3.2. Prior to the scheduled date(s) of the due diligence inspection, the Tenant shall ensure that all appropriate manuals, certificates, drawings, records and other documents are on-site, properly bound, displayed or stored and that these documents are legible and made available to the consultant team and/or Landlord personnel engaged in the inspection process.

2.3.3. Prior to the scheduled date(s) of the due diligence inspection, the Tenant shall ensure that readable lamacoid plates are provided on all electrical and mechanical equipment. The lamacoid plate layout, condition, wording and accuracy will be confirmed by the Landlord during the due diligence inspection.

2.3.4. At the conclusion of the due diligence inspection, and upon receipt of a final report from the consulting team, the Landlord will advise the Tenant in writing of any deficient condition which prevents safe and proper occupancy, or is in violation of prevailing code or legislation, subject to any “grandfathering” permitted by such code or legislation. The Tenant shall be required to correct

such identified deficient conditions to the satisfaction of the Landlord, and at the sole expense of the Tenant, prior to the expiry of the Lease.

2.4. Utility Account Transfer

2.4.1. The Tenant shall arrange for the transfer of all utility accounts into the name of the Landlord to be effective on the last day of the Term. Any agreement struck with a utility company during the course of this Lease should be transferable to the Landlord without penalty or cost.

2.5. Transfer of Records

2.5.1. All maintenance records, manuals, drawings, performance logs and site documentation related to the Retail Component will be transferred to the Landlord on the Lease termination date and will become the property of the Landlord.

2.5.2. The Tenant will provide a plastic laminated and framed schematic flow diagram with all valves marked and tagged as installed in mechanical equipment rooms and other spaces throughout the Retail Component.

2.5.3. The Tenant shall provide three (3) complete operation and maintenance equipment manuals for the Retail Component to be turned over to the Landlord at the end of this Lease. All manuals will be bound and labelled and will include all requisite certificates, inspection reports and other documentation as otherwise described herein.

2.5.4. All records will be in a good state of repair, will be accurate, up-to-date and materially complete prior to the expiry of this Lease. Any documentation requiring replacement to meet this requirement will be provided at the sole cost of the Tenant.

2.5.5. A list of pertinent contact names and numbers will be provided by the Tenant to the Landlord at the conclusion of this Lease.

2.6. Transfer of Existing Service and Maintenance Agreements

2.6.1. The Tenant shall ensure that all existing service and maintenance agreements established for the Retail Component expire normally, without penalty or automatic renewal, on or prior to the termination of this Lease.

2.6.2. The Tenant shall provide the Landlord with a comprehensive listing of all existing service and maintenance agreements, including the name of each service vendor, and the terms, conditions and schedules associated with each agreement, at the start of the final Lease Year.

2.6.3. The Landlord shall undertake negotiations for new service and maintenance contracts on its own initiative and with implementation dates coincident with the termination of this Lease.

Schedule D

Heritage Easement Matters

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

Schedule E

Tenant Mortgagee Retail Lands Mortgage Value Principles

Included as a part of this Schedule is a blank pro forma template for a Development Approach (Land Residual) valuation in determining the fair market value of the Retail Lands. This is to be populated with data at the time of determination of fair market value of the Retail Lands, as described below. The numbering in list below corresponds to the numbering in the pro forma.

2. Construction Costs

Items 2.1 to 2.5 will be populated with the actual amounts attributable to the Retail Component as a baseline, adjusted by the Construction Cost Index from the date of Total Completion of the Retail Component to the time of the determination of fair market value of the Retail Lands.

3. Subtenant Inducement Line

This will be based on amounts, as set out in the financial statements of the Tenant, spent on Subtenants in occupation on the date of the determination of the fair market value of the Retail Lands, and excluding free rent, if any.

4. Miscellaneous Carry

Item 4.1 shall be the amount of a quote provided by an independent broker of insurance for a policy of insurance for the development of a project of a similar nature to the Retail Component.

Item 4.2 shall be the amount of the realty taxes (if any) relating to the construction period only.

Item 4.3 shall be the amount of the Permits and development charges, taking into account any credits for demolitions. The development charges will be set based on net area being added to the site.

5. Professional Fees

The architectural and engineering costs, Item 5.1, are to be calculated based on 7.5% of Items 2 and 3. Item 5.2 is a flat administration fee of \$500,000, adjusted by the Construction Cost Index from the date of Total Completion of the Retail Component to the time of the determination of fair market value of the Retail Lands (Item 5.2), in accordance with industry norms.

6. Project Fees

Item 6.1 will be calculated as 3% of Items 2, 3, 4.3 and 5.1.

Item 6.2 will be calculated as 2.5% of Items 2, 3, 4.3 and 5.1.

Item 6.3 will be calculated as a percentage of the base rent to be paid by Subtenants in occupancy on the date of determination of the fair market value of the Retail Lands as follows:

- for Subleases having a rentable area less than or equal to 5,000 sq ft:
 - during the first through fifth year of such Subleases, four percent (4%) of the base rent to be paid, and
 - during the sixth through tenth year of such Subleases, two percent (2%) of the base rent to be paid; and
- for Subleases having a rentable area greater than 5,000 sq ft:
 - during the first through fifth year of such Subleases, three percent (3%) of the base rent to be paid, and

- during the sixth through tenth year of such Subleases, one and a half percent (1.5%) of the base rent to be paid.

7. Financing

Items 7.1 and 7.2 will be calculated as a percentage of loan commitments at the time of the determination of the fair market value of the Retail Lands, as per industry norms.

Item 7.3 will be calculated on the basis of the market rate applicable at the time of determination of the fair market value of the Retail Lands for a 24 month construction period.

8. Subtotal Development Costs

This is the total of the above costs.

9. Developer Profit

Based on 20% of above costs excluding contingency

10. Total Development Costs

Summation of all applicable costs.

11. Leasable Area

Amount estimated at 360,000 sq .ft. as per the Zoning By-Law and actually based upon the as - built plans and specifications for the Retail Component.

12. Net Revenue

Actual annual net income from Subleases with “market rents” imputed for vacant space (if any). Note that these rents reflect access to parking for 200 spaces at no additional cost.

13. Inducement Recovery

Annual income recovered (if any), separate from Subleases, associated with all forms of inducements to Subtenants.

15. Vacancy Allowance

Stabilized at 5% and is applied to Sublease and inducement recovery income, but excludes parking revenue. This rate is at the high end of the range typically applied and thereby considers an allowance for vacancy on operating recoveries and realty tax expenses for periods of vacancy.

16. Net Parking Revenue

Forecast of stabilized annual net income from parking based on review of actual parking net income in previous years attributable to the Retail Component.

17. Net Revenue Project

Sum of all income sources stabilized in accordance with accepted industry practices for year one occupancy.

18. Capitalization Rate

This rate of return is to be taken from the market place at the time of determination of the fair market value for the Retail Lands.

19. Capitalized Value

Net Revenue Project divided by the capitalization rate.

20. Less Development Costs

Reduce the capitalized value by the sum of all development costs.

21. Land Residual Value

Fair market value of the Retail Lands as per development process.

22. Land Rent

Land Residual Value times the lease rate, being 5% net of any costs and realty taxes.

Retail Development Pro Forma Lansdowne Park Ottawa, Ontario		
		Retail Proforma
	PROJECT COSTS	
1	LAND	
	1.1 Initial Purchase Price	\$ 0
	1.2 Other Land Costs	\$ 0
		\$ 0
2	CONSTRUCTION	
	2.1 Land Servicing (Parking)	\$ ●
	2.2 Site Servicing	\$ ●
	2.3 Public Realm	\$ ●
	2.4 Base Building	\$ ●
	2.5 Tenant Work Construction	\$ ●
		\$ ●
3	SUBTENANT INDUCEMENTS (Fit-up costs)	\$ ●
4	MISCELLANIOUS CARRY	
	4.1 Insurance	\$ ●

	4.2 Realty Taxes	\$ ●
	4.3 Building Permits & Development Charges	\$ ●
		\$ ●
5	PROFESSIONAL FEES	
	5.1 Architecture, Engineering & Other	\$ ●
	5.2 Administration	\$ ●
		\$ ●
6	PROJECT FEES	
	6.1 Construction Management	\$ ●
	6.2 Development	\$ ●
	6.2 Leasing Fees	\$ ●
		\$ ●
7	FINANCING	
	7.1 Commitment Fees	\$ ●
	7.2 Letter of Credit Fees	\$ ●
	7.3 Interest	\$ ●
		\$ ●
8	SUBTOTAL DEVELOPMENT COSTS	\$ ●
9	DEVELOPER PROFIT (20% of cost)	\$ ●
10	TOTAL DEVELOPMENT COSTS	\$ ●
	PROJECT REVENUES	
11	LEASEABLE AREA	360,000
12	NET REVENUE -	\$ ●
13	INDUCEMENT RECOVERY	\$ ●
14	NET REVENUE - RETAIL	\$ ●
15	LESS VACANCY ALLOWANCE OF 5%	\$ ●
16	NET PARKING REVENUE	\$ ●
17	NET REVENUE PRJT (RETAIL&PARKING)	\$ ●
	VALUES	

18	<i>CAPITALIZATION RATE</i>	\$ ●
19	<i>CAPITALIZED VALUE</i>	\$ ●
20	<i>LESS DEVELOPMENT COSTS</i>	\$ ●
21	<i>LAND RESIDUAL VALUE</i>	\$ ●
22	<i>ANNUAL LAND RENT (Based on 5%)</i>	\$ ●

Schedule F
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 Tenant 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 pursuant to the Project Agreement, 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.