



FOR RECOMMENDATION

PUBLIC

OPEN SESSION

TO: Academic Board

SPONSOR: Scott Mabury, Vice President, University Operations
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PRESENTER: Elizabeth Cowper, Chair of the Planning and Budget Committee
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DATE: September 9, 2013 for October 3, 2013

AGENDA ITEM: 10

ITEM IDENTIFICATION:

UTSC – Pan-Am Aquatics and Athletics Centre: Shareholder and Co-Ownership Agreement

JURISDICTIONAL INFORMATION:

The Academic Board is responsible for planning matters and agreements with external bodies. The Planning and Budget Committee, a Standing Committee of the Board, considers matters that have an impact on relationships amongst divisions and relationships between the University and the community at large. It has specific jurisdiction for approval, in principle, of the incorporation of associated organizations and research ancillaries. Section 4.5.2 of the Planning and Budget Committee Terms of Reference states that the Committee recommends to the Board templates for agreements with external bodies. Individual agreements that do not conform to the template are recommended to the Board by the Committee and confirmed by the Executive Committee.

GOVERNANCE PATH:

For the Approval of the Agreement

1. Planning and Budget Committee - September 16, 2013 (for recommendation)
2. UTSC Campus Affairs Committee – September 17, 2013 (for information)
3. UTSC Campus Council – October 8, 2013 (for information)
- 4. Academic Board – October 3, 2013 (for recommendation)**
5. Executive Committee – October 23, 2013 (for endorsement and forwarding)
6. Governing Council – October 30, 2013 (for approval)

For the Approval of the Establishment of the Joint Corporation

1. UTSC Campus Affairs Committee – September 17, 2013 (for information)
2. Business Board – September 23, 2013 (for recommendation)
3. UTSC Campus Council – October 8, 2013 (for information)

PREVIOUS ACTION TAKEN:

Planning and Budget Committee – January 12, 2011

The Planning and Budget Committee recommended to the Academic Board, subject to the availability of funding for the land remediation of the site,

- THAT the Project Planning Report for the UTSC Sport and Recreation Centre, as accommodated in the Pan American Aquatics Centre, Field House and Canadian Sport Institute Ontario to be built at the University of Toronto Scarborough, dated January 6, 2011, be approved in principle.
- THAT the site northeast of the corner of Military Trail and Morningside Avenue be assigned to the Pan American Aquatics Centre, Field House and Canadian Sport Institute Ontario Project.
- THAT the total project cost for the UTSC portion be \$37.51 Million (2008 dollars) out of a total project cost of \$170.5 Million (2008 dollars).
- THAT the funding costs for UTSC portion of \$37.51 Million (2008 dollars) comprise: \$30 Million acquired through a UTSC/student levy and, \$7.51 Million from UTSC/U of T Central

Business Board - January 31, 2011

The Business Board approved the remediation of the land and implementation of the project by Infrastructure Ontario.

University Affairs Board – February 1, 2011

Subject to the availability of funding for the land remediation of the site, the University Affairs Board approved in principle the Project Planning Report for the UTSC Sport and Recreation Centre, as accommodated in the Pan American Aquatics Centre, Field House and Canadian Sport Institute Ontario to be built at the University of Toronto at Scarborough, dated January 6, 2011.

Executive Committee – February 7, 2011

The Executive Committee endorsed the same recommendation.

Governing Council – February 17, 2011

Governing Council adopted the recommendation.

Business Board - Monday, October 24, 2011

The Vice President, Business Affairs was authorized to enter into the following agreements in connection with the University of Toronto Scarborough Sport and Recreation Centre Project, to be negotiated to the satisfaction of the Vice-President, Business Affairs:

- (a) Transfer and Land Consolidation Agreement (the “TLCA”) with the City of Toronto (the “City”) to effect the disposition by each of the City and University to the other of a 50% interest in the applicable City land and University of Toronto land, at nominal value, and the resultant consolidation of the lands to be held as tenants-in-common each with a fifty percent interest share. The authority to enter into the TLCA shall include authority to enter into ancillary agreements such as license, encroachment, easement, closing and other agreements required to effect additional site requirements related to parking, maintenance and access;
- (b) a Shared Ownership and Facility Management Agreement with the City to govern the ownership use, operation and management of the Pan-Am Aquatics Centre (PAAC) project and such other ancillary agreements and documents as may be required to effect the intent and requirements of the PAAC project, the terms of which shall be consistent with the intent set out herein and the financial parameters determined and approved by Governing Council.
- (c) Such other agreements as may be necessary to complete the project.

Similar to the process undertaken for previous related Pan Am agreements, the University's external counsel, Cassels Brock, working with our University team reviewed and negotiated the agreements and recommended the draft shareholder and co-ownership agreements for adoption by the Governing Council.

The University's finance, labour and tax teams (including external advisors) have been briefed on the underlying concepts of the agreements.

HIGHLIGHTS

Attached, members will find copies of:

- Appendix 1: Term Sheet Co-Ownership Agreement
- Appendix 2: Term Sheet Shareholder Agreement

In 2009, the City entered into a Multi-Party Agreement (the “MPA”) with key parties, including the Federal and Provincial governments, and committed to delivering certain capital projects in relation to hosting the 2015 Pan American and Parapan American Games (the “2015 Games”). This included a commitment to build an aquatic centre and field house for use during the 2015 Games. In November 2012, City Council endorsed the establishment of a joint not-for-profit corporation with the Governing Council of the University of Toronto, for the purposes of operating the new facility, and authorized staff to enter into related negotiations with the University of Toronto.

Since early 2013 both parties have been working together on the establishment of a corporation for the Toronto Pan Am Sports Centre (the “Centre”) to be jointly owned by the City of Toronto and the University of Toronto (“the University”). This committee has been establishing the terms and conditions for co-ownership and shareholder agreements between the City and the

University, including the governance structure for the corporation; the City's appointments to the Board of Directors of the corporation; and related governance and financial matters.

Post the 2015 Games the facility will move into legacy operations, the Centre will have numerous uses by the University, City and other organizations and clubs including recreational programming and services, fitness training and high performance athlete training.

Substantial completion of the Centre is scheduled for July of 2014. Consequently, it is expected to be operational for use by the general and university communities in September 2014. The Toronto Organizing Committee for the 2015 Pan American and Parapan American Games ("Toronto 2015") will have exclusive use of the Centre from May 15, 2015 to September 15, 2015 to prepare for and stage the 2015 Games and to return the Centre to the City and University at the end of that period.

The co-ownership and shareholder agreements between the City and University are to be executed in 2013. This will permit implementation of the governance structure as well as establishment of a management team and operational plans and procedures. These critical elements must be in place on a schedule that aligns with the time lines for the 2015 Games.

Joint Corporation

City and University staff have been consulting one another on the establishment of a joint corporation pursuant to the Business Corporations Act (Ontario) and have confirmed that this approach is an appropriate model for TPASC. The Parties were successful in obtaining a Provincial amendment to O. Reg. 609/06 under the City of Toronto Act, 2006 to provide the City with the legal authority to establish such a joint corporation.

The arrangements for the joint corporation have will come forward to the Business Board on September 23, 2013, for its recommendation.

Required Agreements

Agreements between the City and the University are required as part of the implementation of the joint corporation:

- A Co-Ownership Agreement will set out the fundamental principles, rights and obligations of the City and University as Co-Owners of TPASC along with the terms and processes for the Co-Owners to make decisions and provide oversight of the Project.
- A Unanimous Shareholders' Agreement will set out the relationship between the City and University as Shareholders of the corporation, the fundamental principles of the Shareholders regarding the Board of TPASC, and Shareholder requirements for the responsibility and accountability of the Board. The TPASC Board will be a party to, and will be governed by the provisions of, the Unanimous Shareholders' Agreement.

The City and University will have equal representation on all boards and committees and all decisions shall be unanimous.

It is proposed that these Agreements be finalized substantially on terms and conditions as set out in the term sheets attached as Appendix 1 and 2 to this Report.

FINANCIAL IMPLICATIONS:

The University will fund not less than 17% and the City will fund not less than 31% of the operating expenses of the TPASC on an annual basis, as established in previous agreements. The remaining 52% of required operating funding will come from Third Party Users: 30% from the Canadian Sport Institute Ontario (“CSIO”) and high performance sport users (national and provincial teams) and 22% from other Third Party Users.

Any operating and non-operating revenue surpluses and shortfalls will be allocated to the City and the University on a 50/50 basis. Surpluses will be used firstly to offset revenue shortfalls and actual operating costs deficiencies, and secondly to reduce the usage costs.

The MPA requires the establishment of the Toronto 2015 Legacy Fund, capitalized by Ontario and Canada, which will contribute to the operation and maintenance costs of designated Legacy Facilities, including the Centre. It is anticipated that the Centre will receive contributions of approximately \$4 million per year from the Legacy Fund.

A capital reserve for the Centre will be established and maintained for the purpose of funding major maintenance and capital expenditures. Approximately \$1.2 million of the annual Legacy Fund contributions will be allocated to the capital reserve for this purpose. TPASC will also set aside reserves for capital expenditures and the City and the University will make further contributions as necessary and in accordance with capital maintenance plans to ensure sufficient funding is available for anticipated future maintenance and capital expenditures. The balance of the Legacy Fund contributions will be used to off-set usage of the Centre by CSIO and other high performance sport organizations.

The City is responsible for the costs and all ongoing maintenance and post-remediation monitoring of the barrier wall and landfill gas venting systems, and any environmental monitoring associated with the perpetual care of the primary waste mound located on City lands.

RECOMMENDATION

Be It Recommended to the Governing Council:

THAT whereby a corporation known as the Toronto Pan Am Sports Centre Inc. (TPASC) will be jointly established by the City of Toronto and the University of Toronto:

1. THAT the Co-Ownership Agreement (draft dated September 12, 2013) between the City of Toronto and the University of Toronto be approved, effective immediately, to which the TPASC Inc. will be a party and to which the corporation will be bound, substantially on terms and conditions as set out in the term sheets attached hereto and that the University execute this agreement and all related agreements with the City of Toronto and TPASC;

2. THAT the President, or designate, be authorized to sign the Co-Ownership Agreement on behalf of the Governing Council, provided the agreement conforms to the terms and conditions outlined in section 1; and
3. THAT the agreement signed under the provision of this resolution be filed with the Secretary of the Governing Council.

APPENDIX 1

Summary of Co-Ownership Agreement

In summary, key terms and conditions of the Co-Ownership Agreement include:

1. Principles:
 - The Co-Ownership will be governed by this Agreement, which replaces the Master Agreement between the parties dated December 1, 2010. Unless otherwise stated, other pertinent agreements, such as the Facility Agreement and the MPA, remain in effect.
 - There will be a cooperative working relationship between the University and the City and a unified approach to Toronto 2015 and the Provincial Government.
 2. City and University Lands:
 - The University and the City will grant to the Co-Owners non-exclusive access rights to lands they hold which are part of and necessary for the Project, including specific road and parking lands.
 3. Governance and Finance Liaisons:
 - The City Manager and the Vice-President of University Operations, or their designates, will be Governance Liaisons with responsibility for ensuring compliance with their organization's governance requirements in relation to this Agreement and serving as the proxy to represent their Co-Owner at meetings of the Co-Owners and to execute consent resolutions.
 - The CFO of the City and the Vice-President of University Operations, or their designates, will be the Finance Liaisons of their respective organization with responsibility for supporting financial functions and reporting relating to the Project and TPASC.
 - The Governance and Finance Liaisons shall not serve on the TPASC Board.
 4. Co-Owner Approvals:
 - Actions or decisions of TPASC that require prior Co-Owner approval include:
 - activities not provided for in an approved budget or business plan;
 - sale of major assets or purchase of land;
 - amending this Agreement;
 - acting in connection to any claim or litigation involving the Co-Owners.
 - Either Co-Owner may call a Co-Owner meeting with 10 business days' notice.
 5. Operations and Financing:
- Summary of Co-Ownership and Shareholders' Agreement

- An Operating Agreement will be entered into under which:
 - the University will commit to fund not less than 17% of operating expenses and have user rights to not less than 17% of the annual Centre time;
 - the City will commit to fund not less than 31% of operating expenses and have user rights to not less than 31% of the annual Centre time.
- These proportions may be reviewed and adjusted upwards after 3 years.
- CSIO will commit to use 30% of the annual Centre time.
- 22% of the annual Centre time will be made available to other third party users.

6. Revenues, Reserves:

- Legacy Fund Contributions will be used for the benefit of the Project.
- Any operating and non-operating surplus and any shortfalls will be shared equally (50/50) by the Co-Owners.
- The Co-Owners and Shareholders will actively and cooperatively review and implement ways and means for TPASC to avoid or offset future Project shortfalls.
- Capital reserve accounts will be established and the funds including interest will be used solely for funding major maintenance and capital expenditures.
- The Co-Owners will annually pay into capital reserve accounts such monies deemed necessary and approved to fund anticipated future needs.

7. Environmental Remediation, Indemnities:

- All approved Remediation Costs incurred to date on Project lands, including consulting fees and costs related to any required environmental monitoring but excluding legal fees, will be shared:
 - 57.69% by the University;
 - 42.31% by the City.

Except as provided below, ongoing compliance costs shall be shared equally

- The Co-Owners will apply to have the Part V Certificate of Approval released from the Project with costs shared as per the Remediation Costs.

- The City will be solely responsible for all monitoring required under Part V Certificate of Approval and Air Approval and associated costs, as well as costs to remove the Part V Certificate of Approval from adjacent City lands.
 - The City will have primary responsibility to enforce indemnification under the Remediation Agreements , with any costs payable by the Co-Owners shared as per the Remediation Costs.
 - The University shall grant easements at nominal consideration for City construction and maintenance of the barrier wall and gas venting system. Any additional remediation of the Project lands required will be shared equally (50/50) by the Co-Owners.
 - The University or City will indemnify and hold each other and TPASC harmless from all actions, losses liabilities, claims etc. relating to contaminants remaining on the historical lands, or released from the historical lands, or released from the abutting University or City lands onto the Project lands.
8. Development Matters:
- Initial Project costs incurred, committed or budgeted by the University or City will be shared equally (50/50) unless otherwise agreed.
 - Except as otherwise agreed, each party will be responsible for its own legal fees incurred with the development of the Project.
 - Military Trail may be realigned in the future, bisecting the Project lands.
 - A future objective is to dedicate a portion of Pan-Am Drive as a public highway.
9. Transfer of Interest, Review:
- In year 18, the Co-Owners will review the status and prospects of the Project past the 20 year term of the Agreement.
10. Taxes:
- The Co-Owners will endeavour to enter into a municipal capital facility agreement to exempt the Project from property taxation.
 - To the extent the Project is subject to property taxation, the Co-Owners will pay such taxes equally (50/50) to the extent not recoverable from tenants.
 - Unrecoverable HST payable by the Co-Owners shall be shared equally – confirm that this is the deal given that City obtains a higher rebate than the University

- Contributions and distributions to and from TPASC to recognize the University's charitable status and to be structured accordingly

11. Parking, Roads:

- All parking facilities on the Project lands and the Adjacent Parking Lands will be for the exclusive use of the Project.
- If required for future development, the University may, with City concurrence, apply to the City for approval to relocate the exclusive parking on the Adjacent Parking Lands to other lands, and the University will bear all associated costs.
- The amount of and location of parking will be reviewed within 2 years.
- Parking operations may be contracted to another party.
- The University will manage and maintain the Additional Parking Lands and all revenues will belong to the University.
- The Co-Owners will jointly manage and maintain the Adjacent Parking Lands, and share any revenues, until the parking is relocated to other University lands.
- The City shall reimburse the Co-Owners for its proportionate share of maintenance and repair costs within the Access Drive Lands related to City equipment using the Transportation Yard.

12. Confidentiality:

- Each Co-Owner will not directly or indirectly communicate or disclose to any person any confidential information acquired.
- Each Co-Owner may communicate or disclose confidential information to its directors, officers, employees, professional advisors, auditors, Council Members and Members of Governing Council, only to the extent necessary and on written agreement that the confidential information will be held in strict confidence.

13. Other Provisions:

- Provisions are included to ensure that trade-marks, domain names software and other intellectual property will be appropriately protected.
- Circumstances constituting a default by a Co-Owner, and the rights of the non-defaulting Co-Owner, are included.
- Any disagreement arising between Co-Owners in connection with the interpretation of this Agreement will be addressed by a dispute resolution procedure and, if unresolved, will be referred to arbitration.

APPENDIX 2

Summary of Unanimous Shareholders' Agreement

In summary, key terms and conditions of the Unanimous Shareholders' Agreement include:

1. Corporate Matters:
 - The shareholders will cause decisions to be taken and documents to be executed to ensure compliance with this Agreement.
 - The directors will have all the rights, powers, duties and liabilities arising under the Business Corporations Act (Ontario) except to the extent that this Agreement expressly restricts the discretion and power of the Board.

2. Board Composition:
 - The TPASC Board will consist of 10 members, 5 of whom will be appointed to serve at the pleasure of each Shareholder and until successors are appointed.
 - The Board initially will be composed primarily of employees/officers of the Shareholders.
 - Each Shareholder may nominate up to 2 non-staff members to the Board and will endeavour to nominate an equal number of staff and non-staff members.
 - Directors will serve for a 2 year term, without remuneration, and be eligible for reappointment.
 - Shareholders will promptly fill any vacancies.
 - In January 2017, the Shareholders will review the Board structure and make recommendations to their governing bodies.
 - To be eligible for appointment as a Director of the Board of TPASC:
 - An individual must satisfy and maintain the eligibility requirements set out in the Business Corporations Act (Ontario) and any other eligibility criteria established by the Shareholders from time to time.
 - Members of the Board of TPASC will collectively have the following qualifications:
 - Financial management expertise.
 - Business management and operating expertise.
 - Corporate governance expertise.
 - A youthful perspective.

3. Board Responsibilities, Meetings:

- The Board will oversee the management of the business and affairs of TPASC, ensuring TPASC:
 - is in material compliance with applicable laws;
 - complies with By-laws and policies as determined by the Board and Shareholders;
 - complies with approved business plans and operating and capital budgets;
 - fulfils such other responsibilities as set out in the Term Sheet.
- The Board will hire senior managers, approve annually business plans and operating and capital budgets, and approve policies that regulate the internal business and affairs of the TPASC as deemed appropriate.
- The Board will meet at least once every calendar quarter, and one meeting each year will be open to the public.
- Quorum will be a majority of the Board comprised of at least 3 Directors nominated by each Shareholder.
- The Governance Liaisons will be entitled to attend as observers in Board meetings, except in-camera meetings [unless the Board waives this restriction].
- Votes on By-laws will require a two-thirds majority.

4. Chair:

- The Board will have a Chair and Vice-Chair whose term of office will be a maximum of 2 consecutive years.
- For the initial term, the Board will appoint the Chair and Vice-Chair, and then the right to nominate the Chair will alternate between the Shareholders.
- The Vice-Chair shall succeed to the office of the Chair.
- If the Chair or the Vice-Chair is replaced during the last half of the term, the balance of the term shall not count towards the limit on length of service.
- The Chair shall not be entitled to a second or casting vote on any matter.

5. Committees, Advisory Councils:

- The Board will have the following Committees:
 - Finance & Human Resources Committee
 - Planning Committee

- Audit Committee.
- The Board will have a Sports Advisory Council, comprised of 1 Director nominated by each Shareholder and additional members appointed by the Board who have expertise and knowledge in high performance sports.
- The Board will have a Community Advisory Council, comprised of 1 Director nominated by each Shareholder and additional members appointed by the Board who represent the community, the University (including students) and other user group constituencies.
- The Board will appoint the Chair and, if any, the Vice-Chair of each Committee [and each Advisory Council].

6. Shareholder Approvals:

- Unless approved by the Shareholders, TPASC may not authorize, undertake, or carry out any of the following:
 - matters to be approved at the annual meeting of TPASC;
 - any business or activity other than the operation of the Centre;
 - activities not provided for in an approved budget or business plan;
 - sell major assets, purchase land, issue shares, form partnerships or joint ventures, or amalgamate or merge with any other corporation;
 - amend the Articles, this Agreement, the Operating Agreement or any By-Laws;
 - such other matters as set out in the Agreements.

7. Shareholder Meetings:

- An annual meeting of Shareholders will be held at least once each calendar year.
- A quorum of Directors may call a special meeting of the Shareholders.
- A quorum for a meeting of Shareholders is both Shareholders.
- All meetings of the Shareholders will be open to the public, except where any such meeting may be closed to the public in accordance with applicable law.
- Meetings of the City and the University, in their capacity as Co-Owners and Shareholders, may be held consecutively or concurrently.

8. Governance and Finance Liaisons:

- The City Manager and the Vice-President of University Operations, or their designates, will be Governance Liaisons with responsibility for ensuring compliance with their organization's governance requirements in relation to this Agreement and serving as the proxy to represent their Shareholder at meetings of the Shareholders and to execute consent resolutions.
- The CFO of the City and the Vice President of University Operations, or their designates, will be the Finance Liaisons of their respective organization with responsibility for supporting financial functions and reporting relating to the Project and TPASC.
- Any designate of the City Manager, Vice-President of the University or either CFO shall be the same person as their respective designate if any under the Co-Ownership Agreement.
- The Governance and Finance Liaisons shall not serve on the TPASC Board.

9. Auditor, Financial Matters:

- The generally accepted accounting principles (GAAP) established by the Canadian Institute of Chartered Accountants will apply.
- The fiscal year of TPASC shall end on December 31.
- The Board will recommend an auditor for consideration by the Shareholders based on a competitive process.
- TPASC will maintain its bank accounts with such financial institutions as the Board may determine, and all banking instruments will require the signatures of any 2 officers or Directors as the Board determines.
- The Board shall approve signing authorities/thresholds.
- TPASC will prepare annually a business plan based on a 5 year budget cycle for approval by the Board and the Shareholders and an annual operating and capital budget for the Project at least 90 days prior to the commencement of each financial year.
- The operating budget will reflect the approved business plan and contain a detailed monthly budget, comparison statements from the previous financial year, a cash flow/liquidity analysis for the Centre and a timeline for contributions by the Shareholders.
- The capital budget will reflect the approved business plan and contain a statement of the nature and amount of all major maintenance and capital expenditures to be incurred during such financial year.

- There will be a consultative process to allow for the Finance Liasons and other appropriate Shareholder personnel to provide input and guidance in the development of annual budgets.
- TPASC will maintain capital reserve accounts and prepare an investment strategy for consideration by the Board.
- TPASC will prepare unaudited quarterly financial statements for consideration by the Board.
- Audited financial statements for each fiscal year will be prepared and delivered no later than 90 days after the end of the fiscal year to the Board and Shareholders.
- TPASC will maintain its Books and Records and disclose all financial transactions of TPASC, and with notice the Shareholders will be entitled to access the Books and Records at reasonable times during normal business hours.
- The Legacy Fund Agreements shall be subject to the approval of the Shareholders in their capacity as Co-Owners pursuant to the Co-Ownership Agreement.
- Legacy Fund Contributions will be used for the benefit of the Project
- The mechanisms for the Legacy Fund Contributions are under review

10. Confidentiality:

- Each Shareholder will not directly or indirectly communicate or disclose to any person any confidential information acquired.
- Each Shareholder may communicate or disclose confidential information to its directors, officers, employees, professional advisors, auditors, Council Members and Members of Governing Council, only to the extent necessary and on written agreement that the confidential information will be held in strict confidence.

11. Other Provisions:

- Provisions are included with respect to conflicts of interest and the Municipal Conflict of Interest Act, indemnification of TPASC Directors and officers, and liability insurance.
- Circumstances constituting a default by a Shareholder, and the rights of the non-defaulting Shareholder, are included.

- Any disagreement arising between Shareholders in connection with the interpretation of this Agreement will be addressed by a dispute resolution procedure and, if unresolved, will be referred to arbitration.

September 12, 2013

**SUBSTANTIALLY FINAL DRAFT SUBJECT TO CITY COUNCIL
AND UNIVERSITY GOVERNING COUNCIL APPROVAL**

CO-OWNERSHIP AGREEMENT

BETWEEN

The Governing Council of the University of Toronto

- and -

City of Toronto

[Date]



CASSELS BROCK
LAWYERS

2100 Scotia Plaza
40 King Street West, Toronto, Ontario M5H 3C2

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CO-OWNERSHIP AGREEMENT

Dated [Month day, Year]

BETWEEN

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO
(the "University")

- and -

CITY OF TORONTO
(the "City")

WHEREAS:

- A. The University and the City are the Co-Owners of the Project; and
- B. The University and the City have established the Corporation to manage the business and affairs of the Project;

The Parties agree as follows:

Article 1 INTERPRETATION

1.01 Definitions

In this Agreement, the following definitions apply:

"Access Drive Lands" means the lands described as such in Schedule B, owned by the City, on which the most northerly portion of the access driveway for the Project is situate.

"Access License Agreement" has the meaning attributed to such term in Section 3.03(a).

"Additional Parking Lands" means the lands described as such in Schedule B, owned by the University, portions of which may be used on a non-exclusive basis by the Co-Owners for parking purposes related to the Project pursuant to the Access Licence Agreement.

“Adjacent Parking Lands” means the lands described as such in Schedule B, owned by the University, to be used exclusively by the University and City for parking purposes related to the Project pursuant to the Reciprocal Access Easement Agreement, as such lands may be replaced with the prior agreement of the Co-Owners as provided herein.

“Adjacent Parking Lands Licence” has the meaning attributed to such term in Section 3.04(a).

“Affiliate” means, in respect of any Co-Owner, an affiliate within the meaning of the *Business Corporations Act* (Ontario) as amended from time to time.

“Air Approval” means the Amended Certificate of Approval – Air Number 5073-8F7QV5 issued by MOE on March 25, 2011.

“Annual Centre Time” means the total number of hours in each financial year that the Centre is available for use by the Co-Owners and Third Party Users.

“Approved” or **“Approval”** means, as applicable:

- (i) an approval in writing signed by each Co-Owner; or
- (ii) an approval by resolution in writing signed by all of the members of the Property Owners’ Committee or approved unanimously at a duly constituted meeting of the Property Owners’ Committee.

“Arm’s Length” has the meaning attributed to such term in the *Income Tax Act* (Canada), as the same may be amended from time to time.

“Board” means the board of directors of the Corporation

“Business Day” means any day, other than Saturday, Sunday or any statutory holiday in Ontario on which the principal commercial banks located in Toronto, Ontario are open for business during normal banking hours.

“Capital Reserve Accounts” has the meaning attributed to such term in Section 7.03.

“Certificates of Property Use” means:

- (i) CPU No. 0276-8MCQNA – BOTH (EBR Registry Number 011-5555), in respect of the Lands (the **“Co-Owner CPU”**);
- (ii) CPU No. 0276-8MCQNA – TOR (EBR Registry Number 011-5556), in respect of the Access Drive Lands (the **“City CPU”**); and

- (iii) CPU No. 0276-8MCQNA – U of T (EBR Registry Number 011-5557), in respect of the Adjacent Parking lands (the “**University CPU**”).

“**City Confidential Information**” means all trade secrets, confidential or proprietary information or data of or possessed by the City relating to the property, assets, liabilities, operations, affairs, governance or purposes of the City and that are either:

- (i) unrelated to the Co-Ownership, the Project and/or the Corporation; or
- (ii) not intended or required to be held, used or made available for the benefit of the University and/or the Corporation,

and, for certainty, all confidential or proprietary information or data relating to the City’s own programs shall constitute City Confidential Information.

“**Commencement Date**” is the date on which the TPASC opens for operation to the students, the community and other users, which is expected to be on or about July 15, 2014.

“**Confidential Information**” means all trade secrets, confidential or proprietary information or data of or possessed by the Co-Owners, relating to the property, assets, liabilities, operations, affairs, governance or purposes of the Co-Ownership, the Project and the Corporation including, without limitation, such information pertaining to revenues, budgets, finances, operations, costs, marketing and promotion, business strategies and plans, sponsorships, labour relations agreements and other materials, insurance policies, business processes, building plans and drawings, regulatory approvals, environmental reports, Games-related information, building security, parking agreements, the Facility Agreement, the Legacy Fund Agreements, the Legacy Fund Contributions, leases, subleases, concession agreements, user agreements, short-term rentals, permits, tenants, subtenants, concessionaires, users, suppliers, employees and contract staff; for certainty, Confidential Information shall expressly exclude the City Confidential Information and the University Confidential Information.

“**Co-Owner**” means each of the University and the City and “**Co-Owners**” means both of them.

“**Co-Owner’s Interest**” means, with respect to a Co-Owner, the undivided interest of such Co-Owner from time to time in the Project; and “**Co-Owners’ Interests**” means the Co-Owner’s Interests of both Co-Owners collectively.

“**Co-Ownership**” means the co-ownership relating to the Project established by the Co-Owners pursuant to this Agreement.

“Co-Ownership Proportion” means, with respect to a Co-Owner, the proportion which the Co-Owner's Interest of such Co-Owner is of the aggregate Co-Owners' Interests of both Co-Owners at the time of determination, expressed as a percentage, and, at the date of this Agreement, the Co-Ownership Proportion of each of the University and the City is acknowledged to be fifty percent (50%).

“Corporation” means Toronto Pan Am Sports Centre Inc., a corporation incorporated under the laws of Ontario.

“CRA” means Conestoga-Rovers & Associates.

“CRA Agreements” means:

- (i) Consulting Agreement dated as of August 20, 2010 between City of Toronto and CRA;
- (ii) Amending Agreement dated as of April 8, 2011 between City of Toronto and CRA;
- (iii) Tripartite Agreement dated as of April 8, 2011 between City of Toronto, the University of Toronto and CRA; and
- (iv) Any further agreements entered into by the Parties, or either of them, with CRA in connection with the Project.

“CSIO” means Canadian Sport Institute Ontario.

“Defaulting Co-Owner” has the meaning attributed to such term in Section 17.01.

“Dispute” has the meaning attributed to such term in Section 18.01.

“Domain Name” means that part of a uniform resource locator after the letters “www” used to identify an address for a computer network connection to the Internet and the owner of the address.

“Effective Date” means the date of this Agreement.

“Event of Default” has the meaning attributed to such term in Section 17.01.

“Facility Agreement” means the Facility Agreement made as of June 22, 2012, between TO2015, IO, the City and the University.

“Finance Liaison” has the meaning attributed to such term in Section 5.02(a).

“FIPPA” has the meaning attributed to such term in Section 19.01.

“Games” means the 2015 Pan/Parapan American Games.

“Governance Liaison” has the meaning attributed to such term in Section 5.01(a).

“Historical City Lands” means the lands described as Part 2 on Plan 66R-25881.

“Historical University Lands” means the lands described as Part 3 on Plan 66R-25881.

“HST” means the harmonized sales tax levied pursuant to Part IX of the *Excise Tax Act* (Canada).

“Initial Operating Period” has the meaning attributed to such term in Section 10.02.

“Intellectual Property” means all tangible and intangible intellectual and industrial property created, developed or reduced to practice by a Co-Owner including, without limitation: software in object code and source code form, compilations of data, computer databases, documentation, reports, studies, abstracts, summaries, specifications, technical information, tools, methodologies, processes, techniques, analytical frameworks, algorithms, formulas, designs, industrial designs, know how, business methods, confidential information, works of authorship, mask works, integrated circuit topographies, inventions, improvements, models, drawings, products, schemas, prototypes, architectural plans and all other related material.

“Intellectual Property Rights” means any and all rights, in any jurisdiction, provided under:

- (a) patent law;
- (b) copyright law (including moral rights);
- (c) trade-mark law (including laws governing trade-marks, trade names and logos);
- (d) design patent or industrial design law;
- (e) semi-conductor chip or mask work law; or
- (f) any other statutory provision (including laws governing domain names) or common law principle (including trade secret law and law relating to information of the same or similar nature and protected in the same or similar way) governing Intellectual Property, whether registered or unregistered, and including rights in any and all applications and registrations in respect of the foregoing.

“IO” means Ontario Infrastructure and Lands Corporation.

“Joinder Agreement” means the agreement dated December 22, 2009 pursuant to which the University has agreed to be bound by and is entitled to the benefit of certain provisions of the Multi-Party Agreement.

“Jointly Developed Intellectual Property” has the meaning given to it in Section 12.04(a).

“Lands” means the lands described in Schedule A to this Agreement.

“Legacy Fund Contributions” means the funding received by the Co-Owners pursuant to the Legacy Fund Agreements.

“Legacy Fund Agreements” means the TO2015 Sport Legacy Plan dated ●, 2013, a copy of which is attached hereto as Schedule F, and all related agreements between the Co-Owners, TO2015 and ● pursuant to which the Co-Owners will receive a portion of the endowment fund known as the “TO2015 Legacy Fund” established in connection with the Games.

“MM&C Expenditures” means any major maintenance and/or capital expenditure with respect to the Project and expressly excludes any emergency or life safety expenditures.

“MFIPPA” has the meaning attributed to such term in Section 19.01.

“MOE” means the Ministry of the Environment of the Province of Ontario.

“Multi-Party Agreement” means the multi-party agreement dated November, 2009 between Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of Ontario, the City, Canadian Olympic Committee, Canadian Paralympic Committee and Ontario 2015 Pan-Am Games Bid Corporation.

“Non-defaulting Co-Owner” has the meaning attributed to such term in Section 17.01.

“Notice” means any notice, request, direction, or other document that a Party can or must make or give under this Agreement.

“Occupancy Agreement” means any lease, space license, kiosk license, concession agreement, parking license or other agreement pursuant to which the Co-Owners and/or the Corporation grant to another Person or Persons a right to use or occupy interior or exterior premises at the TPASC.

“Operating Agreement” means the agreement entered into or to be entered into between the City and the University, in their capacity as owners of the TPASC, and the Corporation pursuant to which the Corporation shall manage

and operate the TPASC, as such agreement may be amended from time to time.

“Pan-Am Drive” means the driveway identified on the Site Plan as Pan-Am Drive.

“Parking Management Agreement” has the meaning attributed to such term in Section 14.04B.

“Part V Certificate of Approval” means the Provisional Certificate of Approval Waste Disposal Site No. 9013-8EMRND issued by MOE on March 25, 2011.

“Parties” means the parties to this Agreement and **“Party”** means any one of them.

“Person” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted.

“Prime Rate” means the rate of interest per annum established by Canadian Imperial Bank of Commerce from time to time at Toronto, Canada as the reference rate it will use to determine rates of interest payable by its borrowers on Canadian dollar commercial loans made by such bank to such borrowers in Canada and designated by such bank as its “prime rate”.

“Project” means, collectively, the Lands, the TPASC and all related fixed improvements on the Project Lands and all other property, real or personal, now or hereafter acquired by the Co-Owners or the Corporation to be used in connection therewith, but for greater certainty does not include the University’s fee simple ownership interest in the Adjacent Parking Lands and the Additional Parking Lands or the City’s fee simple ownership interest in the Access Drive Lands.

“Project Agreement” means the agreement dated June 28, 2012 between IO and PCL Aquatics Centre 2012 Ltd. relating to the design, construction and financing of TPASC.

“Project By-Law” has the meaning ascribed thereto in Section 14.02.

“Project Lands” means the Lands, the Access Drive Lands and the Adjacent Parking Lands.

“Project RSCs” has the meaning ascribed thereto in Section 8.01(c).

“Property Owner Appointees” has the meaning attributed to such term in Section 5.01.

“Property Owners’ Committee” has the meaning attributed to such term in Section 5.01.

“Reciprocal Access Easement Agreement” has the meaning attributed to such term in Section 3.03.

“Remediation Costs” has the meaning ascribed thereto in Section 8.01.

“Responsible Party” has the meaning given to it in Section 12.05(a).

“Shareholder” means the City or the University in its capacity as a shareholder of the Corporation

“Shareholders’ Agreement” means the agreement dated ●, 2013 between the City, the University and the Corporation relating to the management and operation of the Corporation and the ownership of its shares.

“Site Plan” means the site plan prepared by NORR Limited identified as Drawing No. LE-A100-00-01 and dated August 28, 2012, a copy of which is attached as Schedule C.

“Third Party Users” means CSIO (or governmental authorities on behalf of the foregoing), high performance sports organizations, retail tenants and concessionaires and other third party users of the TPASC.

“Toronto 2015” means Toronto Organizing Committee for The 2015 Pan American and Parapan American Games.

“Toronto 2015 Legacy Fund” means The Toronto 2015 Pan/Pan American Games Legacy Fund as managed by [Name of Fund Management Firm] in accordance with the provisions of the Multi-Party Agreement.

“TPASC” means the aquatic centre and field house and related parking and other improvements now or hereafter constructed on the Project Lands.

“Trade-mark” has the meaning given to it in the *Trade-marks Act* (Canada), R.S.C. 1985, c. T-13, as am.

“Transfer” means the sale (including judicial sale), assignment (including by way of amalgamation), exchange, gift, transfer, devise or bequest by operation of law or otherwise, voluntarily or involuntarily, the mortgage, hypothecation, pledge, encumbrance or any other disposition or agreement for such by a Co-Owner or the Corporation of the whole or any part of its beneficial interest in the Project, or any of its rights under this Agreement but, for greater certainty, does not include an Occupancy Agreement.

“University Confidential Information” means all trade secrets, confidential or proprietary information or data of or possessed by the University relating to the property, assets, liabilities, operations, affairs, governance or purposes of the University and that are either:

- (i) unrelated to the Co-Ownership, the Project and/or the Corporation;
or
- (ii) not intended or required to be held, used or made available for the benefit of the City and/or the Corporation,

and, for certainty, all confidential or proprietary information or data relating to the University’s own programs shall constitute University Confidential Information.

1.02 Headings; Internal References

The headings used in this Agreement and its division into articles, sections, schedules, and other subdivisions do not affect its interpretation. References in this Agreement to articles, sections, schedules, and other subdivisions are to those parts of this Agreement.

1.03 Number and Gender

Unless the context requires otherwise, words importing the singular number include the plural and *vice versa*; words importing gender include all genders.

1.04 Calculation of Time

In this Agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. Eastern Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 5:00 p.m. Eastern Time on the next Business Day.

1.05 Use of the Term “Including”

Where this Agreement uses the word “including,” it means “including without limitation,” and where it uses the word “includes,” it means “includes without limitation.”

1.06 Interpretation of this Agreement

The Parties acknowledge that they have each participated in settling the terms of this Agreement. The Parties agree that any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this Agreement.

1.07 References to Statutes, etc.

Unless specified otherwise, any reference in this Agreement to a statute includes the regulations, rules, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those regulations, rules, or policies.

1.08 Accounting Principles

All references in this Agreement to generally accepted accounting principles and any financial calculations or determinations shall, unless otherwise specifically provided, be to the generally accepted accounting principles from time to time established by the Canadian Institute of Chartered Accountants, or any successor institute, in the "CICA Handbook" applicable as of the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles consistently applied. [Note: Add definition of "PSAB".]

1.09 Currency

Unless specified otherwise, all dollar amounts expressed in this Agreement refer to the lawful Canadian currency.

1.10 Schedules

The following are the schedules to this Agreement:

- Schedule A - Description of Lands
- Schedule B - Legal Description of Access Drive Lands, Adjacent Parking Lands and Additional Parking Lands
- Schedule C - Site Plan
- Schedule D - Project Costs
- Schedule E - Insurance Requirements
- Schedule F TO2015 Sport Legacy Plan

Article 2 PURPOSE AND TERM

2.01 Purpose

The University and the City are the Co-Owners of the Project and are entering into this Agreement to set out:

- (A) the fundamental principles and the rights and obligations of the Co-Owners with respect to the Project, including use of the Project Lands for the purpose of the Project;

- (B) the terms and processes for the Co-Owners to make decisions and to provide oversight and direction to the Project; and
- (c) a framework for any related Shareholders' Agreement with respect to the operation and management of the Project by the Corporation or any other agreement of similar purpose.

2.02 Commencement and Term

This Agreement shall commence on the Effective Date and shall continue until the earlier of:

- (a) the Transfer (other than by way of Occupancy Agreement or financing in accordance with this Agreement) of all of the Project by the Co-Owners and the Corporation and completion of all matters between the Co-Owners and the Corporation under this Agreement including the full distribution of the proceeds of such Transfer;
- (b) the acquisition by a Co-Owner of the entire Co-Owner's Interest of the other Co-Owner and its interest in the Corporation; and
- (c) the date upon which the Co-Owners have terminated this Agreement in writing.

Article 3 THE PROJECT

3.01 Description of Project and TPASC

The Parties acknowledge and confirm that the TPASC to be built on the Project Lands will be one of the major venues for the Games. The development, construction and implementation of the TPASC and the legacy requirements relating thereto will be governed by the Multi-Party Agreement (to the extent the Parties have agreed to be bound by and are entitled to the benefit of the Multi-Party Agreement), the Joinder Agreement and the Facility Agreement.

3.02 Fundamental Principles

The City and the University acknowledge their mutual intention and commitment to work co-operatively on the Project and to present a unified position in dealings with Toronto 2015, IO, Third Party Users and all other Project stakeholders. To that end, the Co-Owners will make every effort to build consensus on issues and ensure that their interests are, to the extent possible, aligned and compatible. Without limiting the foregoing, the Co-Owners will:

- (i) negotiate and enter into the definitive agreements relating to the Games and to the Project;

- (ii) dedicate appropriate financial and other resources to the Project as contemplated in applicable agreements;
- (iii) provide timely and appropriate Co-Owner decisions on consents and approvals with respect to the Project as contemplated in applicable agreements;
- (iv) resolve any disputes fairly and expeditiously according to agreed upon processes to build consensus and reach appropriate decisions;
- (v) take and perform such other actions as may be reasonably necessary to advance the Project; and
- (vi) work cooperatively with each other in connection with the Project, and share all information relating to the Project in a timely manner,.

3.03 Lands Retained by City

The Co-Owners acknowledge and agree as follows with respect to certain facilities located on lands owned by the City and which are critical to the operation of the Project:

(a) Access Drive Lands

- (i) The City is the owner of the Access Drive Lands. The Co-Owners have entered into a Reciprocal Access Easement Agreement dated ● (“**Reciprocal Access Easement Agreement**”) pursuant to which the City has granted to the Co-Owners a non-exclusive easement over, along and upon the Access Drive Lands.
- (ii) The Parties acknowledge that the Access Drive Lands are part of and necessary for the Project.

3.04 Lands Retained by University

The Co-Owners acknowledge and agree as follows with respect to certain facilities located on lands owned by the University:

(a) Adjacent Parking Lands

- (i) The University is the owner of the Adjacent Parking Lands. Pursuant to the Reciprocal Access Agreement, subject to Section 14.02(b) hereof, the University has granted to the Co-Owners an exclusive easement over, along and upon the Adjacent Parking Lands.

(b) Additional Parking Lands

- (i) The University is the owner of the Additional Parking Lands. Pursuant to an agreement dated ● (the “**Access Licence Agreement**”), the University has granted to the Co-Owners a non-exclusive licence to use one (1) parking space on the Additional Parking Lands for every 100 m² of gross floor area of the TPASC on an unreserved basis for patron parking requirements relating to the TPASC.
- (ii) Pursuant to the Access Licence Agreement, the University has also granted the Co-Owners a non-exclusive licence over, along and upon the portion of Pan Am Drive that extends outside the Project Lands as generally depicted on Schedule “C”.
- (iii) Notwithstanding that the Additional Parking Lands are not part of the Project Lands, all costs of construction of Pan-Am Drive, both within and outside the Project Lands, and of altering the parking facilities on the Additional Parking Lands, as set out in the Output Specifications being Schedule 15 to the Project Agreement, shall be a cost of the Project to be funded out of the Project budget pursuant to the Facility Agreement and the Project Agreement.

3.05 Cost Overruns

The Co-Owners will work co-operatively to enforce, and cause Toronto 2015 to enforce, all Province of Ontario guarantees in respect of cost overruns for the Project.

3.06 Adherence to, Decisions under and Enforcement of Facility Agreement, CRA Agreements and Other Agreements

The Co-Owners acknowledge and agree that in all matters related to construction and delivery of the Project for the Games, they shall and, if applicable, cause the Corporation to, adhere to their obligations in the Facility Agreement, the CRA Agreements and any other relevant agreements. It is recognized that the City is a direct party to the Multi-Party Agreement whereas the University is a party to the Joinder Agreement only. Further, the City is a party to certain other agreements with the federal government of Canada and the Province of Ontario and certain other agreements relating to the Project which the University is not a party to. Accordingly, the City will enforce its rights under the Multi-Party Agreement and all such other agreements, to the extent relating to the Project, for the mutual benefit of the City, the University and, if applicable, the Corporation and will keep the University regularly informed of any material developments under or changes to such agreements.

Article 4 NO PARTNERSHIP

4.01 Disclaimer of Partnership

The Co-Owners disclaim any intention to create a partnership or to constitute either of them the agent of the other either directly or through the Corporation. Nothing in this Agreement shall constitute the Co-Owners or either of them as partners. Except as may be expressly provided in this Agreement, nothing shall constitute the Co-Owners or either of them as the agent of the other Co-Owner. Each Co-Owner expressly declares its intention to rely on:

- (a) the provisions of Section 3 of the *Partnership Act* (Ontario) as amended or re-enacted from time to time, to the effect, inter alia, that tenancy-in-common, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof; and
- (b) the statutory and common law that applies to tenants-in-common, save only to the extent that the same is, by the express provisions of this Agreement, amended or varied.

Consequently, except as otherwise expressly and specifically provided herein, neither Co-Owner shall have any power or authority to act for, or assume any obligations or responsibility on behalf of the other Co-Owner.

4.02 Waiver of Partition

Each Co-Owner waives the benefit of all provisions of law, as now in effect or as hereafter enacted, relating to actions for a partition and/or administration of real and personal property, including, without limiting the generality of the foregoing, the *Partition Act* (Ontario) and each Co-Owner agrees that it will not resort to any action at law or in equity to partition its interest in the Project or to seek administration in respect thereof except as herein permitted.

4.03 Waiver of Sale

Each Co-Owner waives the benefit of all provisions of law, as now in effect or as hereafter enacted, relating to actions for a sale in lieu of partition of real and personal property, including, without limiting the generality of the foregoing, the *Partition Act* (Ontario) and each Co-Owner agrees that it will not resort to any action at law or in equity for a sale in lieu of partition in respect of its interest in the Project except as herein permitted.

Article 5 CO-OWNER MATTERS

5.01 Governance Liaison

- (a) Pursuant to the Shareholders' Agreement, each of the City and the University shall from time to time designate an individual as its "governance liaison" (each a "Governance Liaison" and collectively the "Governance Liaisons") to communicate with each other regarding Co-

Owner and Shareholder actions, decisions and other matters contemplated by this Agreement or the Shareholders' Agreement and to serve on the Property Owners' Committee.

- (b) The Vice-President, University Operations of the University or his or her designate shall be the University's Governance Liaison with responsibility for ensuring compliance with the University's internal governance requirements in connection with actions, decisions or the consideration of other matters contemplated by this Agreement. The University's Governance Liaison under this Agreement and the Shareholders Agreement shall be the same individual.
- (c) The City Manager or his or her designate shall be the City's Governance Liaison with responsibility for ensuring compliance with the City's internal governance requirements in connection with actions, decisions or the consideration of other matters contemplated by this Agreement. The City's Governance Liaison under this Agreement and the Shareholders Agreement shall be the same individual.
- (d) Written notice of a decision by the Vice-President, University Operations or the City Manager to appoint a designate pursuant to this Section 5.01 shall be provided by the Governance Liaison of a Co-Owner to the other Co-Owner, the Corporation and the Board within 2 Business Days of the appointment. The Governance Liaisons shall be responsible for communicating the notice to relevant internal parties of its Co-Owner. Any written notices delivered in accordance with this Section 5.01(d) shall be deemed to comply with Section 20.02 hereof.
- (e) The Co-Owners shall from time to time provide direction to their Governance Liaisons with respect to the exercise and performance of the Co-Owners' rights and obligations as Co-Owners and as Shareholders of the Corporation pursuant to the Shareholders' Agreement.
- (f) Each Co-Owner shall appoint its Governance Liaison or his or her designate as the proxy to represent such Co-Owner at meetings of the Co-Owners and to execute consent resolutions of the Co-Owners. Prior written notice of the appointment of a proxy shall be provided by each Co-Owner to the other Co-Owner.
- (g) Each Co-Owner shall appoint its Governance Liaison or his or her designate as the proxy to represent such Co-Owner at meetings of the Shareholders of the Corporation and to execute consent resolutions of the Shareholders of the Corporation Prior written notice of the appointment of a proxy shall be provided by each Co-Owner to the other Co-Owner.

5.02 Finance Liaison

- (a) Each of the City and the University shall from time to time designate an individual as its "finance liaison" (each a "**Finance Liaison**" and collectively the "**Finance Liaisons**") to support financial functions and reporting relating to the Project and the Corporation
- (b) The University's Vice-President of University Operations, or his or her designate from time to time, shall be the University's Finance Liaison. The University's Finance Liaison under this Agreement and the Shareholders Agreement shall be the same individual.
- (c) The City's Chief Financial Officer, or his/her designate from time to time, shall be the City's Finance Liaison. The City's Finance Liaison under this Agreement and the Shareholders Agreement shall be the same individual.
- (d) Each Co-Owner shall provide the other Co-Owner with prior written notice of the appointment of its Finance Liaison. Written notice of a decision by the City's Chief Financial Officer or the University's Chief Financial Officer to appoint a designate pursuant to this Section 5.02 shall be provided by the Governance Liaison of a Co-Owner to the other Co-Owner, the Corporation and the Board within two Business Days of the appointment. The Governance Liaison shall be responsible for communicating the notice to relevant internal parties of its Co-Owner. Any written notices delivered in accordance with this Section 5.02(d) shall be deemed to comply with Section 20.02 hereof.

5.03 **Liaisons, Restriction**

The Governance Liaisons and Finance Liaisons, while they hold such positions, shall not serve on the Board.

5.04 **Property Owners' Committee**

- (a) The Co-Owners shall establish a committee (the "**Property Owners' Committee**") consisting of four members, two of whom shall be appointed by each Co-Owner (the "**Property Owner Appointees**"). The mandate and authorities of the Property Owners' Committee shall be established by the Co-Owners from time to time.
- (b) The Property Owner Appointees from time to time shall be the Governance Liaisons and the Finance Liaisons of the Co-Owners.
- (c) Decisions of the Property Owners' Committee shall be made on a consensus basis.
- (d) In order to be effective, a decision by the Property Owners' Committee shall be Approved by either an instrument in writing signed by all the Liaisons or a resolution passed at a duly constituted meeting of the Property Owners' Committee.

5.05 Major Decisions Requiring Co-Owner Approval

None of the following actions or decisions shall be authorized, undertaken or Approved without the prior Approval of the Co-Owners:

- (a) any material activity that is not provided for or contemplated in an Approved budget or an Approved strategic or business plan;
- (b) any financing arrangement for the Project on behalf of the Co-Owners other than as set out in an Approved budget then in effect;
- (c) sell, lease, exchange or otherwise dispose of assets of the Project except in the ordinary course of business or as contemplated in any Approved budget then in effect;
- (d) purchase any interest in real property used or to be used in connection with the Project;
- (e) distribute funds of any nature or type whatsoever to the Co-Owners or either of them;
- (f) change the number of members of the Property Owners' Committee;
- (g) the termination, amendment or replacement of the Operating Agreement or the Shareholders' Agreement or any material amendment thereto;
- (h) make any payment or enter into any transaction, contract, agreement or commitment with any Person who does not deal at Arm's Length with the Co-Owners except for any borrowings from the Co-Owners or their Affiliates contemplated herein;
- (i) amend any material provision of this Agreement or enter into any material amendments to the Legacy Fund Agreements; or
- (j) initiating or taking any action (including settlement) in connection with any claim or litigation by or against the Co-Owners in respect of the Project.

5.06 Powers of Board of Directors of the Corporation

Nothing contained in this Agreement shall detract from or restrict the powers of the Board in a manner which is inconsistent with or contrary to any provision of the Shareholders' Agreement.

5.07 Meetings of Co-Owners

Meetings of the Co-Owners shall be held periodically at the registered office of the Corporation, or at such other place within Toronto as the Co-Owners determine. Either Co-Owner may call a meeting upon not less than ten (10) Business days notice. A

quorum for a meeting of Co-Owners shall be both Co-Owners. Meetings of the Co-Owners and the Shareholders of the Corporation may be held consecutively or concurrently.

5.08 City Council or Governing Council Approval

- (a) Each Co-Owner acknowledges that the other Co-Owner has formal approval processes, either by City Council or the University's Governing Council, to effect and/or confirm recommendations of certain actions or decisions under this Agreement and the Shareholders' Agreement. Each Co-Owner represents and warrants to the other Co-Owner that it has received the necessary approvals to enter into and to implement this Agreement, subject to Section 5.08(b).
- (b) The Co-Owners acknowledge that the following matters may be subject to formal approval, in the case of the City, by City Council, and in the case of the University, by the University's Governing Council:
 - (i) any matter referred to in Section 5.05 which, in the sole discretion of a Co-Owner, requires approval from its governing body; and
 - (ii) a sale of a Co-Owner's Interest.
- (c) Each Co-Owner shall use reasonable efforts to expedite approvals required from its governing body and shall promptly notify the other Co-Owner of the need to have an action or decision submitted to its governing body for approval. For certainty, the exercise of reasonable efforts as aforesaid shall not require a Co-Owner to expedite scheduling of meetings of its governing body to address matters contemplated herein or fetter the discretion of such governing body.

5.09 Execution of Documents

All agreements, contracts, leases, purchase orders and other commitments to be executed by the Co-Owners with respect to the Project shall be made and executed in accordance with an Approval of the Co-Owners or the Property Owners' Committee or the Governance Liaisons, as applicable, pursuant to this Agreement or the Shareholders' Agreement.

5.10 Statutory Rights and Responsibilities of City

The University further acknowledges that nothing in this Agreement interferes with or fetters the exercise by the City of all of its rights 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.

Article 6 FINANCIAL MATTERS / LIABILITIES OF THE CO-OWNERSHIP

6.01 Budgets

The Co-Owners acknowledge and agree that the annual capital and operating budgets of the Project for each financial year (including the MM&C Expenditures for such financial year) shall be established and approved in accordance with the provisions of the Shareholders' Agreement and shall be Approved hereunder. The Approved budgets for each financial year shall include a cash flow/liquidity analysis for TPASC and a timeline for Co-Owner contributions as contemplated by the Shareholders' Agreement. The Co-Owners and TPASC shall establish a regular consultative process for the Finance Liaisons and other appropriate representatives of the Co-Owner to provide input and guidance to the Board and management to assist them in developing the annual budgets for TPASC.

Article 7 OPERATIONS, ETC.

7.01 Operating Agreements

If not entered into on or prior to the date hereof, the Co-Owners shall ensure that the Operating Agreement is entered into with the Corporation prior to the commencement of operations of the TPASC. The Co-Owners shall grant any licenses or access rights required by the Corporation in order to fulfil its duties under the Operating Agreement. The Operating Agreement shall set forth each Co-Owner's rights and obligations relating to the use of the TPASC, in the case of the University for student and other University programs and in the case of the City for community programs. Pursuant to the Operating Agreement, the University and the City shall commit to use 17% and 31%, respectively, of the TPASC's annual facility time and to fund an equivalent percentage of the TPASC's annual operating costs. The balance of TPASC's annual facility time shall be used by CSIO and other third party users.

7.02 Revenues

- (a) Any revenues of the Project, including operating revenues, Legacy Fund Contributions and non-operating revenues such as, but not limited to, revenues from naming rights, sponsorships and income earned on the Toronto 2015 Legacy Fund, to the extent not received by or payable to the Corporation, shall be allocated to the Co-Owners in equal shares and used by the Co-Owners, firstly, to offset revenue shortfalls and actual operating costs deficiencies and, secondly, to reduce their own usage costs of the Project and, to the extent applicable, such funds shall be contributed to the Corporation to cover such operating costs and deficiencies. Subject to Section 7.03, the Legacy Fund Contributions shall be paid by the Co-Owners to the Corporation in accordance with the provisions of the Shareholders' Agreement.
- (b) In the event that the revenues generated from Third Party Users and Legacy Fund Contributions are insufficient to cover the operating costs of

the Project in any financial year, each Co-Owner will make any top up payment required by the Operating Agreement and share any remaining shortfall equally. Further, the Co-Owners (in their capacity as Co-Owners and Shareholders) will actively and cooperatively review, evaluate and implement all viable ways and means for the Corporation and the Project to avoid or mitigate future shortfalls in the first instance and secondly to implement all viable alternatives for funding of future shortfalls including, without limitation:

- (i) reviewing operating performance and identifying improvements in operational efficiency;
 - (ii) reviewing policies, procedures and management controls, including compliance, and identifying improvements;
 - (iii) reviewing operating budgets to identify cost savings to offset revenue shortfalls, including adjusting reserves or contingencies as appropriate;
 - (iv) exploring opportunities to increase their respective usage of the TPASC to help offset revenue shortfalls;
 - (v) seeking financial contributions from senior levels of government and other sources related to the high performance sports elements of the TPASC;
 - (vi) repurposing, down-sizing and/or closing portions of the TPASC with a view to eliminating or containing structural deficits; and
 - (vii) selling the TPASC or a material interest therein.
- (c) The Co-Owners (in their capacity as Co-Owners and Shareholders) will establish a defined process and timeline for addressing and rectifying budget shortfalls.

7.03 Capital Reserve Accounts

The Co-Owners shall establish and maintain one or more accounts (collectively the “**Capital Reserve Accounts**”) for the sole purpose of funding MM&C Expenditures from time to time. The Capital Reserve Accounts may be in the names of the individual Co-Owners or in the name of the Corporation, or any combination thereof, as determined by the Co-Owners from time to time. The Co-Owners shall annually pay into the Capital Reserve Accounts such amounts as may be Approved by the Co-Owners as being reasonably necessary to fund anticipated future MM&C Expenditures. For certainty, approximately \$1.2 million of the annual Legacy Fund Contributions shall be allocated to anticipated future MM&C Expenditures and shall be paid by the Co-Owners into the applicable Capital Reserve Account. Funds in the Capital Reserve Accounts, including

interest, shall only be used by the Co-Owners and the Corporation to pay MM&C Expenditures in accordance with Approved budgets for MM&C Expenditures.

**Article 8
ENVIRONMENTAL REMEDIATION**

8.01 Environmental Remediation

- (a) The Co-Owners agree to work co-operatively to obtain all regulatory approvals required in connection with the remediation of the Project Lands. The Co-Owners further agree that the implementation of the remediation work, the related agreements with contractors and consultants and the applications for the required regulatory approvals shall be subject to their joint oversight and approval.
- (b) All Approved costs incurred to date in connection with such remediation, including consulting fees but excluding legal fees (collectively the "**Remediation Costs**"), shall be shared by the Co-Owners as follows:

City	42.31%
University	57.69%

The Remediation Costs include all costs related to any environmental monitoring required to demonstrate compliance and acceptance of the Project RSCs. For greater certainty, in addition to its share of the Remediation Costs, the City will be solely responsible for all monitoring required pursuant to the Part V Certificate of Approval and the Air Approval and will bear all costs of such monitoring. Any underpayment or overpayment of Remediation Costs by a Co-Owner prior to the date hereof shall be reimbursed by or to the other Co-Owner within sixty (60) days following the execution of this Agreement.

- (c) The Co-Owners have obtained Records of Site Condition pursuant to Ontario Regulation 153/04, as amended, of the *Environmental Protection Act*, Ontario, for the Project Lands (the "**Project RSCs**"):
- (d) The Co-Owners agree that they will apply to have the Part V Certificate of Approval released from the Project Lands with the intention that the Part V Certificate of Approval will remain only on lands owned by the City which are adjacent to the Project Lands. The costs of amending the Part V Certificate of Approval shall be shared in accordance with Section 8.01(b), save and except any additional costs that may be incurred to remove the Part V Certificate of Approval from City lands outside of the Project Lands, which costs shall be the sole responsibility of the City.
- (e) The City shall, upon receipt, provide the University with: (i) copies of all remediation contract invoices, along with any supporting documentation

including CRA's certification and approval of such invoices; and (ii) all invoices and supporting documents received from CRA pursuant to the CRA Agreements. The University shall provide payment to the City of the University's share of the amount of each contractor and CRA invoice plus applicable HST on or before the 35th calendar day following the date on which such invoice is received. The invoices shall be deemed received by the University on the third Business Day following the date of mailing if delivered by regular mail, or if transmitted by facsimile, shall be deemed received on the Business Day following the day on which it is transmitted.

- (f) Except as provided below, all contracts and agreements entered into by the City with contractors and consultants in relation to the remediation work, including all indemnifications, and all rights under contractor/consultant insurance policies shall be held by the City for the benefit of the Co-Owners and the Corporation. It is understood that the City, as the direct counterparty to such contracts and agreements, shall have the primary responsibility to enforce all indemnifications thereunder on behalf of the Co-Owners and the Corporation and the University will undertake direct enforcement only to the extent that, in its reasonable judgment, the City is failing to adequately enforce such indemnifications or is doing so in a manner which will prejudice any rights or interests of the University or the Corporation in relation to the Project. The City's costs in enforcing the indemnifications shall be included in the Remediation Costs and shared between the Co-Owners in accordance with the cost allocation set forth in Section 8.01.

8.02 **Barrier Wall**

- (a) The University shall, if necessary, grant easements at nominal consideration to the City as may be required for the construction and ongoing maintenance on any University lands of any portion of the barrier wall and landfill gas venting systems. The City agrees that it will be responsible, at its sole expense, for the ongoing maintenance of the barrier wall and landfill gas venting systems. The City shall be solely responsible for the costs of all post-remediation monitoring of the barrier wall and landfill gas venting systems and any other environmental monitoring associated with the perpetual care and control of the primary waste mound located on City lands.
- (b) The City will promptly provide the Co-Owners and the Corporation with as-built drawings of the barrier wall and landfill gas venting system to the extent not provided prior to the date hereof.

8.03 **Additional Environmental Remediation**

In the event that any additional remediation of the Project Lands is required pursuant to the terms of the Facility Agreement and/or the Project Agreement, the City and the

University will work co-operatively with Toronto 2015 and IO to undertake such additional remediation work and the cost thereof (to the extent not provided for in the Project Budget) shall be shared equally by the Co-Owners. For certainty, the cost allocation between the Co-Owners set forth in Section 8.01 shall only apply to the remediation work contemplated by the CRA Agreements and not to any further remediation work required pursuant to the Facility Agreement and/or the Project Agreement.

8.04 Compliance with Environmental Requirements

The Co-Owners shall ensure that the Corporation operates the TPASC in compliance with all MOE requirements. The Co-Owners acknowledge that the Certificates of Property Use include ongoing post-remediation monitoring measures and a requirement for annual reports. The Co-Owners will be jointly responsible for complying with the obligations in the Certificates of Property Use. The City and the University will cooperate in complying with all environmental conditions and approvals and will jointly retain such consultants as required for this purpose. The costs incurred in fulfillment of these obligations shall be shared by the Co-Owners equally.

8.05 Indemnities re: Environmental Matters

The Co-Owners agree to the following cross-indemnifications with respect to environmental matters, on the understanding that these indemnities apply only to the extent that the Project Lands are impacted, or have impacts on other lands:

- (i) The City agrees to indemnify and hold the University and the Corporation harmless from and against all actions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs, expenses, (including reasonable legal fees and disbursements on a full indemnity basis) imposed on, made against or incurred by the University or the Corporation arising from or relating to, directly or indirectly: (i) contaminants remaining on the Historical City Lands; (ii) the past or present release of any contaminants from the Historical City Lands; and (iii) the past or present release of any contaminants in or onto the Project Lands from lands owned by the City abutting or adjoining the Project Lands including the lands on which the barrier wall and landfill gas venting systems are located, including the Access Drive Lands.
- (ii) The University agrees to indemnify and hold the City and the Corporation harmless from and against all actions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs, expenses, (including reasonable legal fees and disbursements on a full indemnity basis) imposed on, made against or incurred by the City or the Corporation arising from or relating to, directly or indirectly: (i) contaminants remaining on the Historical University Lands; (ii) the past or present release of any contaminants from the

Historical University Lands; and (iii) the past or present release of any contaminants in or onto the Project Lands from lands owned by the University abutting or adjoining the Project Lands.

Article 9 DEVELOPMENT MATTERS

9.01 Initial Project Costs

Attached hereto as Schedule D is a list of costs incurred, committed or budgeted by the Parties for legal and consultant costs in connection with the construction and initial development of the Project (excluding the Remediation Costs). The Parties agree that, subject to review and confirmation by the Parties, the costs listed in Schedule D and any other costs not funded out of the Approved capital budget for the Project shall be shared equally (unless otherwise agreed in writing) and shall not be incurred until the expenditures have been Approved by the Co-Owners. Save as indicated on Schedule D or as otherwise agreed by the Parties, each Party will be responsible for all legal fees incurred by it in connection with the development of the Project. Any underpayment or overpayment of any costs listed in Schedule D by a Co-Owner prior to the date hereof shall be reimbursed by or to the other Co-Owner within sixty (60) days following the delivery of an invoice to the Co-Owner responsible for such payment.

9.02 Municipal Approvals

The Co-Owners will work cooperatively to obtain all municipal approvals required for development of the Project. Without limitation, the Co-Owners will execute in a timely manner all documentation required to obtain the necessary municipal approvals, including any conditional building agreement, site plan agreement, agreements for the supply of utilities and other like agreements and related applications.

9.03 Military Trail and Pan-Am Drive

- (a) The Co-Owners acknowledge that Military Trail may be realigned in the future, and that the proposed realignment will bisect the Project Lands.
- (b) The Co-Owners acknowledge the further objective of having a portion of Pan-Am Drive, generally as shown on the Site Plan from Tams Road to the future realigned Military Trail, dedicated as a public highway.

Article 10 TRANSFER OF INTEREST IN THE PROJECT

10.01 General Prohibition

Except for those Transfers expressly permitted by this Agreement, neither Co-Owner shall make or permit a Transfer (including a Transfer by the Corporation) and any attempt to do so shall be void. Without limiting the foregoing, it is agreed that neither Co-Owner may separately mortgage or charge its ownership interest in the Project.

10.02 Initial Operating Period

In recognition of various factors including the expected timeline for receiving Legacy Fund Contributions, the Co-Owners agree that no Transfer shall take place prior to the 20th anniversary of the Commencement Date (the “**Initial Operating Period**”).

10.03 Process for Evaluating Ongoing Operations of the Project

On or about the 18th anniversary of the Commencement Date, the Parties shall commence a process to review the status and prospects of the Project including, without limitation, the financial condition of the TPASC, the physical condition of the Project, and the best options available for operating the TPASC beyond the Initial Operating Period in an economically viable manner having regard to the interests of all relevant stakeholders. As part of such evaluation process, the Co-Owners shall consider such factors that they deem relevant which may include the following:

- (a) reviewing the then current and projected usage levels of the TPASC by the Co-Owners and other users and exploring opportunities to increase usage;
- (b) seeking continued and/or enhanced financial contributions from senior levels of government and other sources related to the high-performance sports elements of the TPASC;
- (c) considering the ongoing role of the Corporation and alternative models for operating the TPASC, including the possibility of outsourcing certain functions;
- (d) re-purposing, downsizing and/or closing portions of the TPASC with a view to eliminating or containing structural deficits;
- (e) determining the fair market value of the Project or the components thereof;
- (f) determining the manner in which any Intellectual Property Rights will be disposed of; and
- (g) selling or otherwise disposing of the Project, or an interest therein, to one or more third parties.

Within twelve (12) months following the commencement of the review and evaluation process, the Co-Owners shall develop a set of conclusions and recommendations regarding the future operations of the Project and their relationship as Co-Owners of the Project and shareholders of the Corporation. The Co-Owners shall seek the requisite approvals to enable them to implement such conclusions and recommendations including, as required, approval of City Council and the University's Governing Council. This Agreement, the Shareholders' Agreement and, if applicable, the Operating Agreement shall be amended, supplemented or restated to reflect such conclusions and recommendations.

Article 11 NAMING AND SPONSORSHIP

11.01 Naming Rights

It is acknowledged and agreed that the granting of naming rights for the TPASC, both during and following the Games, is subject to various requirements set forth in the Multi-Party Agreement and the Facility Agreement. The Co-Owners and the Corporation will work co-operatively to maximize revenues generated from naming rights granted for the Project. All grants of naming rights and branding arrangements for the Project will be subject to Approval of the Co-Owners.

11.02 Revenues

The City and the University agree that any funds generated from naming rights shall be applied for the benefit of the Project and in compliance with any other agreements with Ontario and Canada and shall be paid to or for the benefit of the Corporation as required pursuant to Article 7 hereof. Such naming rights may require the approval of City Council and the University's Governing Council.

11.03 Event Sponsorships

It is contemplated that the sponsorship agreements and arrangements for events at the TPASC shall be generally entered into by the Corporation with the applicable sponsors, provided that the Co-Owners may, in their discretion, elect to enter into any such agreements or arrangements directly. All sponsorship arrangements for events at the TPASC will be subject to Approval of the Co-Owners or the board of directors of the Corporation, as applicable.

Article 12 INTELLECTUAL PROPERTY

12.01 Trade-marks

- (a) All Trade-marks that are to be used in connection with the TPASC, including, without limitation, as a building name or part of a building name, on signage used in association with the TPASC, on marketing materials (in any medium) produced in respect of the TPASC, or in any television, radio or Internet advertising, must be Approved by the Co-Owners or the board of directors of the Corporation, as applicable. All Trade-marks shall bear all proprietary notices of the applicable owner and shall be reproduced in accordance with the applicable owner's style guidelines. The Co-Owners agree that they shall not combine or use in close proximity to each other any Trade-marks that are owned or licensed by either of them so as to create a composite or combined Trade-mark.
- (b) Any Trade-marks used in connection with the TPASC that are based upon or feature prominently any Trade-marks of the University shall belong to

the University and any Trade-marks used in connection with the TPASC that are based upon or feature prominently any Trade-marks of the City shall belong to the City.

- (c) Any Trade-marks used in connection with the TPASC that are not based upon or feature prominently any Trade-marks of the University or the City shall be owned by one Co-Owner or the other or by the Corporation as mutually determined by the Co-Owners from time to time having regard to the use and application of such Trade-marks. The Co-Owner that is designated as the owner of any such Trade-mark shall license it to the other Co-Owners and the Corporation as provided herein. The Parties will develop a process for determining the ownership of any Trade-marks contemplated by this Section 12.01(c).
- (d) Each Co-Owner agrees to apply for the advertisement, pursuant to the applicable subsection of Section 9 of the *Trade-marks Act* (Canada), R.S.C. 1985, c. T-13, as am., of those of its Trade-marks that are to be used in association with the TPASC.
- (e) Each Co-Owner hereby grants to the other Co-Owner and the Corporation a non-exclusive, royalty-free, non-transferable license for the term of this Agreement to copy, display and use its Trade-marks that are used in connection with the TPASC, and such other Trade-marks as the Co-Owners or the board of directors of the Corporation may Approve, strictly for the purpose of the other Co-Owner and the Corporation receiving the benefit or and performing its obligations under this Agreement, and for no other purpose. Nothing in this Agreement confers upon any Co-Owner or the Corporation any right, title or interest in or to any other Co-Owner's Trade-marks and any goodwill that is generated by any Co-Owner's licensed use of the other Co-Owner's Trade-marks enures solely to the owner of the applicable Trade-mark(s). The licenses granted herein shall terminate immediately and automatically upon the expiration or termination of this Agreement. Under the terms of the license, each Co-Owner and the Corporation maintains all necessary rights to be able to control the quality and character of the goods and services offered in association with its Trade-marks and the other Co-Owner and the Corporation shall follow directions provided by the Co-Owner who is the owner of the Trade-mark or its designees in that respect. Any rights not herein specifically licensed to the other Co-Owner or the Corporation are reserved to the Co-Owner that is the owner of the applicable Trade-mark. With the prior written approval of the licensor Co-Owner, which shall not be unreasonably withheld, the licensee Co-Owner or the Corporation may grant sublicenses of the licensor's Trade-marks strictly for the purposes contemplated by this Section 12.01(e) and otherwise on the terms reasonably acceptable to the licensor Co-Owner.
- (f) Each Co-Owner agrees that it shall not:

- (i) directly or indirectly interfere with, contest the validity or enforceability of, infringe, attempt to depreciate the value of the goodwill attaching the Trade-marks of the other Co-Owner or the Corporation nor counsel, procure or assist any other Person to do the same;
 - (ii) seek to register any Trade-mark or any word, phrase, term, script, device or design confusingly similar to the Trade-marks of the other Co-Owner or the Corporation or otherwise use or attempt to use either the Trade-marks of the other Co-Owner or the Corporation or any artwork supplied by the other Co-Owner or the Corporation in a manner that impairs the right, title and interest of the other Co-Owner or the Corporation therein or confuses or deceives the public;
 - (iii) use the Trade-marks of the other Co-Owner or the Corporation or anything confusingly similar to the Trade-marks of the other Co-Owner or the Corporation as part of its corporate, business, trade or other name or in any internet Domain Name or electronic or email address, or in any manner that may represent or imply that it is the owner of any Trade-marks of the other Co-Owner or the Corporation; or
 - (iv) create any composite or combination mark including one or more of any Trade-marks of the Co-Owner or the Corporation
- (g) Each Co-Owner agrees that it shall:
- (i) execute any documents deemed necessary by the other Co-Owner or the Corporation to obtain protection for the Trade-marks of such other Co-Owner or the Corporation used in connection with the TPASC or to maintain their continued validity and enforceability;
 - (ii) promptly report to the other Co-Owner or the Corporation any unauthorized use or infringement of Trade-marks of such other Co-Owner or the Corporation used in connection with the TPASC that comes to its knowledge; and
 - (iii) co-operate fully with the other Co-Owner or the Corporation as to the conduct and control of any litigation regarding such other Co-Owner's Trade-marks used in connection with the TPASC, including the execution of all such documents and performance of such acts and things as, in such other Co-Owner's or the Corporation's reasonable opinion, may be necessary for the conduct of such litigation.

12.02 Domain Names

All Domain Names that are to be used in connection with any web site associated with the TPASC must be Approved by the Co-Owners or the board of directors of the Corporation Section 12.01, with the exception of Section 12.01(d), shall apply, with the necessary modification as the context may require, to any Domain Names that the Co-Owners decide to use in connection with any web site associated with the TPASC and, without limiting the generality of the foregoing, the Parties will develop a process for determining the ownership of Domain Names. With respect to the Domain Names that the Co-Owners or the board of directors of the Corporation Approve(s) for use in connection with any web site associated with the TPASC, the Co-Owner that is assigned the responsibility for registering the Domain Name(s) or the Corporation, as the case may be, shall ensure that such registrations are made in a timely manner and that they do not lapse during the term of this Agreement.

12.03 Other Intellectual Property

- (a) To the extent that a Co-Owner contributes any Intellectual Property (other than Trade-marks and Domain Names) for use at the TPASC, the contributing Co-Owner hereby grants to the other Co-Owner and the Corporation a non-exclusive, royalty-free, non-transferable license for the term of this Agreement to copy, display and use such Intellectual Property, strictly for the purpose of the other Co-Owner performing its obligations under this Agreement, the Operating Agreement and the Shareholders' Agreement, and for no other purpose. Nothing in this Agreement confers upon a Co-Owner or the Corporation any right, title or interest in or to the other Co-Owner's Intellectual Property. The license granted herein shall terminate immediately and automatically upon the expiration or termination of this Agreement. Any rights not herein specifically licensed to the other Co-Owner and the Corporation are reserved to the Co-Owner that is the contributor of the applicable Intellectual Property. With the prior written approval of the licensor Co-Owner, which shall not be unreasonably withheld, the licensee Co-Owner or the Corporation may grant sublicenses of the licensor's Intellectual Property strictly for the purposes contemplated by this Section 12.03(a) and otherwise on the terms reasonably acceptable to the licensor Co-Owner.
- (b) With respect to any materials that may be subject to copyright protection and that are licensed by a Co-Owner for use by the other Co-Owner and the Corporation pursuant to the licenses set out in Section 12.03(a) above, all copyright in such materials remains the property of the Co-Owner contributing such materials and its respective licensors. The Co-Owner receiving such materials and the Corporation shall faithfully and accurately reproduce all artwork contributed with or as part of such materials (including any copyright notices therein), and shall further comply with all style and notice guidelines with respect to any of the contributing Co-Owner's copyrights that may be contained within or form part of any such materials, in any media. The Co-Owner receiving such materials and the Corporation shall not alter, modify, or otherwise change any of the

contributing Co-Owner's artwork, or copyright notices contained within such artwork, in its reproduction of same, in any way. Further, the Co-Owner receiving the licensed materials and the Corporation shall not: copy or reproduce the artwork contributed by another Co-Owner hereunder except as expressly permitted by, or reasonably necessary for the performance of the recipients' obligations under this Agreement; or claim copyright in any of the artwork contributed by another Co-Owner.

- (c) With respect to any software that may be contributed and licensed by a Co-Owner for use by the other Co-Owner and the Corporation pursuant to the licenses set out in Section 12.03(a) above, the Co-Owner that is the licensee and the Corporation shall not permit or assist any Person to copy, modify, translate, decompile, disassemble, or otherwise reverse engineer, or otherwise determine or attempt to determine source code or protocols from, the executable code of the software. The Co-Owner that is the licensee of such software and the Corporation shall not use it or permit any Person to use the software for any purpose other than as permitted by this Agreement including for commercial time-sharing, rental, outsourcing, or service bureau use.

12.04 Jointly Developed Intellectual Property

- (a) Subject to clause (d), the Co-Owners agree that for all Intellectual Property, other than Trade-marks and Domain Names, that may be jointly created or used by or for them in respect of the TPASC (the "**Jointly Developed Intellectual Property**"), upon creation of such Jointly Developed Intellectual Property each Co-Owner shall have an equal, undivided one-half interest in and to such Jointly Developed Intellectual Property, including all Intellectual Property Rights therein, such interest to be unfettered, except as otherwise provided herein. For certainty, unless otherwise agreed by the Co-Owners, any third party reports issued or created for or in respect of the Project shall constitute Jointly Developed Intellectual Property. To the extent that a Co-Owner has created Intellectual Property (other than Trade-marks) without the involvement of the other Co-Owner for use at or in respect of the TPASC, the Co-Owner who created the Intellectual Property shall be deemed to have irrevocably assigned to the other Co-Owner an undivided one-half interest in and to such Intellectual Property, including all Intellectual Property Rights therein, and to have provided a waiver of all moral rights therein from all individuals who may be considered as authors of such works. In the case of inventions, the Co-Owner by whom the inventor(s) was employed shall cause such inventor(s) to irrevocably assign all of their worldwide Intellectual Property Rights in and to the Jointly Developed Intellectual Property and the invention(s) encompassed thereby to the Co-Owners as joint assignees. Each Co-Owner agrees to execute such further assurances as the other Co-Owner may require to give effect to the foregoing. For certainty, the Jointly Developed Intellectual Property shall

not include software programs or other Intellectual Property developed or originated by a Co-Owner for exclusive use in connection with such Co-Owner's own programs conducted at the TPASC or elsewhere.

- (b) No Co-Owner shall grant any licenses of the Jointly Developed Intellectual property to third parties without the prior written approval of the other Co-Owner, provided that licenses shall be granted to the Corporation to the extent necessary to enable the Corporation to operate the TPASC. Notwithstanding this subclause, with the prior written approval of the other Co-Owner, which shall not be unreasonably withheld, a Co-Owner or the Corporation may grant sublicenses of the licensor's Intellectual Property strictly for the purposes contemplated in this Article and otherwise on the terms reasonably acceptable to the other Co-Owner.
- (c) Upon the creation of any Jointly Developed Intellectual Property, the Co-Owners shall consult each other as to the appropriateness of obtaining applicable Intellectual Property registrations and the potential costs thereof. No registrations of any Intellectual Property Rights for Jointly Developed Intellectual Property shall be made without the Approval of the Co-Owners.
- (d) When making an application for registration in respect of any Jointly Developed Intellectual Property, the Co-Owner chosen by the Co-Owners to lead the registration or the Corporation, as applicable, shall retain counsel, prepare all appropriate applications with the assistance of counsel, instruct counsel to attend to the timely filing of same, diligently and timely prosecute such applications in good faith, and maintain the registrations issuing therefrom, and, at all times, keep the other Co-Owners and the Corporation apprised of the status of the application(s) and patents. All such applications shall be made jointly in the name of the Co-Owners, and/or, where local law requires, and as applicable, in the name of the applicable inventor(s) (in the case of inventions). Each Co-Owner shall perform all reasonable acts and execute and deliver all reasonable documents requested by the other Co-Owner at any time to prosecute, maintain, record and enforce the Intellectual Property applications and any registrations issuing therefrom. The Co-Owner leading the application process for any Jointly Developed Intellectual Property and the Corporation shall notify the other Co-Owner promptly if any application becomes subject to any final and irreversible bar, abandonment, refusal, rejection, forfeiture, withdrawal, expiration, lapse, cancellation, expungement, opposition or dedication to the public or of any final and irreversible adverse determination or development.

12.05 Third Party Infringement of Jointly Developed Intellectual Property

- (a) The Co-Owners shall inform each other and the Corporation promptly of any alleged infringement and of any available evidence of infringement by

any third party of the Jointly Developed Intellectual Property. If the Co-Owners agree to pursue a third party infringer, they shall appoint the Corporation or one of the Co-Owners as the responsible Party for taking action against third party infringers (the "**Responsible Party**").

- (b) If the Co-Owners agree to jointly pursue a third party infringer, the Co-Owners and the Corporation shall work together co-operatively in good faith to collaborate on and co-ordinate their actions, and shall share all costs equally. Each Co-Owner and the Corporation shall perform all reasonable acts and execute and deliver all reasonable documents requested by the other Co-Owners or the Corporation at any time to take action against such infringer. Each Co-Owner and the Corporation shall, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, documentation and the like, and execute such deeds and other instruments as the Responsible Party may from time to time reasonably require in connection therewith. Any recovery or damages for past infringement derived therefrom shall first be used to reimburse the Responsible Party for expenses associated with prosecution of the third party infringer. The balance of the remaining recovery or damages shall be paid to the Co-Owners in proportion to the losses that each Co-Owner has suffered that are directly and demonstrably attributable to the infringement. If the recovery of damages is insufficient to cover the Responsible Party's reasonable expenses for the prosecution of the third party infringer, then the other Co-Owners shall share such expenses equally. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the Approval of the Co-Owners. If a Co-Owner decides not to pursue a third party infringer, the other Co-Owner shall be entitled to do so at its sole expense and shall indemnify and hold harmless the other Co-Owner and the Corporation in respect thereof.
- (c) The provisions in this Article 12 for the control and conduct of the process for the prosecution of a third party infringer, shall apply, with the necessary modification as the context may require, in the event that a declaratory judgment action alleging invalidity of any of the Jointly Developed Intellectual Property is brought.

Article 13 TAXES

13.01 Property Taxes

The Co-Owners confirm their intention to enter into, and, if applicable, cause the Corporation to enter into, a municipal capital facility agreement with the City of Toronto pursuant to section 252 of the *City of Toronto Act* for the purposes of obtaining an exemption from taxation for municipal and school purposes. In the event that such agreement is not entered into or the Project is subject to property taxation in whole or in

part, each Co-Owner shall be responsible for and pay 50% of any property taxes payable from time to time to the extent not recovered from third parties. Property taxes may be payable in respect of space within the TPASC leased to CSIO and other tenants and lessees.

Article 14 PARKING

14.01 Parking on Project Lands

All parking facilities on the Lands and on the Adjacent Parking Lands shall be for the exclusive use of the Co-Owners and the Corporation in connection with the Project.

14.02 Parking on Adjacent Parking Lands

- (a) The Co-Owners acknowledge and agree that the Adjacent Parking Lands are exclusively required for the Project in accordance with the zoning by-law for the Co-Owned Lands, being By-law No. 781-2011 (the "**Project By-law**").
- (b) The University may, on reasonable prior notice to the Corporation and with the concurrence of the City as Co-Owner, submit an application to the City for approval to relocate the exclusive parking on the Adjacent Parking Lands to other lands north of Ellesmere should the University require the Adjacent Parking Lands in connection with future development activities. In determining whether to give its concurrence to the proposed relocation and any associated by-law amendment, the City as Co-Owner may, acting reasonably, have regard to the proximity of the relocated parking facilities to the Project. The University shall bear all costs of relocating the exclusive parking.

14.03 Process for Reassessment of Parking Requirements

The Co-Owners and the Corporation will re-assess the amount of and location of exclusive and non-exclusive parking outside of the Lands within two years following the completion of the Games and periodically thereafter. Any increase, decrease or relocation of parking facilities or spaces, as Approved by the Co-Owners or the Board, will be subject to compliance with the Project By-Law or an amendment thereof being obtained. The Co-Owners will grant and/or enter into any required easements, leases and/or licenses for parking to facilitate access to and from parking areas located within and outside of the Project Lands at nominal consideration and upon such other terms as are Approved by the Co-Owners, acting reasonably. Any such easements, leases and/or licenses will be terminated and replaced by comparable rights in connection with the relocation of any parking areas.

14.04 Parking Management

A. Parking on the Lands

The Co-Owners shall operate and maintain the parking on the Lands directly or, if Approved, contract out parking operations in respect of the parking on the Lands to the University or the Corporation or to another third party parking manager.

B. Parking on the Adjacent Parking Lands

The Co-Owners shall be jointly responsible for the cost of operating and managing all parking facilities on the Adjacent Parking Lands and share equally in any revenues obtained thereof until such time as the parking is relocated in accordance with section 14.02(b). Upon relocation, the University will be responsible for the operation and management of the relocated parking facilities, which the University will operate in substantially the same manner and to substantially the same standard as other parking lots on the University of Toronto Scarborough campus. All revenues from the relocated parking facilities shall belong to the University.

C. Parking on Additional Parking Lands

The University will operate the parking facilities on the Additional Parking Lands in substantially the same manner and to substantially the same standard as other parking lots on the University of Toronto Scarborough campus. All revenues from the Additional Parking Lands shall belong to the University.

Article 15
REPAIR AND MAINTENANCE, INSURANCE

15.01 General Standard

The Co-Owners will, and pursuant to the Operating Agreement will require the Corporation, to maintain the Project in good repair and safe operating condition.

15.02 Access Maintenance

- (a) The Co-Owners will jointly, and pursuant to the Operating Agreement require the Corporation, to maintain Pan Am Drive including all sidewalks, entrances and exits, in good order and repair, properly drained, and clear of ice, snow and rubbish.
- (b) In the event that it is determined that the relative usage, and resulting wear and tear if any, caused to Pan-Am Drive by the vehicles and equipment which enter and exit the City's Transportation Services Morningside Yard by way of the Access Drive Lands exceeds the relative usage and resulting disproportionate wear and tear of the remainder of Pan-Am Drive, the City shall reimburse the Co-Owners for its proportionate share of the costs of maintenance and repair of that portion of Pan Am Drive located within the Access Drive Lands.

15.03 Insurance

The Co-Owners will, and pursuant to the Operating Agreement will require the Corporation to, keep and maintain all insurance as required pursuant to the Facility Agreement up to the end of the 2015 Exclusive Use Period [as defined in the Facility Agreement]. Thereafter, the Co-Owners will, and pursuant to the Operating Agreement will cause the Corporation to, maintain the insurance coverages set out in Schedule E attached. **[NTD: To be reviewed with insurance advisors.]**

Article 16 LEGACY MATTERS

16.01 Legacy Fund Agreements

The Legacy Fund Agreements shall be subject to the Approval of both of the Co-Owners. The Co-Owners shall be subject to the Approved Legacy Fund Agreements and shall take all necessary and appropriate actions to ensure compliance with the provisions thereof.

16.02 Legacy Fund Contributions

The Co-Owners acknowledge that all Legacy Fund Contributions shall be applied and used solely for the benefit of the Project and the Approved annual capital and operating budgets for the Project shall include the allocation and use of the Legacy Fund Contributions for the applicable year. Subject to Section 7.03, Legacy Fund Contributions received by the Co-Owners pursuant to the Legacy Terms and Conditions Agreement will be promptly contributed to the Corporation in accordance with the provisions of the Shareholders' Agreement. The Co-Owners understand that the implementation of the Legacy Fund Agreements will involve a dynamic process that may evolve over time. Accordingly, the Co-Owners will update the provisions of this Article 16 to the extent necessary to accommodate any changes to the Legacy Fund Agreements and the Legacy Fund Contributions.

Article 17 DEFAULT

17.01 Events of Default

In this Article, the Co-Owner which has defaulted is called the "**Defaulting Co-Owner**" and the other Co-Owner is called the "**Non-defaulting Co-Owner**". Any of the following circumstances shall constitute a default by a Co-Owner (hereinafter called an "**Event of Default**"):

- (a) if the Defaulting Co-Owner shall fail to make any payment required hereunder and such failure shall continue for a period of [thirty (30)] Business Days after written notice thereof has been given by the Non-Defaulting Co-Owner; or
- (b) if the Defaulting Co-Owner shall be in default of any other provision of this Agreement, and such default shall continue for a period of sixty (60) days

after written notice thereof has been given by the Non-Defaulting Co-Owner, or such longer period as may be required to cure such default provided that reasonable steps to cure such default are taken and diligently pursued; or

- (c) if the Defaulting Co-Owner shall become subject to the provisions of the *Bankruptcy and Insolvency Act* (Canada), or, in the case of the City the *Municipal Administration Act*, Ontario, or shall go into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or make a general assignment for the benefit of its creditors, or shall have sought protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) or otherwise acknowledge its insolvency; or
- (d) if a liquidator, receiver, receiver and manager or trustee in bankruptcy shall be appointed to or of the Co-Owner's Interest of the Defaulting Co-Owner or any part thereof with the consent or acquiescence of the Defaulting Co-Owner, and such appointment shall remain unvacated and unstayed for thirty (30) days after written notice thereof is given by the Non-Defaulting Co-Owner; or
- (e) if an encumbrancer takes possession of or takes any steps to realize on the Co-Owner's Interest of the Defaulting Co-Owner or any substantial part thereof, or if a distress or execution or any similar process be levied or enforced upon or against such Co-Owner's Interest and the same remains unsatisfied for the lesser of (i) thirty (30) days and (ii) such period as would permit the same to be sold; provided that such process is not in good faith disputed by the Defaulting Co-Owner and, in that event, provided further that non-payment shall not in the reasonable opinion of the Non-Defaulting Co-Owner jeopardize the right, title and interest of the Non-Defaulting Co-Owner in its Co-Owner's Interest, and provided further that, if the Defaulting Co-Owner shall desire to contest the same, it shall also give security which, in the absolute discretion of the Non-Defaulting Co-Owner, shall be deemed sufficient to pay in full the amount claimed in the event it shall be held to be a valid claim.

In the event of the occurrence of more than one of the circumstances set forth in Section 17.01, with respect to the Defaulting Co-Owner, each such circumstance shall be deemed to be a separate Event of Default and the Non-defaulting Co-Owner shall be entitled to elect to exercise its remedies hereunder with respect to each such Event of Default.

17.02 Rights Available to Non-defaulting Co-Owner

If an Event of Default in respect of either Co-Owner shall have occurred, then until such Event of Default is cured, the Non-defaulting Co-Owner shall have the right:

- (a) to bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Co-Owners that damages at law may be an inadequate remedy for a default or breach of this Agreement; and/or
- (b) to remedy such default and any other default of the Defaulting Co-Owner under this Agreement and shall be entitled on demand to be reimbursed by the Defaulting Co-Owner for any monies expended to remedy any such default and any other expenses (including legal fees on a solicitor and client basis) incurred by the Non-defaulting Co-Owner (and to bring any legal proceedings for the recovery thereof), together with interest at four percent (4%) per annum above the Prime Rate from time to time in effect; and in addition, the Defaulting Co-Owner hereby directs that all amounts payable to it pursuant to this Agreement (including amounts distributable to it under Article 11 by the Co-Owners or the Corporation) shall be paid to the Non-defaulting Co-Owner to the extent necessary to reimburse the Non-defaulting Co-Owner for such monies with interest as aforesaid; and/or
- (c) to bring any action at law as may be necessary or desirable in order to recover damages.

Article 18 DISPUTE RESOLUTION

18.01 Dispute Resolution and Escalation

Any disagreement that arises between the Co-Owners with respect to any issue or matter in connection with this Agreement (a "**Dispute**") will be subject to the following dispute resolution procedure:

- (a) The Co-Owners shall attempt to resolve any Dispute informally by meeting as often, for a duration and as promptly as those representatives deem necessary to discuss the Dispute and negotiate in good faith in an attempt to resolve the Dispute.
- (b) If the representatives of the Co-Owners are unable to resolve a Dispute through the process referenced in Section 18.01(a), then the dispute will be documented and submitted for resolution, on a without prejudice basis, to the University's Governance Liaison and the City's Governance Liaison who will attempt to resolve the Dispute through discussion and good faith negotiation.
- (c) If the University's Governance Liaison and the City's Governance Liaison are unable to resolve the Dispute through the process referenced in Section 18.01(b), the Dispute will be referred to the Dispute to the City Manager and the University's Vice-President, University Operations who

will attempt to resolve the Dispute through discussion and good faith negotiation.

- (d) if the Co-Owners, after undertaking the measures contemplated above, cannot resolve the Dispute within thirty (30) Business Days after the date of the first meeting, the Dispute will be referred to arbitration before a mutually agreed upon single arbitrator. In the event that the Co-Owners cannot agree on the appointment of an arbitrator, one will be appointed pursuant to the provisions of the *Arbitration Act, 1991* (Ontario). The arbitration will be conducted in Toronto under the rules of the *Arbitration Act, 1991* (Ontario). The arbitrator will issue an arbitral award within fifteen (15) Business Days following the date the matter was arbitrated, and any arbitral award will be final, conclusive and binding upon the Co-Owners. The cost of the arbitration shall be paid by the unsuccessful Party.
- (e) While the dispute resolution procedures of this Article are in process, until such time as these procedures have been finally implemented and a final decision has been rendered, no default will be deemed to have occurred and, in respect of the matter in dispute, if the final decision is that a default has occurred, then the times for curing such default will commence to run from the date of delivery of notice of the final determination to the Co-Owners.

The Co-Owners acknowledge that the Shareholders' Agreement contains comparable dispute resolution provisions. Accordingly, if a Dispute involves this Agreement and the Shareholders' Agreement, the Dispute shall be resolved concurrently under both agreements including, if applicable, pursuant to a single arbitration proceeding.

Article 19

CONFIDENTIALITY AND COMMUNICATION STRATEGY

19.01 Confidentiality Obligations

- (a) Subject to the following provisions of this Section 19.01, each Co-Owner agrees that it shall not, without the prior written consent of the other Co-Owner, directly or indirectly communicate or disclose to any Person, or use for any purpose other than in furtherance of the Co-Ownership (or the Co-Owner's own internal purposes and that of any Affiliate and then only to their own employees or advisors), any Confidential Information acquired by such Co-Owner.
- (b) Each Co-Owner may disclose Confidential Information to: (i) its directors, officers, governors or employees; (ii) its professional advisors, consultants, auditors, potential and actual bankers and lenders; (iii) Toronto City Council or a Toronto City Councillor or to the Governing Council or a Governor of the University; and (iv) Committees of City Council and the Governing Council of the University or members thereof,

provided that such disclosure shall only be made to the extent necessary, and the disclosing Co-Owner shall advise the Person to whom the Confidential Information is to be disclosed that such Confidential Information is to be kept in the strictest of confidence and shall require such Person, as applicable, to undertake in writing for the benefit of the Parties to maintain such Confidential Information in the strictest confidence.

- (c) The foregoing provisions shall not apply to information: (i) which is in the public domain; (ii) which the disclosing Co-Owner can demonstrate through appropriate documentation was previously known to it; (iii) which the disclosing Co-Owner learned from a source other than the other Co-Owner, and without violation of this or any other non-disclosure obligation; or (iv) which is required to be disclosed by law or the decision or order of a court or tribunal of competent jurisdiction.
- (d) The Co-Owners acknowledge that:
 - (i) the University is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31 ("**FIPPA**") and that information, including Confidential Information, submitted and in the possession of the University is governed by FIPPA and may be subject to disclosure in accordance with the requirements of same.
 - (ii) the City is subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("**MFIPPA**") and that information, including Confidential Information, submitted and in the possession of the City is governed by and may be subject to disclosure in accordance with the requirements of same.

Prior to disclosing any Confidential Information pursuant to FIPPA or MFIPPA, the Parties agree to redact any portions of such Confidential Information that is not required to be disclosed pursuant to FIPPA or MFIPPA. The information to be redacted shall be mutually agreed to by the Parties.

- (e) The obligations under this Article 19 shall remain in effect during the continuance of this Agreement and for a period of ten (10) years thereafter.

19.02 Communications

All press releases and other communications to the general public in respect of the Project shall be made in the joint names of the Co-Owners or in the name of the Corporation and only with the Approval of the Co-Owners or the board of directors of TPSAC, as applicable. The Co-Owners acknowledge that each of the City and the

University has a communications strategy in place and that any communication to the public regarding the Project must reflect and be consistent with the communications strategy of both Co-Owners.

Article 20 GENERAL

20.01 Inconsistencies

In the event of an inconsistency between the provisions of this Agreement and the provisions of the Shareholders' Agreement, the Co-Owners shall, in good faith, determine which provisions shall govern.

20.02 Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by prepaid first-class mail, by facsimile or other means of electronic communication or by delivery as hereafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fourth (4th) Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with this Section. Notices and other communications shall be addressed as follows:

- (a) in the case of a notice to the City, at:

City Manager's Office
Toronto City Hall
100 Queen Street West
11th Floor, East Tower
Toronto, Ontario
M5H 2N2

Attention: Joe Pennachetti
Fax: ●
Email: Jpennac@toronto.ca

with a copy to:

General Manager
Parks, Forestry & Recreation
City of Toronto
100 Queen Street West
4th Floor, West Tower
Toronto, Ontario
M5H 2N2

Attention: Jim Hart
Fax: ●
Email: jhart@toronto.ca

(b) in the case of a notice to the University, at:

University of Toronto
Room 112, Simcoe Hall
27 King's College Circle
Toronto, Ontario
M5S 1A1

Attention: Vice President, University Operations
Fax: ●
Email: scott.mabury@utoronto.ca

with a copy to:

University of Toronto,
Scarborough Campus
1265 Military Trail
Toronto, Ontario
M1C 1A4

Attention: Principal UTSC, Vice President
Fax: ●
Email: principal@utsc.utoronto.ca

with a copy to the University's counsel at:

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Signe Leisk
Fax: (416) 640-3218
Email: sleisk@casselsbrock.com

The delivery of any notice or other communication to counsel to any of the Parties hereto shall not constitute notice for the purposes of this Section, nor shall the failure invalidate any notice given under this Section.

20.03 Amendments

This Agreement may only be amended by an agreement in writing between all the Parties hereto.

20.04 Further Assurances

The Parties hereto and their respective directors, officers and employees, to the extent applicable, agree to execute and deliver such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their votes and influence, and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

20.05 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

20.06 Entire Agreement

This Agreement, and any agreements and documents to be delivered pursuant to the terms of this Agreement, constitutes the entire agreement among the Parties pertaining to dealings with the Co-Ownership and the Project and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, representations, warranties or other agreements in connection with dealings with the Co-Ownership and the Project, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Agreement and any agreements and documents to be delivered pursuant to the terms of this Agreement.

20.07 Waiver

A waiver of any default, breach or non-compliance under this Agreement is not effective unless it is in writing and signed by the Party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-compliance or by anything done or omitted to be done by that Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance, whether of the same or any other nature.

20.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

20.09 Governing Law

This Agreement shall be governed by and construed in accordance with, and the rights of the Parties shall be governed by, the laws of Ontario and the laws of Canada applicable therein, without regard to any conflict of law principles. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario and all courts competent to hear appeals from those courts with respect to any matter related to this Agreement.

20.10 Counterparts

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the Parties adopt any signatures received by a receiving fax machine as original signatures of the Parties; provided, however, that any Party providing its signature in such manner will promptly forward to the other Party an original of the signed copy of this Agreement which was so faxed.

20.11 Master Agreement

This Agreement supersedes the agreement between the Co-Owners made as of December 1, 2010 which was entered into for the purpose of defining their relationship in relation to the Project, including the framework for owning and operating the Project.

This Agreement has been executed by the Co-Owners.

**THE GOVERNING COUNCIL OF THE
UNIVERSITY OF TORONTO**

Per: _____
Name:
Title:

I have authority to bind the University

CITY OF TORONTO

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the Corporation

Schedule A
Description of Lands

Part of Lot 13, RCP 10303 and Part of Lot 10 Concession 2, City of Toronto, designated as Parts 2 and 3 on Plan 66R-25881.

Schedule B
**Legal Description of Access Drive Lands,
Adjacent Parking Lands and Additional Parking Lands**

Description of Access Drive Lands

Part of Lot 13, RCP 10303, City of Toronto designated as Part 1 on Plan 66R-25881.

Description of Adjacent Parking Lands

Part of Lot 10 Concession 2, City of Toronto designated as Part 4 on Plan 66R-25881.

Description of Additional Parking Lands

Part of Lot 15, RCP 10303 and Part of Block A Plan 1220 and Part of Lot 10 Concession 2, City of Toronto described as Parts 13 and 16 on Plan 66R – 25517
[Confirm].

**Schedule D
Project Costs**

[NTD: To be updated.]

Schedule E
Insurance Requirements

Schedule F
TO2015 Sport Legacy Plan

September 12, 2013

**SUBSTANTIALLY FINAL DRAFT SUBJECT TO CITY COUNCIL
AND UNIVERSITY GOVERNING COUNCIL APPROVAL**

PRIVILEGED AND CONFIDENTIAL

CITY OF TORONTO

- and -

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

- and -

TORONTO PAN AM SPORTS CENTRE INC.

UNANIMOUS SHAREHOLDERS' AGREEMENT

Dated As of

_____, 2013

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PRIVILEGED AND CONFIDENTIAL

UNANIMOUS SHAREHOLDERS' AGREEMENT

THIS AGREEMENT is made the ● day of ●, 2013.

BETWEEN:

CITY OF TORONTO

(the "**City**")

- and -

**THE GOVERNING COUNCIL OF THE
UNIVERSITY OF TORONTO**

(the "**University**")

- and -

TORONTO PAN AM SPORTS CENTRE INC., a
corporation incorporated under the laws of Ontario

(the "**Corporation**")

WHEREAS:

- (i) the Corporation has been incorporated by the City and the University pursuant to the *Business Corporations Act* (Ontario);
- (ii) the authorized capital of the Corporation consists of an unlimited number of Common Shares, of which 2 Common Shares are presently issued and outstanding;
- (iii) each of the City and the University is the registered and beneficial owner of one Common Share; and
- (iv) the Parties hereto wish to enter into this Agreement for the purposes hereinafter set forth and to govern their relationship as Shareholders of the Corporation, with the intent that it shall constitute a unanimous shareholder agreement;

The Parties hereto agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Agreement, in addition to any other terms defined elsewhere herein:

"**Act**" means the *Business Corporations Act* (Ontario), as the same may be amended from time to time and any successor legislation thereto, except where otherwise expressly provided.

"**Affiliate**" means, in respect of any Shareholder, an affiliate within the meaning of the Act, and includes any Person who is an Eligible Transferee of such Shareholder, whether or not acquiring Shares from such Shareholder or the Corporation.

"**Agreement**" means this Agreement and all schedules, if any, attached to this Agreement, in each case as they may be supplemented or amended from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement, and unless otherwise indicated, references to Articles and Sections are to the specified Articles and Sections in this Agreement.

"**Arm's Length**" has the meaning attributed to such term in the *Income Tax Act* (Canada), as the same may be amended from time to time.

"**Articles**" means the Certificate and Articles of Incorporation of the Corporation, as the same may from time to time be amended, replaced or superseded in accordance with the provisions of this Agreement.

"**Auditors**" means the firm of chartered accountants selected pursuant to Section 5.1.

"**Board of Directors**" or "**Board**" means the board of directors of the Corporation, as constituted in accordance with this Agreement and the Act.

"**Books and Records**" means books and records of the Corporation, including all financial records, books of account, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence, and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media.

"**Business Day**" means any day, other than Saturday, Sunday or any statutory holiday in Ontario on which the principal commercial banks located in Toronto, Ontario are open for business during normal banking hours.

"**By-Laws**" means the by-laws of the Corporation, as such by-laws may from time to time be amended, replaced or superseded in accordance with the provisions of this Agreement.

"**City Confidential Information**" means all trade secrets, confidential or proprietary information or data of or possessed by the City relating to the property, assets, liabilities, operations, affairs, governance or purposes of the City and that are either:

- (i) unrelated to the Project and/or the Corporation; or
- (ii) not intended or required to be held, used or made available for the benefit of the University and/or the Corporation,

and, for certainty, all confidential or proprietary information or data relating to the City's own programs shall constitute City Confidential Information.

"Commencement Date" is the date on which the TPASC opens for operation to students, the community and other users, which is expected to be on or about July 15, 2014.

"Common Shares" means the common shares in the capital of the Corporation.

"Confidential Information" means all trade secrets, confidential or proprietary information or data of or possessed by the Corporation, relating to the property, assets, liabilities, business affairs, governance or purposes of the Corporation including, without limitation, such information pertaining to revenues, budgets, finances, operations, costs, marketing and promotion, business strategies and plans, sponsorships, labour relations agreements and other materials, insurance policies, business processes, building plans and drawings, regulatory approvals, environmental reports, Games-related information, building security, parking agreements, the Facility Agreement, the Legacy Fund Agreements, the Legacy Fund Contributions, leases, subleases, concession agreements, user agreements, short-term rentals, permits, tenants, subtenants, concessionaires, users, suppliers, employees and contract staff; for certainty, Confidential Information shall expressly exclude the City Confidential Information and the University Confidential Information.

"Co-Ownership Agreement" means the co-ownership agreement dated as of ●, 2013 between the City and the University, as such agreement may be amended from time to time.

"Co-Owners" means the City and the University in their capacity as co-owners of the TPASC pursuant to the Co-Ownership Agreement.

"Corporation" has the meaning attributed to such term in the recitals to this Agreement, and any other corporation the Shareholders hereafter agree this agreement applies to, and includes any successor to any such corporation resulting from any amalgamation, merger, arrangement or other reorganization of or including any such corporation or any continuance under the laws of another jurisdiction.

"Defaulting Shareholder" has the meaning attributed to such term in Section 10.1.

"Director" means a director of the Corporation and **"Directors"** has a similar extending meaning.

"Dispute" has the meaning attributed to such term in Section 11.1.

"Event of Default" has the meaning attributed to such term in Section 10.1.

"Facility Agreement" means the agreement dated June 22, 2012 between the City, the University, Ontario Infrastructure and Lands Corporation and TO2015 for the 2015 Pan American Games relating to the construction of the TPASC, the staging of the Games, and related matters.

"Finance Liaison" has the meaning attributed to such term in Section 0.

"**GAAP**" has the meaning attributed to such term in Section 1.5.

"**Games**" means the 2015 Pan/Parapan American Games.

"**Governance Liaison**" has the meaning attributed to such term in Section 4.8.

"**Initial Operating Period**" has the meaning attributed to such term in Section 8.2.

"**Legacy Fund Contributions**" means the funding received by the Shareholders pursuant to the Legacy Fund Agreements.

"**Legacy Fund Agreements**" means the TO2015 Sport Legacy Plan dated ●, 2013 and all related agreements between the Shareholders, TO2015 and ● pursuant to which the Shareholders (in their capacity as owners of the TPASC) will receive a portion of the endowment fund known as the "TO2015 Legacy Fund" established in connection with the Games.

"**MCI Act**" means the *Municipal Conflict of Interest Act* (Ontario) as amended from time to time.

"**MM&C Expenditures**" has the meaning attributed to such term in the Co-Ownership Agreement.

"**Non-Defaulting Shareholder**" has the meaning attributed to such term in Section 10.1.

"**Operating Agreement**" means the agreement entered into or to be entered into between the City and the University, in their capacity as Co-Owners of the TPASC), and the Corporation pursuant to which the Corporation shall manage and operate the TPASC, as such agreement may be amended from time to time.

"**Parties**" means the parties to this Agreement, and "**Party**" means any one of them.

"**Person**" means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted.

"**Prime Rate**" means the rate of interest per annum established by Canadian Imperial Bank of Commerce from time to time at Toronto, Canada as the reference rate it will use to determine rates of interest payable by its borrowers on Canadian dollar commercial loans made by such bank to such borrowers in Canada and designated by such bank as its "prime rate".

"**Project**" has the meaning attributed to such term in the Co-Ownership Agreement.

"**PSAB**" has the meaning attributed to such term in Section 1.5.

"Shareholder Debt" means indebtedness, if any, which is owed by the Corporation to a Shareholder or any of its Affiliates for advances or loans made, with the approval of the Board of Directors.

"Shareholders" means the shareholders of the Corporation from time to time and **"Shareholder"** means any one of them.

"Shares" means the existing Common Shares of the Corporation and includes any shares or securities into which such shares may be converted or changed and any shares or securities which may be received by the parties hereto or bound hereby as a result of an amalgamation, merger, arrangement or other reorganization of or including the Corporation.

"Special Approval of the Shareholders " means the approval by all of the Shareholders evidenced by an instrument in writing or a duly constituted meeting of the Shareholders.

"Staff Members" has the meaning attributed to such term in Section 0.

"Subsidiary" means a subsidiary within the meaning of the Act.

"TO2015" means the Toronto Organizing Committee for the 2015 Pan American Games.

"TPASC" means the aquatic centre and fieldhouse to be known as Toronto Pan Am Sports Centre.

"Transfer" includes any sale, exchange, assignment, gift, bequest, disposition, mortgage, charge, pledge, encumbrance, grant of security interest or other arrangement by which possession, legal title or beneficial ownership passes, directly or indirectly, from one Person to another, or to the same Person in a different capacity, whether or not voluntary and whether or not for value, and any agreement to effect any of the foregoing. and the words **"Transferred"**, **"Transferring"** and similar words have corresponding meanings.

"University Confidential Information" means all trade secrets, confidential or proprietary information or data of or possessed by the University relating to the property, assets, liabilities, operations, affairs, governance or purposes of the University and that are either:

- (i) unrelated to the Project and/or the Corporation; or
- (ii) not intended or required to be held, used or made available for the benefit of the City and/or the Corporation,

and, for certainty, all confidential or proprietary information or data relating to the University's own programs shall constitute University Confidential Information.

1.2 **Schedules; Headings**

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation hereof.

1.3 **Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.4 **Currency**

Except as expressly provided in this Agreement, all payments contemplated pursuant to this Agreement are stated and shall be paid in lawful currency of Canada, in cash, by bank draft or by certified cheque or any other method that provides immediately available funds.

1.5 **Accounting Principles**

All references in this Agreement to generally accepted accounting principles and any financial calculations or determinations shall, unless otherwise specifically provided, be to the generally accepted accounting principles from time to time established by the Canadian Institute of Chartered Accountants, or any successor institute, in the "CICA Handbook" applicable as of the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles consistently applied ("**GAAP**"). [Note: Add definition of "**PSAB**".]

1.6 **Calculation of Time**

Whenever any payment to be made hereunder shall be stated to be due, any period of time hereunder shall be stated to end, any calculation shall be stated to be made hereunder or any other action to be taken hereunder shall be stated to be required to be taken on or as of a day other than a Business Day, such payment shall be due, such period of time shall end, such calculation shall be made or such action shall be required to be taken on or as of the next succeeding Business Day, unless the next succeeding Business Day shall fall in the next calendar month, in which case such payment shall be due, such period of time shall end, such calculation shall be made or such action shall be required to be taken on or as of the next preceding Business Day and, in the case of any payment of interest pursuant to the terms of this Agreement any such adjustment shall be taken into account in determining the amount of such interest payment.

1.7 **Statute References**

Unless otherwise expressly stated, any reference in this Agreement to any statute or any Section of the statute shall be deemed to be a reference to such statute or Section as amended, restated or re-enacted from time to time.

ARTICLE 2 PURPOSES OF AGREEMENT

2.1 **Purposes of Agreement**

The primary purposes of this Agreement are to set out:

- (a) the relationship between the Shareholders including the process for decisions by the Shareholders in their capacity as Shareholders;
- (b) the terms and processes for the Shareholders to provide direction to the Board as contemplated in this Agreement;
- (c) the fundamental principles of the Shareholders regarding the Board and the Corporation; and
- (d) subject to the Board's authority, the management of the business and affairs of the Corporation and Shareholder requirements for the accountability and responsibility of the Board.

ARTICLE 3

ORGANIZATION OF THE CORPORATION AND IMPLEMENTATION OF AGREEMENT

3.1 Corporate Name etc.

The name of the Corporation shall be Toronto Pan Am Sports Centre Inc. Any trademarks, trade names, business names, domain names, copyrights and related intellectual property rights pertaining to the TPASC shall be owned by or licensed to the Corporation on terms and conditions approved by Special Approval of the Shareholders as contemplated by Article 12 of the Co-Ownership Agreement.

3.2 Articles and By-Laws of the Corporation

The Articles and By-Laws of the Corporation in effect at the date hereof are attached hereto as Schedule 3.1. In the event of any conflict between the provisions of this Agreement and the provisions of the Articles or By-Laws, each Shareholder shall take or cause to be taken such steps and proceedings as may be required under the Act or otherwise to amend the Articles and By-Laws to resolve such conflicts so that the provisions of this Agreement shall at all times prevail to the maximum extent permitted by law.

3.3 Compliance with Agreement

The Shareholders shall cause such meetings to be held, votes to be cast, resolutions to be passed, By-Laws to be enacted and confirmed, documents to be executed and all other things and acts to be done to ensure that, at all times, the terms of this Agreement are complied with.

3.4 Unanimous Shareholders Agreement

This Agreement constitutes a unanimous shareholders agreement within the meaning of the Act, and is not intended to, and shall not be construed so as to create or give rise to a general partnership, limited partnership or joint venture.

3.5 Powers of the Directors and Shareholders

The Directors of the Corporation shall have all the rights, powers, duties and liabilities arising under the Act or otherwise except to the extent that the provisions of this Agreement

expressly restrict the discretion and powers of the Board of Directors to manage or to supervise the management of the business and affairs of the Corporation. The Shareholders shall have all the rights, powers, duties and liabilities of the Directors of the Corporation, whether arising under the Act or otherwise, only to the extent that this Agreement expressly restricts the discretion or powers of the Directors to arrange or supervise the management of the business and affairs of the Corporation.

3.6 **Consent of the Corporation.**

The Corporation consents to the entering into of this Agreement and covenants that it will, at all times during the term of this Agreement, be governed by the provision of this Agreement in carrying on its business and affairs.

**ARTICLE 4
MANAGEMENT OF THE BUSINESS AND AFFAIRS OF THE CORPORATION**

4.1 **Board of Directors.**

(a) **Composition.**

The Corporation shall have a Board consisting of ten (10) members, five (5) of whom shall be appointed by each Shareholder.

(b) **Appointment at Pleasure of Shareholders.**

Subject to Section 4.1(c), each Shareholder may decide, in its discretion, to replace any Director appointed by it at any time and for any reason. The Governance Liaisons and Finance Liaisons, while they hold such positions, shall not serve on the Board.

(c) **Election of Directors.**

In recognition of the commitments of the Shareholders in relation to the staging and legacy of the Games, the Board will initially be composed primarily of individuals who are employees and/or officers of the Shareholders (the "**Staff Members**"), provided that each Shareholder may nominate up to [two (2)] non-Staff Members to the Board. Without limiting the generality of the foregoing, the Shareholders agree that Schedule "A" hereto sets forth the eligibility criteria that each Board nominee shall meet and the qualifications of the Board nominees as a whole. The Shareholders shall regularly consult with each other regarding the composition of the Board and will endeavour to ensure that each of them nominates an equal number of Staff Members and non-Staff Members to the Board.

(d) **Term.**

Each Director shall serve for a term of two (2) years. Incumbent Directors may be reappointed by the applicable nominating Shareholder.

(e) **Serving until Successor Appointed.**

Each Director shall continue to serve on the Board until his or her successor is elected or appointed.

(f) **Remuneration.**

The Directors shall not be remunerated for serving as such but may be reimbursed for their reasonable out-of-pocket expenses in attending board meetings in accordance with a policy approved by the Board.

(g) **Vacancies.**

If a Director resigns or is removed by the Shareholder who nominated him or her or otherwise ceases to be a Director for any reason (the "**Retiring Director**"), the Shareholders shall fill the vacancy as soon as possible by appointing another individual nominated by the Shareholder who nominated the Retiring Director.

(h) **Shareholder Action.**

Each Shareholder shall use its reasonable efforts to expedite the completion of its appointments process, if any, so as to ensure that the Board of Directors is at all times able to function in accordance with this Agreement and applicable law. Further, the Shareholders shall cause such meetings to be held, votes to be cast and resolutions to be passed so as to ensure that, at all times, Directors are elected and vacancies are filled in accordance with the foregoing provisions of this Section 4.1, provided that a Shareholder's reasonable efforts as aforesaid shall not require the Shareholder to expedite scheduling of meetings of its governing body to address matters contemplated herein or fetter the discretion of such governing body.

(i) **Review and Evaluation Process.**

On or about January 15, 2017, the Shareholders shall commence a process to review and evaluate the performance and functionality of the Board during the preceding three (3) years and to determine whether the Board should continue to be composed primarily of Staff Members, or members of the public, or a combination thereof, the qualifications and eligibility requirements for Directors, whether the Directors should be subject to term limits and related matters. Within twelve (12) months following the commencement of the review and evaluation process, the Shareholders shall develop a set of conclusions and recommendations regarding the future composition and functionality of the Board. The Shareholders shall seek the requisite approvals to enable them to implement such conclusions and recommendations including, as required, approval of City Council and the University's Governing Council. This Agreement shall be amended, supplemented or restated to reflect such conclusions and recommendations.

4.2 Board Responsibilities and Decisions.

(a) **Board Responsibilities.** Subject to Section 4.6, the Board shall be responsible for supervising the management of the business and affairs of the Corporation in accordance with the Act. Without limiting the generality of the foregoing, the Board shall at all times comply with the following responsibilities:

- (i) overseeing the management of the business and affairs of the Corporation;
- (ii) ensuring that the Corporation is managed in material compliance with all applicable laws;

- (iii) ensuring that the Corporation conducts its operations and affairs in accordance with the By-Laws and the Corporation's policies, objectives or directions determined from time to time by the Board, and, where applicable, the Shareholders;
- (iv) ensuring that the Corporation is managed in material compliance with the approved annual business plans and operating and capital budgets;
- (v) establishing sound financial principles and performance objectives for the Corporation;
- (vi) appointing the officers of the Corporation and hiring the Corporation's Chief Executive Officer and other senior managers;
- (vii) ensuring that the Shareholders are promptly notified when a vacancy occurs on the Board;
- (viii) approving the overall business strategy for the Corporation and related business or strategic plans, whether annual or multi-year;
- (ix) approving the financing strategy of the Corporation, including the selection of financial institutions and related banking authorities;
- (x) approving annual operating and capital budgets for the Corporation as contemplated by Section 5.6 ensuring compliance;
- (xi) approving such policies to regulate the internal business and affairs of the Corporation as the Board considers appropriate having regard to the nature of the Corporation's operations and purposes including, without limitation, purchasing policies;
- (xii) undertaking, or performing and/or overseeing such actions related to the Games and the Facility Agreement as may be directed from time to time by the City and the University in their capacity as owners of the TPASC; and
- (xiii) ensuring that the Corporation complies with the provisions of the Operating Agreement and any other agreements between the City, the University and the Corporation relating to the operation or use of the TPASC.

(b) **Decisions of Directors.** In order to be effective, a decision by the Board shall be approved by either an instrument in writing signed by all of the Directors or a resolution passed by a majority of the Directors present at a meeting of the Board duly called and at which a quorum is present. Decisions pertaining to the By-laws shall require a two-thirds majority of the Board.

4.3 **Meetings of Directors.**

(a) The Board of Directors shall meet at least once in every calendar quarter at such place in Toronto as the Directors may determine from time to time and otherwise at the registered office of the Corporation. A schedule of Board meetings including meeting locations for the

following year will be approved by the Board at a Board meeting before the end of each calendar year.

(b) A quorum for any meeting of the Board of Directors shall be a majority of the Board of Directors comprised of at least three (3) of the Directors nominated by the City and at least three (3) of the Directors nominated by the University.

(c) Additional meetings of the Board may be called by the Chair or a quorum of Directors upon not less than five (5) Business Days' notice and otherwise in accordance with the By-Laws. The notice of meeting shall contain a statement as to the business proposed to be transacted at such meeting in accordance with the By-Laws. A copy of the notice must be also delivered to the Shareholders. A Director may waive his/her right to receive notice of any meeting of the Board provided that such waiver is in writing.

(d) Meetings may validly be held by telephone or electronic facilities so as to permit all Directors participating in the meeting to communicate with each other simultaneously and instantaneously, and a Director participating in such a meeting by such means is deemed for the purposes of the Act to be present at such meeting.

(e) Once in each calendar year, a meeting of the Board of Directors shall be open to the public and notice thereof shall be posted on the Corporation's website at least twenty (20) days prior to the date of the meeting.

(f) No Director shall miss two (2) consecutive Board meetings without the prior approval of the Chair of the Board.

(g) The Governance Liaisons shall be entitled to attend meetings of the Board as observers other than in-camera meetings of the Board. The meeting materials provided to the Governance Liaisons and the Finance Liaisons shall be determined by the Board in its sole discretion.

4.4 **Chair/Officers/Management**

(a) **Chair.** The Board shall have a Chair and Vice-Chair, both of whom shall be Directors. The term of office of the Chair and Vice-Chair shall be a maximum of two (2) consecutive years. The right to nominate the Chair shall alternate between the Shareholders every two (2) years. For the initial two (2) year term, the Board shall appoint the Chair and Vice-Chair. The Vice-Chair shall succeed to the office of the Chair upon the expiry of the Chair's term unless the Shareholder who nominated the Vice-Chair otherwise determines. A Shareholder may change its designee as Chair or Vice-Chair, as applicable, within its two (2) year nominating period. If the Chair or the Vice-Chair is replaced during the last half of the term, the balance of the term shall not count towards the limit on length of service set forth in this Section 4.4. The Chair shall not be entitled to a second or casting vote on any matter that comes before the Board.

(b) **Other Officers.** The Corporation shall have such other officers as the Board appoints from time to time. The duties of the officers of the Corporation shall be established by the Board.

(c) **Senior Management.** The Corporation shall hire a Chief Executive Officer and such other senior managers as the Board determines from time to time. The Board shall determine the duties and responsibilities of the Chief Executive Officer and such other senior managers.

4.5 **Committees of the Board**

(a) **Finance and Human Resources Committee.** The Board shall establish a Finance and Human Resources Committee. The Finance and Human Resources Committee shall report to the Board and shall have the mandate and responsibilities determined by the Board which shall include reviewing and providing recommendations with respect to annual operating and capital budgets and reviewing and commenting on the hiring, termination and compensation of the Corporation's senior management team. The composition of the Finance and Human Resources Committee shall be four (4) members of the Board, comprised of two (2) Directors who are nominees of each Shareholder. The Finance Liaisons shall be entitled to attend meetings of the Finance and Human Resources Committee as observers excluding any in-camera meetings. Meetings materials provided to the Finance Liaison shall be determined by the Finance and Human Resources Committee in its sole discretion.

(b) **Planning Committee.** The Board shall establish a Planning Committee. The Planning Committee shall report to the Board and shall have the following mandate and responsibilities as determined by the Board which shall include reviewing and commenting on any business plans or strategic plans presented by the Corporation's management, whether annual or multi-year. The composition of the Planning Committee shall be four (4) members of the Board, comprised of two (2) Directors who are nominees of each Shareholder.

(c) **Audit Committee.** The Board shall elect from among their number an Audit Committee. The Audit Committee shall report to the Board and shall have the following mandate and responsibilities determined by the Board which shall include, without limitation, reviewing and commenting on the financial statements of the Corporation and reporting thereon to the Board before such financial statements are approved under the Act. The composition of the Audit Committee will be four (4) members of the Board, comprised of two (2) Directors who are nominees of each Shareholder.

(d) **Sports Advisory Council.** The Board shall establish a Sports Advisory Council to provide advice and guidance to the Board and the Corporation's management in connection with the TPASC's plans, objectives, challenges and opportunities. It is anticipated that the Sports Advisory Council may have an annual planning session at which the Corporation's management shall have the opportunity to access sports experts including non-council members who are invited to the retreat by the Sports Advisory Council. The Sports Advisory Council may hold such other meetings and planning sessions as its members deem appropriate, provided that at least thirty (30) days' prior notice shall be provided to Advisory Council members, the Board and other invitees. The composition of the Sports Advisory Council will be two (2) members of the Board, comprised of one (1) Director who is a nominee of each Shareholder, and up to nine (9) additional members who shall be appointed by the Board and shall collectively have expertise and knowledge in high performance sports and other activities undertaken at the TPASC. All Board members shall be notified of and be entitled to attend meetings and other functions of the Sports Advisory Council.

(e) **Community Advisory Council.** The Board shall establish a Community Advisory Council to provide input, advice and guidance to the Board and the Corporation's management with respect to issues and matters of interest affecting the communities and users served by the TPASC. Meetings of the Community Advisory Council shall be held on not less than thirty (30) days prior notice to the Advisory Council members, the Board and other invitees. The composition of the Community Advisory Council will be two (2) members of the Board,

comprised of one (1) Director who is a nominee of each Shareholder and up to nine (9) additional members who shall be appointed by the Board and shall represent the community, the University (including students) and other user group constituencies. All Board members shall be notified of and be entitled to attend other functions of the Community Advisory Council.

(f) **Other Committees.** The Board may from time to time establish other committees and determine the mandate, responsibilities and membership of such committees, Subject to the Act, the Board may delegate decision making responsibilities to a committee provided the committee is comprised solely of Board members.

(g) **Chair/Vice-Chair.** The Chair and Vice-Chair (if any) of each Committee established by the Board and their term of office will be determined by the Board and will be nominees of each Shareholder, respectively, on an alternating basis.

4.6 **Major Decisions Requiring Shareholder Approval.**

(a) Unless approved by Special Approval of the Shareholders, the Corporation shall not authorize, undertake, or carry out any of the following:

- (i) any of the matters to be approved at the annual meeting of the Corporation as provided in Section 4.7(b) or any other matters requiring Shareholder approval under this Agreement;
- (ii) any business or activity other than the operation of the TPASC;
- (iii) any material activity that is not provided for or contemplated in an approved budget or an approved strategic or business plan of the Corporation;
- (iv) any financing arrangement or any line of credit on behalf of the Corporation other than as set out in an approved budget then in effect;
- (v) mortgage, pledge, charge, grant of security interest or lien or other encumbrance in or upon any of the assets of the Corporation;
- (vi) sell, lease, exchange or otherwise dispose of assets of the Corporation except in the ordinary course of business or as contemplated in any approved budget then in effect;
- (vii) change the number of Directors of the Corporation;
- (viii) change the auditor of the Corporation;
- (ix) loan any money to, provide a guarantee of, or assume liability for the debts or obligations of any Person;
- (x) except as provide in Section 6.2, the issue of Shares or securities convertible into Shares or enter into any agreement or grant any option or other right to purchase any Shares or other securities convertible into or exchangeable for any Shares;

- (xi) redeem, purchase for cancellation or otherwise acquire any outstanding Shares of the Corporation;
- (xii) amalgamate or merge with or into any other corporation, carry out any reorganization or arrangement, or apply to be continued as a corporation under the laws of any jurisdiction;
- (xiii) amend the Articles or amend, repeal or replace any By-Laws;
- (xiv) amend any material provision of this Agreement or enter any material amendments to the Legacy Fund Agreements;
- (xv) approve the mechanisms to implement any material changes to the structure of the Corporation or the manner in which any new shareholder matters not contemplated by the Agreement are introduced.
- (xvi) incorporate, create, purchase, fund, sell or dispose of any subsidiary, whether wholly or partially owned by the Corporation, or purchase or acquire the securities of any other entity;
- (xvii) form any partnership, joint venture or other agreement relating to the sharing of profits, revenue or expenses;
- (xviii) make an assignment for the benefit of any of its creditors, or take or institute any proceedings for the winding-up, reorganization, dissolution or Bankruptcy or Insolvency of the Corporation;
- (xix) the termination, amendment or replacement of the Operating Agreement;
- (xx) the implementation of instructions and directives, if any, provided to the Shareholders pursuant to the Co-Ownership Agreement;
- (xxi) make any payment or enter into any transaction, contract, agreement or commitment with any Person who does not deal at Arm's Length with the Corporation, any of its subsidiaries, or a Shareholder, except for any borrowings from the Shareholders or their Affiliates contemplated herein; or
- (xxii) approving any matter in respect of which any Director has a conflict of interest as contemplated in Section 4.12.

4.7 **Meetings of Shareholders.**

(a) An annual meeting of Shareholders shall be held at least once in each calendar year at the registered office of the Corporation, or at such other place within Toronto as the Board of Directors determines, upon not less than ten (10) days nor more than fifty (50) days notice and otherwise in accordance with the By-Laws. In addition, a quorum of Directors may call a special meeting of the Shareholders upon not less than ten (10) days nor more than fifty (50) days notice. A Shareholder may waive its right to receive notice of any meeting of the Shareholders provided that such waiver is in writing. A quorum for a meeting of Shareholders shall be both

Shareholders. All meetings of the Shareholders shall be open to the public, except where any such meeting may be closed to the public in accordance with applicable law.

- (b) The following business shall be transacted at each annual meeting of the Shareholders:
 - (i) the election of Directors whose term of office has expired;
 - (ii) receiving the Corporation's annual audited financial statements for the most recently completed fiscal year and making inquiries in respect thereof;
 - (iii) the appointment of the Auditors of the Corporation;
 - (iv) approval of the annual operating and capital budget for the Corporation and any other material business or strategic plans that the Board of Directors present to the Shareholders for approval as contemplated in Section 5.5(b); and
 - (v) such other business as may come before the meeting.
- (c) Meetings of the City and the University, in their capacity as Co-Owners and Shareholders, may be held consecutively or concurrently.

4.8 **Governance Liaisons.**

(a) Each of the City and the University shall from time to time designate an individual as its "governance liaison" for the purposes of this Agreement (each a "**Governance Liaison**" and collectively the "**Governance Liaisons**"). The Governance Liaisons shall communicate with each other regarding Shareholders and Co-Owners actions, decisions and other matters contemplated by this Agreement and the Co-Ownership Agreement. The Governance Liaisons, while they hold such position, shall not serve as Directors.

(b) The Vice-President, University Operations of the University or his or her designate shall be the University's Governance Liaison with responsibility for ensuring compliance with the University's internal governance requirements in connection with actions, decisions or the consideration of other matters contemplated by this Agreement. The University's Governance Liaison under this Agreement and the Co-Ownership Agreement shall be the same individual.

(c) The City Manager or his or her designate shall be the City's Governance Liaison with responsibility for ensuring compliance with the City's internal governance requirements in connection with actions, decisions or the consideration of other matters contemplated by this Agreement. The City's Governance Liaison under this Agreement and the Co-Ownership Agreement shall be the same individual.

(d) Written notice of a decision by the Vice-President, University Operations or the City Manager to appoint a designate pursuant to this Section 4.8 shall be provided by the Governance Liaison of a Shareholder to the other Shareholder, the Corporation and the Board within 2 Business Days of the appointment. The Governance Liaisons shall be responsible for communicating the notice to relevant internal parties of its Shareholder. Any written notices delivered in accordance with this Section 4.8 shall be deemed to comply with Section 13.1 hereof.

(e) The Co-Owners shall from time to time provide direction to their Governance Liaisons with respect to the exercise and performance of the Co-Owners' rights and obligations as Co-Owners and as Shareholders of TPASC.

4.9 **Finance Liaisons**

(a) Each of the City and the University shall from time to time designate an individual as its "finance liaison" (each a "**Finance Liaison**" and collectively the "**Finance Liaisons**") to support financial functions and reporting relating to the Corporation and its operations.

(b) The University's Vice-President, University Operations, or his or her designate from time to time, shall be the University's Finance Liaison. The University's Finance Liaison under this Agreement and the Co-Ownership Agreement shall be the same individual.

(c) The City's Chief Financial Officer, or his or her designate from time to time, shall be the City's Finance Liaison. The City's Finance Liaison under this Agreement and the Co-Ownership Agreement shall be the same individual

(d) Each Shareholder shall provide the other Shareholder with prior written notice of the appointment of its Finance Liaison. Written notice of a decision by the City's Chief Financial Officer or the University's Chief Financial Officer to appoint a designate pursuant to this Section 4.9 shall be provided by the Governance Liaison of a Shareholder to the other Shareholder, the Corporation and the Board within two Business Days of the appointment. The Governance Liaison shall be responsible for communicating the notice to relevant internal parties of its Shareholder. Any written notices delivered in accordance with this Section 4.9(d) shall be deemed to comply with Section 13.1 hereof.

4.10 **Other Liaisons**

It is understood that each Governance Liaison may engage program liaisons and others within his or her own organization to assist in addressing Shareholders actions, decisions and other matters contemplated by this Agreement.

4.11 **Shareholders' Proxies etc.**

Each Shareholder shall appoint its Governance Liaison or his or her designate as the proxy to represent such Shareholder at meetings of the Shareholders and to execute consent resolutions of the Shareholder. Prior written notice of the appointment of a proxy shall be provided by each Shareholder to the other Shareholder.

4.12 **Conflicts of Interest.**

The Directors and officers of the Corporation will strictly abide by the requirements of the Act and any other applicable laws, the By-Laws, and the Corporation's policies in respect of conflicts of interest, including any requirements in respect of disclosure and abstention from voting. It is acknowledged and agreed that the MCI Act shall be read and interpreted by the Parties so as to apply equally and consistently to all of the Directors. In the event that any Person applies, or attempts to apply, the MCI Act in a manner that does not treat all of the Directors equally and consistently, the Parties will pro-actively and expeditiously take such steps as are necessary to rectify the unequal or inconsistent application of the MCI Act including,

without limitation, pursuing an amendment to the MCI Act or any other applicable statute or regulation. Where any Directors have a conflict of interest in respect of any matter before the Board, such matter shall be determined by the Shareholders pursuant to Section 4.6.

4.13 **Indemnity by the Corporation/D&O Insurance**

(a) To the fullest extent permitted by law, the Corporation shall indemnify all Directors, officers, former Directors and former officers of the Corporation, the Shareholders of the Corporation to the extent that such Shareholders exercise the rights, powers, duties and liabilities of a Director of the Corporation, and his or her heirs and legal personal representatives, against all costs, charges and expenses, including any amount paid to settle any action or satisfy a judgment, reasonably incurred by him or her in respect of any civil, criminal or administrative action or proceeding to which he is made a Party by reason of being or having been a Director or officer of the Corporation or by reason of acting or having acted as a Director of the Corporation if,

- (i) he or she acted honestly and in good faith with a view to the best interests of the Corporation; and
- (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he/her had reasonable grounds for believing that his/her conduct was lawful.

The intention of this Section 4.13 is that all Persons referred to in this Section shall have all benefits provided under the indemnification provisions of the Act to the fullest extent permitted by law and the Corporation shall forthwith pass all resolutions and take such other steps as may be required to give full effect to this Section.

(b) The Corporation shall effect and maintain throughout the term of this Agreement directors' and officers' liability insurance in such amounts as are mutually agreed upon by the Shareholders. **[NTD: Review with insurance advisors.]**

ARTICLE 5 AUDITOR/FINANCIAL MATTERS

5.1 **Auditors.**

The Auditors of the Corporation (the "**Auditors**") shall be the firm of chartered accountants selected by the Board from time to time and approved by the Shareholders in accordance with the Act.

5.2 **Fiscal Year.**

The fiscal year of the Corporation shall end on December 31st in each year.

5.3 **Financial Statements and Reports**

The Corporation shall cause to be prepared and delivered to the Board of Directors and the Shareholders hereto as soon as reasonably practicable and in no event later than ninety (90) days after the end of each fiscal year of the Corporation audited financial statements for

such fiscal year consisting of at least a balance sheet, income statement and statement of changes in financial position prepared in accordance with GAAP or PSAB, as applicable, accompanied by a report of the Auditors and a management report, and such other information as may be requested by the Shareholders, acting reasonably. In addition, the Corporation shall cause to be prepared and delivered to the Board and the Shareholders within thirty (30) days after the end of each fiscal quarter unaudited interim financial statements consisting of the statements and other information determined by the Corporation's management and approved by the Board.

5.4 **Bank Accounts**

The Corporation shall maintain its bank accounts with the bank selected by the Board from time to time and/or such other financial institutions as the Board determines from time to time. All bank accounts shall be kept in the name of the Corporation and all cheques, bills, notes, drafts or other instruments shall require the signatures of any two officers or directors as the Board may from time to time determine. All monies received from time to time for the account of the Corporation shall be paid immediately into such bank account or accounts for the time being in operation.

5.5 **Budgets and Plans**

(a) The Board of Directors shall cause management of the Corporation to prepare drafts of an annual operating budget and an annual capital budget for the Project including the TPASC for each financial year of the Corporation at least ninety (90) days prior to the commencement of such financial year. The draft annual budgets shall be prepared in accordance with GAAP or PSAB, as applicable, and shall contain: (i) in the case of the operating budget, a detailed monthly budget, comparison statements from the previous financial year, a cash flow/liquidity analysis for the TPASC and a timeline for contributions by the Shareholders as contemplated by this Agreement and the Co-Ownership Agreement; and (ii) in the case of the capital budget, a statement of the nature and amount of all MM&C Expenditures to be incurred during such financial year. The annual budgets shall be supported by the explanations, notes and information upon which the projections underlying such budgets have been based. The annual operating and capital budgets shall be considered and approved by the Board in accordance with Section 4.2(a) hereof and shall be subject to approval by the Shareholders in accordance with Section 4.6(a) hereof. The Shareholders and the Corporation shall establish a regular consultative process for the Finance Liaisons and other appropriate personnel of the Shareholders to provide input and guidance to the Board and management to assist them in developing budgets and plans, whether annual or multi-year.

(b) The Board of Directors shall also consider and approve, with or without amendment, any business plans and strategic plans, whether annual or multi-year, presented to the Board from time to time by the Corporation's management.

5.6 **Books and Records**

The Corporation shall maintain its Books and Records which shall disclose all financial transactions of the Corporation in accordance with GAAP or PSAB, as applicable. Each of the Shareholders shall be entitled, upon reasonable notice to the Corporation, to access the Books and Records at reasonable times during normal business hours at the principal office of the

Corporation or at such other location or locations at which the Books and Records may be stored or maintained from time to time.

ARTICLE 6 LEGACY FUND CONTRIBUTIONS

6.1 Legacy Fund Agreements.

The Legacy Fund Agreements shall be subject to the approval of the Shareholders in their capacity as Co-Owners pursuant to the Co-Ownership Agreement. The Corporation shall be subject to the Legacy Fund Agreements and shall take all necessary and appropriate actions to ensure compliance with the provisions thereof.

6.2 Legacy Fund Contributions.

The Shareholders acknowledge that all Legacy Fund Contributions shall be applied and used solely for the benefit of the TPASC. The Corporation's annual capital and operating budget shall include the allocation and use of the Legacy Fund Contributions for the applicable year. Subject to the provisions of the Co-Ownership Agreement, Legacy Fund Contributions received by the Shareholders pursuant to the Legacy Fund Agreements will be promptly contributed to the Corporation as consideration for the issuance of an equal number of additional Common Shares to each Shareholder. Accordingly, subject to Section 4.6(a)(xiv), the Shareholders will update the provisions of this Article 6 to the extent necessary to accommodate any changes to the Legacy Fund Agreements and the Legacy Fund Contributions.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF SHAREHOLDERS

7.1 Representations and Warranties of the University

The University represents, warrants and covenants to the City with regard to itself as follows, and acknowledges that the City is relying on such representations and warranties in entering into this Agreement:

- (i) that the execution, delivery and performance by it of this Agreement has been duly authorized by all necessary action on the part of the University;
- (ii) that the University owns beneficially and of record the Share which is expressed to be owned by it in the recitals to this Agreement and that such Share is not subject to any mortgage, lien, charge, pledge, encumbrance, security interest or adverse claim and that no Person has any rights to become a holder or possessor of any of such Share or of the certificate representing the same;
- (iii) that the University has the power and capacity to enter into and give full effect to this Agreement;
- (iv) that this Agreement has been duly executed and delivered by such Shareholder and constitutes a valid and binding obligation enforceable against it in

accordance with its terms, subject to the usual exceptions as to bankruptcy and the availability of equitable remedies; and

- (v) that all of the foregoing representations and warranties will continue to be true and correct during the continuance of this Agreement.

7.2 **Representations and Warranties of the City**

The City represents, warrants and covenants to the University with regard to itself as follows, and acknowledges that the University is relying on such representations and warranties in entering into this Agreement:

- (i) that the execution, delivery and performance by it of this Agreement has been duly authorized by all necessary action on the part of the City;
- (ii) that the City owns beneficially and of record the Share which is expressed to be owned by it in the recitals to this Agreement and that such Share is not subject to any mortgage, lien, charge, pledge, encumbrance, security interest or adverse claim and that no Person has any rights to become a holder or possessor of any of such Share or of the certificate representing the same;
- (iii) that the City has the power and capacity to enter into and give full effect to this Agreement;
- (iv) that this Agreement has been duly executed and delivered by such Shareholder and constitutes a valid and binding obligation enforceable against it in accordance with its terms, subject to the usual exceptions as to bankruptcy and the availability of equitable remedies; and
- (v) that all of the foregoing representations and warranties will continue to be true and correct during the continuance of this Agreement.

7.3 **Survival**

The representations and warranties contained in this Article 7 shall survive the execution and delivery of this Agreement and shall be deemed to be continuing with respect to each Party hereto until it ceases to be bound by the provisions of this Agreement.

ARTICLE 8 TRANSFER OF SHARES AND SHAREHOLDER DEBT

8.1 **General Prohibition on Transfer**

During the continuance of this Agreement, none of the Shareholders shall deal with any Shares or Shareholder Debt, or any interest therein, or Transfer any Shares or Shareholder Debt now or hereafter held by such Shareholder except in accordance with or as permitted in this Agreement. A purported Transfer of any Shares in violation of this Agreement shall not be valid and the Corporation shall not register, nor permit any transfer agent to register, any such Shares on the securities register of the Corporation, nor shall any voting rights attaching to or relating to such Shares be exercised, nor shall any purported exercise of such voting rights be

valid or effective, nor shall any dividend or distribution be paid or made on such Shares. The provisions of the immediately preceding sentence are in addition to, and not in lieu of, any other remedies to enforce the provisions of this Agreement.

8.2 **Initial Operating Period**

In recognition of various factors including the expected timeline for receiving Legacy Fund Contributions, the Shareholders agree that no Transfer shall take place prior to the 20th anniversary of the Commencement Date (the “**Initial Operating Period**”).

8.3 **Process for Evaluating Ongoing Operations of the TPASC**

On or about the 18th anniversary of the Commencement Date, the Parties shall commence a process contemporaneously pursuant to this Agreement and the Co-Ownership Agreement to review the status and prospects of the Project including, without limitation, the financial condition of the TPASC, the physical condition of the Project, and to evaluate the best options available for operating the TPASC beyond the Initial Operating Period in an economically viable manner having regard to the interests of all relevant stakeholders. As part of such evaluation process, the Shareholders shall consider such factors that they deem relevant which may include the following:

- (a) reviewing the then current and projected usage levels of the TPASC by the Shareholders and other users and exploring opportunities to increase usage;
- (b) seeking continued and/or enhanced financial contributions from senior levels of government and other sources related to the high-performance sports elements of the TPASC;
- (c) considering the ongoing role of the Corporation and alternative models for operating the TPASC, including the possibility of outsourcing certain functions;
- (d) re-purposing, downsizing and/or closing portions of the TPASC with a view to eliminating or containing structural deficits;
- (e) determining the fair market value of the Shares; and
- (f) selling or otherwise disposing of the Project, or an interest therein, to one or more third parties.

Within twelve (12) months following the commencement of the review and evaluation process, the Shareholders shall develop a set of conclusions and recommendations regarding the future operations of the Project and their relationship as Shareholders of the Project pursuant to the Co-Ownership Agreement and as Shareholders of the Corporation hereunder. The Shareholders shall seek the requisite approvals to enable them to implement such conclusions and recommendations including, as required, approval of City Council and the University’s Governing Council. This Agreement, the Co-Ownership Agreement and, if applicable, the Operating Agreement shall be amended, supplemented or restated to reflect such conclusions and recommendations.

8.4 **Notation on Share Certificates**

All share certificates representing Shares shall have the following statement conspicuously noted thereon:

"There are restrictions on the right to transfer the shares represented by this certificate. In addition, such shares are subject to a unanimous shareholder agreement dated ● between the City of Toronto, The Governing Council of The University of Toronto and Toronto Pan Am Sports Centre Inc., as the same may be amended from time to time, and may not be pledged, sold or otherwise transferred except in accordance with the provisions thereof."

All certificates representing securities issued by the Corporation which are convertible into or exchangeable for Shares or evidencing a right to acquire Shares shall contain a statement substantially to the same effect.

8.5 **Shareholders to Facilitate Permitted Transfers**

Each of the Shareholders agrees that it shall give and execute all necessary consents and approvals to a Transfer of Shares which is permitted under this Agreement as soon as the relevant provisions of this Agreement relating to such Transfer have been complied with.

ARTICLE 9 CONFIDENTIALITY

9.1 **Confidentiality**

(a) Subject to the following provisions of this Section 9.1, each Shareholder agrees that it shall not, without the prior written consent of the Corporation and the other Shareholder, directly or indirectly communicate or disclose to any Person, or use for any purpose other than in furtherance of the Corporation's business (or the Shareholder's own internal business purposes and that of any Affiliate and then only to their own employees or advisors), any Confidential Information acquired by such Shareholder.

(b) Each Shareholder may disclose Confidential Information to: (i) its directors, officers, governors or employees; (ii) its professional advisors, consultants, auditors, potential and actual bankers and lenders; (iii) Toronto City Council or a Toronto City Councillor or to the Governing Council or a Governor of the University; and (iv) Committees of City Council or the Governing Council of the University or members thereof, provided that such disclosure shall only be made to the extent necessary, and the disclosing Shareholder shall advise the Person to whom the Confidential Information is to be disclosed that such Confidential Information is to be kept in the strictest of confidence and shall require such Person, as applicable, to undertake in writing for the benefit of the Parties to maintain such Confidential Information in the strictest confidence.

(c) The foregoing provisions shall not apply to information: (i) which is in the public domain; (ii) which the disclosing Shareholder can demonstrate through appropriate documentation was previously known to it; (iii) which the disclosing Shareholder learned from a source other than the Corporation or the other Shareholder, and without violation of this or any other non-disclosure obligation; or (iv) which is required to be disclosed by law or the decision or order of a court or tribunal of competent jurisdiction.

- (d) The Parties acknowledge that:
- (i) the University is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31 ("**FIPPA**") and that information, including Confidential Information, submitted and in the possession of the University is governed by FIPPA and may be subject to disclosure in accordance with the requirements of same.
 - (ii) the City is subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("**MFIPPA**") and that information, including Confidential Information, submitted and in the possession of the City is governed by and may be subject to disclosure in accordance with the requirements of same.

Prior to disclosing any Confidential Information pursuant to FIPPA or MFIPPA, the Parties agree to redact any portions of such Confidential Information that is not required to be disclosed pursuant to FIPPA or MFIPPA. The information to be redacted shall be as mutually agreed upon by the Parties.

- (e) The obligations under this Article 9 shall remain in effect during the continuance of this Agreement and for a period of 10 years thereafter.

ARTICLE 10 DEFAULT

10.1 Events of Default

In this Article, the Shareholder which has defaulted is called the "**Defaulting Shareholder**" and the other Shareholder is called the "**Non-Defaulting Shareholder**". Any of the following circumstances shall constitute a default by a Shareholder (hereinafter called an "**Event of Default**"):

- (a) if the Defaulting Shareholder shall fail to make any payment required hereunder and such failure shall continue for a period of thirty (30) Business Days after written notice thereof has been given by the Non-Defaulting Shareholder; or
- (b) if the Defaulting Shareholder shall be in default of any other provision of this Agreement, and such default shall continue for a period of sixty (60) days after written notice thereof has been given by the Non-Defaulting Shareholder, or such longer period as may be required to cure such default provided that reasonable steps to cure such default are taken and diligently pursued; or
- (c) if the Defaulting Shareholder shall become subject to the provisions of the *Bankruptcy and Insolvency Act* (Canada), or, in the case of the City the *Municipal Administration Act*, Ontario, or shall go into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or make a general assignment for the benefit of its creditors, or shall have sought protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) or otherwise acknowledge its insolvency; or

- (d) if a liquidator, receiver, receiver and manager or trustee in bankruptcy shall be appointed in respect of the Shares of the Defaulting Shareholder or any part thereof with the consent or acquiescence of the Defaulting Shareholder, and such appointment shall remain unvacated and unstayed for thirty (30) days after written notice thereof is given by the Non-Defaulting Shareholder;
- (e) if an encumbrancer takes possession of or takes any steps to realize on the Shares of the Defaulting Shareholder or any substantial part thereof, or if a distress or execution or any similar process be levied or enforced upon or against such Shares and the same remains unsatisfied for the lesser of (i) thirty (30) days and (ii) such period as would permit the same to be sold; provided that such process is not in good faith disputed by the Defaulting Shareholder and, in that event, provided further that non-payment shall not in the reasonable opinion of the Non-Defaulting Shareholder jeopardize the right, title and interest of the Non-Defaulting Shareholder in its Shares, and provided further that, if the Defaulting Shareholder shall desire to contest the same, it shall also give security which, in the absolute discretion of the Non-Defaulting Shareholder, shall be deemed sufficient to pay in full the amount claimed in the event it shall be held to be a valid claim; or
- (f) a Co-Owner commits an "Event of Default" as defined in the Co-Ownership Agreement.

In the event of the occurrence of more than one of the circumstances set forth in this Section 10.1, with respect to the Defaulting Shareholder, each such circumstance shall be deemed to be a separate Event of Default and the Non-Defaulting Shareholder shall be entitled to elect to exercise its remedies hereunder with respect to each such Event of Default.

10.2 **Rights Available to Non-Defaulting Shareholder**

If an Event of Default in respect of either Shareholder shall have occurred, then until such Event of Default is cured, the Non-Defaulting Shareholder shall have the right:

- (a) to bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Shareholders that damages at law may be an inadequate remedy for a default or breach of this Agreement; and/or
- (b) to remedy such default and any other default of the Defaulting Shareholder under this Agreement and shall be entitled on demand to be reimbursed by the Defaulting Shareholder for any monies expended to remedy any such default and any other expenses (including legal fees on a solicitor and client basis) incurred by the Non-Defaulting Shareholder (and to bring any legal proceedings for the recovery thereof), together with interest at four percent (4%) per annum above the Prime Rate from time to time in effect; and in addition, the Defaulting Shareholder hereby directs that all amounts payable to it pursuant to this Agreement shall be paid to the Non-Defaulting Shareholder to the extent

necessary to reimburse the Non-Defaulting Shareholder for such monies with interest as aforesaid; and/or

- (c) to bring any action at law as may be necessary or desirable in order to recover damages.

ARTICLE 11 DISPUTE RESOLUTION

11.1 Dispute Resolution.

Any disagreement that arises between the Parties with respect to any issue or matter in connection with this Agreement (a "**Dispute**") will be subject to the following dispute resolution procedure:

- (a) The Parties shall attempt to resolve any Dispute informally by meeting as often, for a duration and as promptly as those representatives deem necessary to discuss the Dispute and negotiate in good faith in an attempt to resolve the Dispute.
- (b) If the representatives of the Parties are unable to resolve a Dispute through the process referenced in Section 11.1(a), then the dispute will be documented and submitted for resolution, on a without prejudice basis, to the University's Governance Liaison and the City's Governance Liaison who will attempt to resolve the Dispute through discussion and good faith negotiation;
- (c) If the University's Governance Liaison and the City's Governance Liaison are unable to resolve the Dispute through the process referenced in Section 11.1(b), the Dispute will be referred to the Dispute to the City Manager and the University's Vice-President, University Operations who will attempt to resolve the Dispute through discussion and good faith negotiation.
- (d) if the Parties, after undertaking the measures contemplated above, cannot resolve the Dispute within fifteen (15) Business Days after the date of the first meeting, the Dispute will be referred to arbitration before a mutually agreed upon single arbitrator. In the event that the Parties cannot agree on the appointment of an arbitrator, one will be appointed pursuant to the provisions of the *Arbitration Act, 1991* (Ontario). The arbitration will be conducted in Toronto under the rules of the *Arbitration Act, 1991* (Ontario). The arbitrator will issue an arbitral award within fifteen (15) Business Days following the date the matter was arbitrated, and any arbitral award will be final, conclusive and binding upon all Parties. The cost of the arbitration shall be paid by the unsuccessful Party or Parties.
- (e) While the dispute resolution procedures of this Article are in process, until such time as these procedures have been finally implemented and a final decision has been rendered, no default will be deemed to have occurred and, in respect of the matter in dispute, if the final decision is that a default has occurred, then the times for curing such default will commence to run from the date of delivery of notice of the final determination to the Parties.

- (f) The Shareholders acknowledge that the Co-Ownership Agreement contains comparable dispute resolution provisions. Accordingly, if a Dispute involves this Agreement and the Co-Ownership Agreement, the Dispute shall be resolved concurrently under both agreements including, if applicable, pursuant to a single arbitration proceeding.

ARTICLE 12 TERM AND TERMINATION

12.1 Term

This Agreement shall come into force and effect as of the date set out on the first page of this Agreement and, except as hereinafter provided, shall continue in force until the earliest of:

- (i) the date on which one Shareholder holds all the Shares;
- (ii) the winding up or dissolution of the Corporation; and
- (iii) the date on which this Agreement is terminated by written agreement of all the Shareholders.

12.2 Termination Not to Affect Rights or Obligations

A termination of this Agreement shall not affect or prejudice any rights or obligations which have accrued or arisen under this Agreement prior to the time of termination and such rights and obligations shall survive the termination of this Agreement.

ARTICLE 13 GENERAL AGREEMENT

13.1 Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by prepaid first-class mail, by facsimile or other means of electronic communication or by delivery as hereafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fourth (4th) Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with this Section. Notices and other communications shall be addressed as follows:

- (a) in the case of a notice to the City, at:

City Manager's Office
Toronto City Hall
100 Queen Street West
11th Floor, East Tower
Toronto, Ontario
M5H 2N2

Attention: Joe Pennachetti
Fax: ●
Email: Jpennac@toronto.ca

with a copy to:

General Manager
Parks, Forestry & Recreation
City of Toronto
100 Queen Street West
4th Floor, West Tower
Toronto, Ontario
M5H 2N2

Attention: Jim Hart
Fax: ●
Email: jhart@toronto.ca

- (b) in the case of a notice to the University, at:

University of Toronto
Room 112, Simcoe Hall
27 King's College Circle
Toronto, Ontario
M5S 1A1

Attention: Vice President, University Operations
Fax: ●
Email: scott.mabury@utoronto.ca

with a copy to:

University of Toronto,
Scarborough Campus
1265 Military Trail
Toronto, Ontario
M1C 1A4

Attention: Principal UTSC, Vice President
Fax: ●

Email: principal@utsc.utoronto.ca

with a copy to the University's counsel at:

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Signe Leisk
Fax: (416) 640-3218
Email: sleisk@casselsbrock.com

- (i) if to the Corporation, to each of the City and the University as set out above.

The delivery of any notice or other communication to counsel to any of the Parties hereto shall not constitute notice for the purposes of this Section, nor shall the failure invalidate any notice given under this Section.

13.2 **Amendments**

This Agreement may only be amended by an agreement in writing between all the Parties hereto.

13.3 **Further Assurances**

The Parties hereto and their respective directors, officers and employees, to the extent applicable, agree to execute and deliver such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their votes and influence, and perform and cause to be performed such further and other acts and things, including authorizing any transfer of Shares, as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

13.4 **Enurement**

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

13.5 **Entire Agreement**

This Agreement, and any agreements and documents to be delivered pursuant to the terms of this Agreement, constitutes the entire agreement among the Parties hereto pertaining to dealings with investments in the Corporation and management of the affairs of the Corporation and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, representations, warranties or other agreements in connection with dealings with investments in the Corporation and management of the affairs of the Corporation, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Agreement and any agreements and documents to be delivered pursuant to the terms of this Agreement.

13.6 **Waiver**

A waiver of any default, breach or non-compliance under this Agreement is not effective unless it is in writing and signed by the Party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-compliance or by anything done or omitted to be done by that Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance, whether of the same or any other nature.

13.7 **Severability**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

13.8 **Governing Law**

This Agreement shall be governed by and construed in accordance with, and the rights of the Parties shall be governed by, the laws of Ontario and the laws of Canada applicable therein, without regard to any conflict of law principles. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario and all courts competent to hear appeals from those courts with respect to any matter related to this Agreement.

13.9 **Counterparts**

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the Parties adopt any signatures received by a receiving fax machine as original signatures of the Parties; provided, however, that any Party providing its signature in such manner will promptly forward to the other Party an original of the signed copy of this Agreement which was so faxed.

[SIGNATURE PAGE FOLLOWS]

The Parties have executed this Agreement.

CITY OF TORONTO

By: _____
Name:
Title:

**THE GOVERNING COUNCIL OF THE
UNIVERSITY OF TORONTO**

By: _____
Name:
Title:

TORONTO PAN AM SPORTS CENTRE INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE “A”
Director Eligibility Criteria and Qualifications

Eligibility Criteria

To be eligible for appointment as a Director:

1. An individual must satisfy and maintain the eligibility requirements set out in the Act and any other eligibility criteria established by the Shareholders from time to time.

Qualifications

1. Board members shall, as a whole, have the following qualifications:
 - (a) Financial management expertise;
 - (b) Business management and operating expertise
 - (c) Corporate governance expertise; and
 - (d) A youthful perspective.