

Toronto Pan Am Sports Centre – Governance Structure

Date:	September 10, 2013
To:	Executive Committee
From:	City Manager
Wards:	City-wide
Ref. Number:	

SUMMARY

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.

As the next step in the process, this report recommends:

- the establishment of a corporation to manage and operate the Toronto Pan Am Sports Centre (“TPASC”) to be jointly owned by the City of Toronto and the University of Toronto (“the University”);
- 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;
- the inclusion of an exemption for the new corporation in the Lobbying by-law;
- the designation of TPASC as a municipal capital facility; and
- the provision of a loan guarantee to TPASC.

City staff have been working with University staff on the terms and conditions that would define the relationship between the City and University as shareholders of the corporation and as co-owners of TPASC (referred to in previous reports as the Pan Am Aquatic Centre and Field House, or PAAC). There is consensus between the University and the City on the approach, the governance structure and the terms and conditions for the required agreements, as set out in this report. Recognizing the complexities in the first few years with start-up followed by temporary transfer of the operation of the facility for

the 2015 Games, there is also consensus on the establishment of a transition board composed of City and University staff for the initial 3 year period.

As a 2015 Games legacy facility, TPASC will have numerous uses by the City, University and other organizations and clubs including recreational programming and services, fitness training and high performance athlete training.

Substantial completion of TPASC 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 TPASC from May 15, 2015 to September 15, 2015 to prepare for and stage the 2015 Games and to return TPASC 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 elements must be in place on a schedule that aligns with time lines for the 2015 Games.

RECOMMENDATIONS

The City Manager recommends that:

Toronto Pan Am Sports Centre Inc.

1. City Council authorize the establishment of a corporation under the *Business Corporations Act* (Ontario), Section 148 of the *City of Toronto Act, 2006*, and Ontario Regulation 609/06 made under the *City of Toronto Act, 2006* as amended, to be called Toronto Pan Am Sports Centre Inc. (“TPASC Inc.”) to be jointly owned by the City of Toronto and the Governing Council of the University of Toronto for the purpose of operating the Toronto Pan Am Sports Centre.
2. City Council authorize the City Manager to negotiate and execute a Co-Ownership Agreement between the City of Toronto and the Governing Council of the University of Toronto, and a Unanimous Shareholders’ Agreement between the City of Toronto and the Governing Council of the University of Toronto to which 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 Sheet in Attachment 1 to this Report and such other terms and conditions as may be satisfactory to the City Manager and City Solicitor.

Board of Directors

3. City Council approve a 10-member Board of Directors for TPASC Inc., initially composed of staff of the City and University, 5 of whom shall be appointed by each of the City of Toronto and the Governing Council of the University of Toronto, with a review of the Board structure to occur in 2017 following the initial 3 year transition period.

4. City Council appoint the following as Directors of the Board of TPASC Inc., at the pleasure of City Council for a 2 year term, effective on the date of incorporation or the date of the execution of both the Co-Ownership Agreement and the Unanimous Shareholders' Agreement, whichever date occurs later, or until successors are appointed:
 - a. the Director of Community Recreation in Parks, Forestry and Recreation;
 - b. the Director of Management Services in Parks, Forestry and Recreation;
 - c. the Director of Accounting Services in the Office of the Treasurer;
 - d. the Director of Facilities Operations in Facilities Management; and
 - e. the General Manager of Economic Development & Culture or his/her designate.

Lobbying By-law

5. City Council exempt the board members, staff and officers of TPASC Inc., when acting in their official capacity, from Municipal Code Chapter 140, Lobbying, by authorizing an amendment to Chapter 140 to add "Toronto Pan Am Sports Centre Inc." to the list of exempt corporations and bodies in Schedule A.

Municipal Capital Facility

6. City Council pass a by-law pursuant to Section 252 of the *City of Toronto Act, 2006*, providing authority to:
 - a. enter into a municipal capital facility agreement with the Governing Council of the University of Toronto and TPASC Inc., in respect of the portions of the Toronto Pan Am Sports Centre to be located on the premises co-owned by the University and the City at 875 Morningside Avenue as identified in Attachment 2 to this Report, that will be used as an eligible municipal capital facility when such use can be determined; and
 - b. if required, exempt the portions of the Toronto Pan Am Sports Centre to which the municipal capital facility agreement will apply from property taxation for municipal and school purposes, which tax exemption is to be effective from the latter of the following dates: (i) the date the municipal capital facility agreement is signed; and (ii) the date the tax exemption by-law is enacted.
7. City Council direct the City Clerk to give written notice of the by-law, when enacted at a future date, to the Minister of Education, the Municipal Property Assessment Corporation, the Toronto District School Board, the Toronto Catholic District School Board, the Conseil Scolaire de District du Centre-Sud-Ouest, and the Conseil Scolaire de District du Catholique Centre-Sud.

8. City Council pass a resolution that the above municipal capital facility is for the purposes of the City and is for public use.

Loan Guarantee

9. City Council authorize the City to provide a line of credit guarantee jointly and severally together with the University of Toronto on behalf of TPASC Inc. to their lender (the "Lender") in an amount not to exceed \$1.0 million (inclusive of all interest, costs and charges payable by TPASC Inc.), for a period ending December 31, 2018 (the "Guarantee") to secure a line of credit required by TPASC Inc. to provide for operating working capital as may be needed from time to time.
10. City Council authorize the City Manager to enter into any agreements or documents between the City, the Governing Council of the University of Toronto, TPASC Inc. and the Lender as may be required, desirable or necessary in relation to providing the Guarantee, all on such terms and conditions satisfactory to the Deputy City Manager & Chief Financial Officer in consultation with the General Manager of Parks Forestry and Recreation and the University of Toronto, in a form acceptable to the City Solicitor.
11. City Council deem the Guarantee to be in the interest of the City.

General

12. The appropriate City Officials be authorized and directed to introduce the necessary bills and to take the necessary actions to give effect thereto.

Implementation Points

As the City and the University will be the shareholders of the corporation and TPASC will be co-owned by them, the terms and conditions for the Co-Ownership Agreement and the Unanimous Shareholders' Agreement must be approved by both the City and the University. City staff have been working with University staff on these agreements for nearly one year. There is consensus between the City and the University on the approach, the governance structure and the terms and conditions for the required agreements, as set out in this Report.

The terms and conditions (as set out in Attachment 1 of this Report) are expected to be considered by the Governing Council of the University of Toronto at its meeting scheduled in October 2013. Once the terms and conditions are approved by both the City and the University governing bodies, the Co-Ownership Agreement and the Unanimous Shareholders' Agreement can be finalized and executed in 2013 to permit implementation of TPASC on a schedule that aligns with the time lines for the 2015 Games.

Financial Impact

1. TPASC Operating Costs and Funding

The required annual operating plans are still under review and funding requirements and budget figures are preliminary estimates. However, once TPASC moves into full-year operations in 2015 (including the 2015 Games), it is initially estimated that the total budget to operate TPASC on an annual basis will be \$14.1 million. Of this \$14.1 million total, approximately \$1.5 million will be an annual contribution from the Legacy Fund for major maintenance and capital expenditures and approximately \$1.0 million will be an annual contribution from office space rentals, leaving \$11.6 million annually to be funded as set out in Table 1.

Based on the proportional usage of the facility as set out in Table 1 below, the City will fund not less than 31% and the University will fund not less than 17% of the operating expenses of TPASC on an annual basis, as established in previous agreements. The remaining 52% of required operating funding is expected to come from Third Party Users: 30% from the Canadian Sport Institute Ontario (“CSIO”) and other high performance sport organizations (“HP”), and 22% from other third party users.

The City's share of the total TPASC operation on an annual basis is initially estimated to be \$3.6 million net.

Table 1: TPASC Usage and Estimated Contributions
(Based on Full-Year Operation in 2015 Dollars)

User	Pool Usage	Field House Usage	Combined Weighted Average	Initial Estimated Contribution
City	27%	36%	31%	\$3.6M
University	9%	27%	17%	\$1.9M
HP & CSIO	41%	15%	30%	\$3.5M <i>(Legacy Fund - \$2.5M Other - \$1.0M)</i>
Other Users	23%	22%	22%	\$2.5M
Total	100%	100%	100%	\$11.6M

The City and University operating budget estimates include annual contributions to a capital reserve for major maintenance and capital expenditures as discussed in subsection 3 below.

TPASC usage and estimated contributions above notwithstanding, any operating and non-operating revenue shortfalls will be allocated to the City and the University on an equal 50/50 basis.

2. Legacy Fund Contributions

The MPA requires the establishment of the Toronto 2015 Legacy Fund, capitalized by the governments of Ontario and Canada, which will contribute to the operation and maintenance costs of designated Legacy Facilities, including TPASC. It is anticipated that TPASC will receive contributions of approximately \$4 million per year from the Legacy Fund over a 20 year period, of which approximately \$1.5 million will be allocated for major maintenance and capital expenditures, as discussed in subsection 3 below, and approximately \$2.5 million will go towards CSIO and other high performance sport organizations and constitute a part of their \$3.5 million contribution to operating costs as set out in Table 1.

3. Capital Costs and Reserves

A capital reserve for TPASC will be established and maintained for the purpose of applying the contributions to the reserve together with the earnings on those contributions for funding major maintenance and capital expenditures.

Approximately \$1.5 million of the annual Legacy Fund contributions will be allocated to the capital reserve for this purpose. The City and the University will also 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 as part of the annual operating funding provided to TPASC.

After reviewing the anticipated major maintenance and capital expenditure needs, an initial 50-year capital replacement plan was developed allowing for periodic replacement intervals. Under that plan, it is anticipated that annual reserve contributions of \$3.9 million gross and \$2.4 million net (after the Legacy Fund contribution) will be required in total, with the City's 31% share amounting to approximately \$0.7 million annually, which is included in the City's \$3.6 million annual funding of TPASC operations as set out in subsection 1. Annual contribution rates will be adjusted once facility audits are performed.

4. Municipal Capital Facility

Given that the construction of TPASC will not be completed until 2014 and the eligible portions have not been determined, the financial implication resulting from the municipal capital facility exemption cannot be identified at this time. As lands occupied by both the City and the University of Toronto would not be subject to taxation, the potential for taxation arises as a result of the potential occupation by non-exempt third parties.

Overall, the net financial implication of the municipal capital facility designation to the City will result in savings through the reduction in the education portion of taxes that may otherwise be payable to the Province.

5. Loan Guarantee

The City will provide a line of credit guarantee jointly with the University on behalf of TPASC Inc. to their lender to secure a line of credit required by TPASC Inc. to provide for operating working capital as may be needed in the initial years of operation. The line of credit guarantee will be in an amount not exceeding \$1.0 million for a period ending December 31, 2018.

6. City Programming

The cost of the City's recreational programming and service delivery within TPASC by the Parks, Forestry and Recreation Division in 2015 is estimated at an annual amount of \$2.1 million gross and \$0.3 million net (excludes the period of exclusive use of TPASC by Toronto 2015 for the 2015 Games). In 2016, based on full-year service delivery, the City's recreational programming within TPASC by Parks, Forestry and Recreation is estimated to require funding of \$3.3 million gross and \$0.1 million net.

In addition, Parks, Forestry and Recreation requires some space at TPASC for office use, and the City's costs are estimated to be \$0.015 million each year.

7. City Land Remediation

For City lands associated with the former landfill, the City will continue to be responsible for the costs of 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.

The 2014 funding requirements and 2015-16 outlooks have been included for consideration as part of the operating funding in the Parks, Forestry and Recreation's 2014 operating budget submission.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

Decision History

In December 2008, City Council endorsed the City's participation in a bid to host the 2015 Games to be held in Toronto and the Greater Golden Horseshoe. The bid itself was initiated, funded and led by the Government of Ontario.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.EX26.6>

In February 2009, City Council authorized the City Manager to negotiate, approve and execute on the City's behalf a multi-party agreement with the Federal and Provincial governments and other key 2015 Games partners. City Council also approved investments totalling \$49.5 million in six City owned assets to be used as training,

competition or festival venues during the 2015 Games, including \$37.5 million for the development of the Pan Am Aquatic Centre and Field House to be developed and operated in partnership with the University of Toronto.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX29.10>

In February 2011, City Council approved additional funding of up to \$47 million and three additional projects, for a total City investment of up to \$96.5 million in a total of nine 2015 Games capital projects.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX2.5>

At its May 25, 2011 meeting, the Scarborough Community Council approved a rezoning application for the Pan Am Aquatic Centre and Field House site. This was adopted by City Council on June 14, 2011.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.SC7.18>

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 purpose of managing and operating the facility. City Council also directed the City Manager to request the Province of Ontario to amend O. Reg. 609/06 under the *City of Toronto Act, 2006* to allow the City to establish such a corporation, and to report back on appropriate governance structures and shareholder agreements.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX24.12>

Issue Background

Toronto is the official host city of the 2015 Games and a signatory to the MPA, which defines the rights and responsibilities of Toronto 2015; the Canadian Olympic and Paralympic Committees; and the City, Provincial and Federal governments, with respect to the governance, financing and delivery of the 2015 Games. Under the MPA, the City committed to build, among other things, an aquatic centre and field house for use during the 2015 Games.

At its meeting on November 27, 2012, City Council adopted report EX24.12 Governance and Operations of the Pan Am Aquatic Centre and Field House. In doing so City Council accepted the business case for the establishment of a joint corporation with the Governing Council of the University of Toronto.

EX24.12 authorized staff to request the Province of Ontario to amend O. Reg. 609/06 made under the *City of Toronto Act, 2006*, to allow the City to establish a corporation jointly with the University. The Province approved O. Reg. 158/13 on May 15, 2013 (published May 17, 2013) which amended O. Reg. 609/06 to give effect to the City's request to provide the City with the authority to establish a joint corporation with the University.

EX24.12 also authorized staff to enter into negotiations with the University on the terms and conditions relating to the joint corporation including governance structures and

agreements, and to pursue along with the University naming rights opportunities for TPASC.

The City provided opportunity for public input, required by O. Reg. 609/06 before establishing a corporation, at the public meeting of the Executive Committee on November 5, 2012 when EX24.12 was considered, and at the public meeting of the Executive Committee at which this Report is considered.

This Report recommends the establishment of a corporation for operating TPASC to be co-owned by the City and the University and recommends the terms and conditions for co-ownership and shareholder agreements between the City and the University. This Report also recommends City appointments to the Board of Directors of the corporation and related governance and financial matters.

COMMENTS

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 City was 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.

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 Inc., and Shareholder requirements for the responsibility and accountability of the Board. TPASC Inc. will be a party to, and will be governed by the provisions of, the Unanimous Shareholders' Agreement.

It is proposed that these Agreements be finalized substantially on terms and conditions as set out in the Term Sheet in Attachment 1 to this Report and such other terms and conditions as may be satisfactory to the City Manager and City Solicitor.

Board Structure and City Appointments

TPASC Inc. will manage and operate a facility providing services to the public, the university community and other users, and will have a relatively focussed mandate. A Board of Directors is proposed for TPASC Inc. consisting of 10 members, 5 of whom are to be appointed by each of the City and the University.

Recognizing the commitments of the City and the University in relation to the staging and legacy of the 2015 Games, including the exclusive use of TPASC to be provided to Toronto 2015 for a period of time, it is proposed that the Board be initially composed of staff of the City and University. It is further proposed that a review of the Board structure would occur in 2017 following the initial 3 year transition period.

It is recommended that City Council appoint the following as Directors of the Board of TPASC Inc., at the pleasure of City Council, for a 2 year term or until successors are appointed, and the University has advised that it will also appoint staff/officers to the board for the initial 3 year transition period:

- the Director of Community Recreation in Parks, Forestry and Recreation;
- the Director of Management Services in Parks, Forestry and Recreation;
- the Director of Accounting Services in the Office of the Treasurer;
- the Director of Facilities Operations in Facilities Management; and
- the General Manager of Economic Development & Culture or his/her designate.

Directors will not be able to assume their role until after TPASC Inc. has been incorporated and both of the Agreements have been executed. Hence, the effective date of the appointments will be either the date of incorporation or the date the agreements are executed, whichever date occurs later.

Municipal Code Chapter 140, Lobbying

Municipal Code Chapter 140, Lobbying, provides for the registration of lobbyists and the public disclosure of their communications with public office holders of the City and its agencies, unless an exemption applies. The City and TPASC Inc. Board members, officers and employees routinely will be in communication with one another given the City's role as Co-Owner and Shareholder of TPASC Inc. Chapter 140 was never intended to apply to this type of governance relationship.

For these reasons, other City corporations have been exempt from the requirement to register in order to communicate with the City, which is one of their owners/shareholders. Accordingly, it is recommended that City Council exempt the Board members, staff and officers of TPASC Inc., when acting in their official capacity, from Municipal Code Chapter 140, Lobbying, by authorizing an amendment to Chapter 140 to add TPASC Inc. to the list of exempt corporations and bodies in Schedule A.

The members of the Governing Council of the University of Toronto and officers and staff of the University, when acting in their official capacity, are already exempt from Municipal Code Chapter 140, Lobbying, pursuant to Section 140-3A(8).

Municipal Capital Facility

Section 252 of the *City of Toronto Act, 2006* (COTA) allows the City to enter into agreements with any person for the provision of municipal capital facilities, and to exempt from taxation the land or a portion of land, on which municipal capital facilities are or will be located.

Ontario Regulation 598/06 prescribes “City facilities used for cultural, recreational or tourist purposes” and “City community centres” as eligible municipal capital facilities for the purpose of Section 252 of COTA. Both such facilities are required to be for public use; community centre must be used primarily for local community use; and cultural, recreational or tourist facilities must be owned by the City or another listed public entity such as a university.

Section 252 of COTA also requires:

- (a) that the property owner and the City enter into an agreement for the provision of a municipal capital facility for the space being leased; and
- (b) that a by-law be passed by Council permitting the City to enter into the agreement, and to exempt the property to which the municipal capital facility agreement applies from taxation for municipal and school purposes.

Upon the passing of this by-law, the City Clerk must give written notice of the by-law to the Minister of Education. For the tax exemption, the City Clerk must also provide a written notice of the contents of the by-law to the Municipal Property Assessment Corporation and the Secretary of any affected school board(s).

Although the space in question at 875 Morningside Avenue will be co-owned by the University and the City, and an agreement to develop and manage TPASC is being put in place between the Governing Council of the University of Toronto and the City, it is currently unclear what portions of the facility may be exempt under existing legislative provisions, what portions may be eligible as municipal capital facilities, and it is assumed that taxable entities within the facility may be subject to taxation, e.g. portions occupied by taxable business tenants. Only those portions of the property that are exempt under existing provisions within the *Assessment Act*, the *University of Toronto Act*, or eligible under Ontario Regulation 598/06 as municipal capital facilities will be exempt from taxes – any ineligible portions of the building will be subject to taxation at applicable rates.

Overall, the net financial implication of the municipal capital facility designation will be a reduction (savings) in the education portion of taxes that would otherwise be payable to the Province (on the portions deemed eligible for the exemption), as these education amounts will no longer be payable to the Province/school boards.

Loan Guarantee

TPASC Inc. will, on an incremental basis, ramp-up operations which will occur in advance of receiving required funding and other contributions as identified in this Report. As a result, the City will provide a line of credit guarantee jointly with the University of Toronto on behalf of TPASC Inc. to their lender to secure a line of credit required by TPASC Inc. to provide for operating working capital as may be needed in the initial years of operation. The line of credit guarantee will be in an amount not exceeding \$1.0 million for a period ending December 31, 2018.

Key Provisions – Co-Ownership Agreement

The Co-Ownership Agreement outlines the relationship of the City and University as Co-Owners of TPASC and the manner in which the Co-Owners will make decisions and provide oversight of the Project. The terms and conditions for the Co-Ownership Agreement are set out in the Term Sheet in Attachment 1 to this Report.

When the Co-Ownership Agreement is executed, it will replace the Master Agreement between the parties dated December 1, 2010. The Co-Ownership Agreement is intended to define the relationship of the Co-Owners and their interest in the project over the next 20 years. In year 18, the Co-Owners will commence a review of the status and longer term prospects of the Project and TPASC.

Appropriate mechanisms are included for the Board to be accountable to the Co-Owners. Actions or decisions of TPASC Inc. requiring 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.

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 City's CFO 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 in relation to the Project and TPASC Inc.

A subsequent Operating Agreement will be negotiated which will detail usage of TPASC time and areas of exclusive use by the City, University, CSIO and other third party users, and other operational matters.

Key Provisions – Unanimous Shareholders’ Agreement

The Unanimous Shareholders’ Agreement outlines the relationship of the City and University as Shareholders of TPASC Inc. and the manner in which they will provide Shareholder direction to the Board of TPASC Inc. Given there is more than one shareholder, to bind the corporation, TPASC Inc. will be a party to this Agreement. The terms and conditions for the Unanimous Shareholders’ Agreement are set out in the Term Sheet in Attachment 1 to this Report.

The Board will oversee the management of the business and affairs of TPASC Inc. The Board will ensure TPASC Inc. is in material compliance with applicable laws, by-laws and policies of the Board and Shareholders, and business plans and operating and capital budgets approved by the Shareholders.

The Unanimous Shareholders’ Agreement includes appropriate accountability mechanisms and, unless approved by the Shareholders, TPASC Inc. may not authorize or undertake any of the following:

- appoint the auditor;
- conduct any business or activity other than the operation of TPASC;
- carry out 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; and
- amend the Articles, this Agreement, the Operating Agreement or any By-Laws.

The structure of the Board of TPASC Inc. will be as discussed above. For the initial term the Board will appoint both the Chair and Vice-Chair (each being a nominee from the other Shareholder), and the right to nominate the Chair will then alternate between the Shareholders. The Board will have the following committee structure:

- Finance & Human Resources Committee;
- Planning Committee;
- Audit Committee;
- Sports Advisory Council; and
- Community Advisory Council.

The Governance Liaisons will also serve as the proxy to represent their Shareholder at meetings of the Shareholders and to execute consent resolutions.

CONTACT

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SIGNATURE

Joseph P. Pennachetti,
City Manager

ATTACHMENTS

- Attachment 1: Toronto Pan Am Sports Centre Governance
Term Sheet (dated September 10, 2013)
- Attachment 2: Toronto Pan Am Sports Centre
Description of Premises

TORONTO PAN AM SPORTS CENTRE GOVERNANCE

TERM SHEET

SEPTEMBER 10, 2013

A. AGREEMENTS

1. Co-Ownership Agreement, Parties:
 - (a) The City of Toronto (the “City”) and the Governing Council of the University of Toronto (the “University”) shall be Co-owners of the Project, inclusive of the aquatic centre and field house, related lands, certain related parking facilities and other improvements (the “Project”).
 - (b) The facility shall be known as the Toronto Pan Am Sports Centre (“TPASC”).
 - (c) The City and the University shall enter into a Co-Ownership Agreement setting out fundamental principles, rights and obligations of the Co-Owners, and terms and processes for the Co-Owners to make decisions and provide Project oversight.
2. Shareholders’ Agreement, Parties:
 - (a) Toronto Pan Am Sports Centre Inc. (“TPASC Inc.”) shall be incorporated pursuant to the *Business Corporations Act* (Ontario), in which the City and the University shall be Shareholders and initially each shall own 1 Common Share (with provision for issuance of additional Common Shares in future).
 - (b) The City and the University shall enter into a Unanimous Shareholders’ Agreement setting out the relationship between the Shareholders, the fundamental principles of the Shareholders regarding TPASC Inc., and Shareholder requirements for the responsibility and accountability of the Board.
 - (c) TPASC Inc. shall be a party to the Unanimous Shareholders’ Agreement and shall be governed by the provisions of the Agreement.

B. CO-OWNERSHIP AGREEMENT

3. Co-Ownership Principles:
 - (a) The City and University shall work cooperatively on the Project and share information, present a unified position in dealing with Toronto 2015, IO and other parties, make every effort to build consensus and align interests.
 - (b) The Co-Owners will work cooperatively to enforce, and cause Toronto 2015 to enforce, all Provincial guarantees in respect of any Project cost overruns.
 - (c) The City and University shall enter into agreements necessary for the 2015 Games and the Project, dedicate appropriate financial and other resources to the Project as contemplated in agreements, and provide timely Co-Owner decisions.

4. City and University Lands:

- (a) The City shall grant to the Co-Owners a non-exclusive easement over the Access Drive Lands (part of Pan Am Drive), owned by the City on the northerly boundary of the site, which are part of and necessary for access to the Project.
- (b) The University shall grant to the Co-Owners:
 - (i) an exclusive easement over the Adjacent Parking Lands, situated to the south of the building, which are part of and necessary for the Project in accordance with zoning requirements;
 - (ii) a non-exclusive licence to use 1 unreserved parking space on the Additional Parking Lands for every 100m² of gross floor area of TPASC;
 - (iii) a non-exclusive licence over the portion of Pan Am Drive that extends to the south, outside the Project lands, with costs of construction of the road and alteration to parking facilities to be borne by the Project.

5. Governance and Finance Liaisons:

- (a) The City Manager and the Vice-President of University Operations, or their designates, shall be the Governance Liaisons with responsibility for ensuring compliance with their respective organization's internal governance requirements in connection with requirements contemplated in this Agreement.
- (b) The Co-Owners shall provide direction to their Governance Liaison with respect to the exercise and performance of rights and obligations as Co-Owners and as Shareholders of TPASC Inc.
- (c) Each Co-Owner shall appoint its Governance Liaison as the proxy to represent the Co-Owner at meetings of the Co-Owners and to execute consent resolutions.
- (d) The CFO of the City and the Vice-President of University Operations, or their designates, shall be the Finance Liaisons of their respective organization with responsibility for supporting financial functions and reporting relating to the Project and TPASC Inc.
- (e) The CFO of the City and the Vice-President of University Operations shall provide written notice within 2 business days of appointment of a designate.
- (f) The Governance and Finance Liaisons shall not serve on the Board.

6. Co-Owner Approvals, Meetings:

- (a) The following actions or decisions require prior approval of the Co-Owners:
 - (i) material activity not provided for in an approved budget or business plan;
 - (ii) financing arrangement other than as set out in an approved budget;
 - (iii) sell, lease or otherwise dispose of assets except in the ordinary course of business or as contemplated in an approved budget;
 - (iv) purchase any interest in real property;
 - (v) distribute funds of any nature or type to a Co-Owner;
 - (vi) terminate, amend or replace the applicable governance Agreements;
 - (vii) make payments or enter into transactions, agreements or commitments with any person who does not deal at arms length with the Co-Owners; or
 - (viii) participate in any claim or litigation by or against the Co-Owners.
- (b) Either Co-Owner may call a meeting; quorum shall be both Co-Owners.

7. Operations and Financing:

- (a) The Co-Owners shall enter into an Operating Agreement with TPASC Inc., prior to commencing operation of TPASC, setting forth each Co-Owner's rights and obligations relating to use of TPASC.
- (b) The University shall commit to fund not less than 17% and the City shall commit to fund not less than 31% (the "Minimum Annual Commitments"; percentages may be adjusted upwards) of the operating expenses of the Project on an annual basis as set forth in the approved operating budgets, which will guide their respective usage of the facility.
- (c) A subsequent Operating Agreement shall provide for periodic review of the Minimum Annual Commitments commencing with a review 3 years after the 2015 Games with the intent that a Co-Owner may increase its proportion of exclusive use subject to availability and payment of associated costs.
- (d) The preliminary operating plan shall call for other users to use approximately 52% of the annual Centre time:
 - (i) the Canadian Sport Institute Ontario ("CSIO") and high performance sport organizations will commit to use 30% of the annual Centre time and CSIO will enter into a lease or license on terms satisfactory to TPASC Inc.; and
 - (ii) other Third Party Users will be established for 22% of the annual Centre time for uses complementary to Co-Owner and CSIO uses.

8. Revenues, Reserves:

- (a) Any operating and non-operating revenues of the Project to the extent not paid to TPASC shall be allocated to the Co-Owners in equal shares and used by them firstly to offset revenue shortfalls and actual operating cost deficiencies and secondly to reduce their own usage costs.
- (b) If revenues and Legacy Fund contributions are insufficient to cover operating costs of the Project, each Co-Owner shall share any shortfall equally.
- (c) The Co-Owners and Shareholders shall actively and cooperatively review, evaluate and implement all viable ways and means for TPASC Inc. and the Project to avoid, mitigate and fund future shortfalls.
- (d) The Co-Owners shall maintain capital reserve accounts for funding major maintenance and capital expenditures, which accounts may be in the names of individual Co-Owners, TPASC Inc. or a combination; the Co-Owners shall annually pay into the capital reserve accounts such amounts as they approve.
- (e) Approximately \$1.5 million of the annual Legacy Fund contributions shall be allocated to anticipated future major maintenance and capital expenditures.
- (f) Funds in the capital reserve accounts, including interest, shall only be used by the Co-Owners and TPASC Inc. to pay for major maintenance and capital expenditures in accordance with approved budgets.

9. Environmental Remediation, Indemnities:

- (a) The Co-Owners shall work co-operatively to obtain regulatory approvals required for remediation of Project lands and implementation of remediation work, including agreements with contractors/consultants and applications for regulatory approvals, which shall be subject to their joint oversight and approval.

- (b) All approved costs incurred to date on such remediation shall be shared, including consulting fees and costs related to any required environmental monitoring but excluding legal fees (the “Remediation Costs”), with the City’s share being 42.31% and the University’s share being 57.69%.
- (c) In addition to its share of the Remediation Costs, the City shall 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.
- (d) Any underpayment or overpayment of Remediation Costs by a Co-Owner shall be reimbursed by or to the other Co-Owner.
- (e) The Co-Owners shall apply to have the Part V Certificate of Approval released from the Project lands and related costs shall be shared as per subsection 9(b).
- (f) Any additional costs that may be incurred to remove the Part V Certificate of Approval from adjacent City lands shall be the responsibility of the City.
- (g) The City shall provide the University with copies of all remediation contract invoices and the University shall pay the City its share of the amount plus HST.
- (h) Except as otherwise agreed, City contracts with contractors/consultants in relation to remediation work shall be for the benefit of the Co-Owners/TPASC Inc.
- (i) The City, as the direct counterparty to such contracts, shall have primary responsibility to enforce indemnifications on behalf of the Co-Owners and TPASC Inc.; City enforcement costs shall be included in the Remediation Costs shared between Co-Owners as in subsection 9(b).
- (j) The University shall, if necessary, grant easements at nominal consideration to the City as required for construction and ongoing maintenance on University lands of any portion of the barrier wall and landfill gas venting systems.
- (k) The City shall be solely responsible for the costs of all ongoing maintenance and post-remediation monitoring of the barrier wall and landfill gas venting systems, and any environmental monitoring associated with perpetual care of the primary waste mound located on City lands.
- (l) In the event that any additional remediation of the Project lands is required pursuant to the terms of the Facility Agreement or Project Agreement, the City and the University shall work co-operatively with Toronto 2015 and IO to undertake such additional remediation work; the cost thereof (to the extent not provided for in the Project budget) shall be shared equally by the Co-Owners.
- (m) The Co-Owners shall be jointly responsible for ensuring that TPASC Inc. operates TPASC in compliance with all MOE requirements including ongoing post-remediation monitoring and reporting, and the City and University shall cooperate in complying with all environmental conditions and approvals and jointly retain required consultants, with the costs to be shared by the Co-Owners equally.
- (n) The City and University shall indemnify and hold each other and TPASC Inc. harmless from and against all actions, losses, liabilities, claims etc. and costs (including reasonable legal fees) directly or indirectly arising from or relating to:
 - (i) contaminants remaining on the historical City or University lands;
 - (ii) past or present release of any contaminants from those historical lands; and
 - (iii) past or present release of any contaminants in or onto the Project lands from abutting or adjoining lands owned by the City or University.

10. Development Matters:

- (a) Initial Project costs incurred/committed by the City or University for legal and consultant costs for construction and initial development (excluding Remediation Costs and costs funded out of the approved Project capital budget) shall be shared equally unless otherwise agreed; any under or over payment shall be reimbursed.
- (b) Except as otherwise agreed, each Party will be responsible for all legal fees incurred by it in connection with the development of the Project.
- (c) The Co-Owners shall work cooperatively to obtain all municipal approvals required for development of the Project in a timely manner.
- (d) Military Trail may be realigned in the future, which will bisect the Project lands.
- (e) A Co-Owner objective shall be to have a portion of Pan-Am Drive, generally from Tams Road to the realigned Military Trail, dedicated as a public highway.

11. Transfer of Interest in the Project, Evaluating Ongoing Operations:

- (a) The Co-Owners and TPASC Inc. shall not make or permit a Transfer of ownership interest, except as permitted by this Agreement.
- (b) Recognizing expected timelines 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”).
- (c) About the 18th anniversary of the Commencement Date, the Co-Owners shall commence a review of the status and prospects of the Project including the financial condition of TPASC, the physical condition of the Project, and the best options available for operating TPASC beyond the Initial Operating Period.

12. Naming, Sponsorships:

Sponsorship agreements and arrangements for events at TPASC shall be generally entered into by TPASC Inc. subject to approval of the Co-Owners or the Board of TPASC Inc., provided that the Co-Owners may in their discretion elect to enter into any such agreements or arrangements directly.

13. Intellectual Property, Trade-marks:

- (a) All trade-marks (“Trade-marks”) to be used in connection with TPASC, including as a building (or part building) name, marketing materials and advertising (any media), must be approved by the Co-Owners or the TPASC Inc. Board.
- (b) Any Trade-marks based upon or featuring prominently any trade-marks of the City or the University shall belong to the City or University; any other Trade-marks shall be owned by one Co-Owner or the other or by TPASC Inc.
- (c) Co-Owners shall grant each other and TPASC Inc. a non-exclusive, royalty-free, non-transferable license for the duration of this Agreement to copy, display and use its Trade-marks strictly for the purpose of this Agreement.
- (d) Each Co-Owner shall not directly or indirectly impair, copy, interfere with, contest, infringe, or attempt to devalue the goodwill of, the Trade-marks of the other Co-Owner or TPASC Inc.
- (a) Other intellectual property including domain names, software and copyright materials, will be appropriately protected.

14. Taxes:

- (a) The Co-Owners shall endeavour to enter into a municipal capital facility agreement with the City of Toronto for the purposes of obtaining an exemption from taxation for municipal and school purposes.
- (b) If such agreement is not entered into or the Project is subject to property taxation in whole or in part, each Co-Owner shall pay 50% of any property taxes payable to the extent not recovered from third parties (property taxes may be payable for space within TPASC leased to CSIO and other tenants).

15. Parking:

- (a) All parking facilities on the Project lands and Adjacent Parking Lands shall be for the exclusive use of the Co-Owners and TPASC Inc. for the Project.
- (b) The Adjacent Parking Lands shall be exclusively used for the Project in accordance with the zoning bylaw.
- (c) The Co-Owners shall re-assess the amount and location of exclusive and non-exclusive parking outside of the Project lands within 2 years following the 2015 Games and periodically thereafter; any change to parking facilities or spaces will be subject to zoning compliance and/or amendment.
- (d) Parking may be operated/maintained directly or, if approved, by third parties.
- (e) TPASC Inc. shall operate/manage parking facilities on the Adjacent Parking Lands pursuant to a parking management agreement and all revenues from the Adjacent Parking Lands shall belong to TPASC Inc.
- (f) The University may, with prior notice to TPASC Inc. and subject to 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 Road should the University require the Adjacent Parking Lands in connection with future development activities; the University shall bear all costs of relocating the exclusive parking and, once relocated, all revenues from the relocated parking lands shall belong to the University.
- (g) 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.

16. Repair, Maintenance:

- (a) The Co-Owners and TPASC Inc. will maintain the Project in good repair and safe operating condition, including Pan Am Drive and all sidewalks and entrances.
- (b) 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 based on the City's usage and resulting disproportionate wear and tear, if any, caused by equipment using the City's Transportation Yard.

17. Legacy Matters:

- (a) The Co-Owners shall be subject to Legacy Fund Agreements.
- (b) Legacy Fund Contributions shall be used for the benefit of the Project as set out in approved annual capital and operating budgets.

18. Confidentiality:

- (a) Co-Owners shall not communicate or disclose to any Person, or use for any purpose other than the Co-Ownership (or the Co-Owner's own internal purposes), any Confidential Information acquired by such Co-Owner.
- (b) Co-Owners may disclose Confidential Information to their directors, officers, employees; professional advisors, auditors and bankers; Toronto City Council, a Toronto City Councillor, the Governing Council or a Governor of the University, provided that such disclosure shall only be made to the extent necessary and with the requirement that such Person, as applicable, undertakes to maintain such Confidential Information in the strictest confidence.

19. Other Matters:

- (a) Circumstances constituting a default by a Co-owner and the rights of the non-defaulting Co-Owner are appropriately protected.
- (b) Any disagreement arising between Co-Owners in connection with the interpretation of the Agreement will be addressed by a dispute resolution procedure and, if unresolved, will be referred to arbitration.
- (c) All press releases and other communications to the general public shall be made in the joint names of the Co-Owners or TPASC Inc. and only with the approval of the Co-Owners or the Board of TPASC Inc., as applicable.
- (d) This Agreement supersedes the Master 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.

C. UNANIMOUS SHAREHOLDERS' AGREEMENT

20. Corporate Matters:

- (a) Unless otherwise provided, all payments shall be in lawful currency of Canada.
- (b) The Shareholders shall cause decisions to be taken and documents to be executed to ensure compliance with the terms of this Agreement.
- (c) This Agreement shall constitute a unanimous shareholders agreement within the meaning of the *Business Corporations Act* (Ontario) and is not intended to give rise to a general partnership, limited partnership or joint venture.
- (d) Directors of TPASC Inc. shall have all the rights, powers, duties and liabilities under the *Business Corporations Act* (Ontario) except to the extent that this Agreement expressly restricts the discretion and powers of the Board of Directors.

21. Board Composition:

- (a) TPASC Inc. shall have a Board consisting of 10 members, 5 of whom shall be appointed by each Shareholder.
- (b) Appointees shall serve at the pleasure of the Shareholder.
- (c) Recognizing Shareholder commitments in relation to the staging and legacy of the Pan Am Games, the Board will initially be composed primarily of individuals who are Staff, provided that each Shareholder may nominate up to 2 non-Staff

Members to the Board and the Shareholders will endeavour to nominate an equal number of Staff and non-Staff Members.

22. Eligibility and Qualifications:

- (a) To be eligible for appointment as a Director of the Board of TPASC Inc., 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.
- (b) Members of the Board TPASC Inc. shall collectively have the following qualifications:
 - (i) Financial management expertise.
 - (ii) Business management and operating expertise.
 - (iii) Corporate governance expertise.
 - (iv) A youthful perspective.

23. Term:

Each Director shall serve for a 2 year term, or until their successor is appointed, and incumbent Directors are eligible for reappointment.

24. Remuneration:

Directors shall not be remunerated for serving as such but may be reimbursed for their reasonable out-of-pocket expenses in attending board meetings.

25. Vacancies:

If a Director ceases to be a Director for any reason, the respective Shareholder shall fill the vacancy as soon as possible by appointing another individual.

26. Review of Board Structure:

- (a) On or about January 15, 2017, the Shareholders shall commence a process to review the functionality of the Board during the preceding 3 years and determine changes to the Board structure that may be required.
- (b) Within 12 months from commencing the review, the Shareholders shall develop a set of conclusions and recommendations regarding the future Board structure for consideration by City Council and the University's Governing Council.

27. Board Responsibilities, Meetings:

- (a) The Board shall at all times comply with the following responsibilities:
 - (i) overseeing the management of the business and affairs of TPASC Inc.;
 - (ii) ensuring TPASC Inc. is managed in material compliance with applicable laws, By-Laws and policies of the Board and Shareholders, and approved annual business plans and operating and capital budgets;
 - (iii) establishing sound financial principles and performance objectives;
 - (iv) appointing the officers of TPASC Inc. and hiring TPASC Inc.'s facility manager and other senior managers;
 - (v) ensuring Shareholders are promptly notified when a Board vacancy occurs;

- (vi) approving the overall business strategy for TPASC Inc. and related business or strategic plans, whether annual or multi-year;
 - (vii) approving the financing strategy of TPASC Inc., including the selection of financial institutions and related banking authorities;
 - (viii) approving annual operating and capital budgets for TPASC Inc.;
 - (ix) approving policies to regulate the internal business and affairs of TPASC Inc., including purchasing policies;
 - (x) undertaking, performing or overseeing such actions related to the Pan Am Games and the Facility Agreement as directed by the City and University;
 - (xi) ensuring that TPASC Inc. complies with the provisions of the Operating Agreement and any other agreements between the City, the University and TPASC Inc. relating to the operation or use of TPASC.
- (b) The Board of Directors shall meet at least once in every calendar quarter at the registered office of TPASC Inc. or such place in Toronto as the Directors may determine and shall approve a schedule of Board meetings and locations for the following year at a Board meeting before the end of each calendar year.
 - (c) A quorum for any meeting of the Board of Directors shall be a majority of Directors comprised of at least 3 of the Directors nominated by the City and at least 3 of the Directors nominated by the University.
 - (d) Once in each calendar year, a Board meeting shall be open to the public and notice shall be posted on TPASC Inc.'s website at least 20 days prior.
 - (e) The Governance Liaisons shall be entitled to attend meetings of the Board as observers and shall receive such meeting materials as the Board may determine.
 - (f) Votes on By-laws shall require a two-thirds majority.

28. Chair:

- (a) The Board shall have a Chair and Vice-Chair, both of whom shall be Directors.
- (b) The term of office of the Chair and Vice-Chair shall be a maximum of 2 consecutive years.
- (c) The right to nominate the Chair alternates between Shareholders every 2 years.
- (d) For the initial 2 year term, the Board shall appoint the Chair and Vice-Chair.
- (e) The Vice-Chair shall succeed to the office of the Chair.
- (f) 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.
- (g) The Chair shall not be entitled to a second or casting vote on any matter.
- (h) The Chair and Vice-Chair (if any) of each Committee and Advisory Council and their term of office shall be determined by the Board.

29. Finance and Human Resources Committee:

- (a) The Board shall establish a Finance and Human Resources Committee.
- (b) The Committee shall have the mandate and responsibilities determined by the Board including reviewing and providing recommendations with respect to annual operating and capital budgets and reviewing and commenting on the hiring, termination and compensation of TPASC Inc.'s senior management team.
- (c) The composition of the Committee shall be 4 members of the Board, comprised of 2 Directors who are nominees of each Shareholder.

- (d) The Finance Liaisons shall be entitled to attend meetings of the Finance and Human Resources Committee as observers, excluding any in-camera meetings.

30. Planning Committee:

- (a) The Board shall establish a Planning Committee.
- (b) The Committee shall have the mandate and responsibilities determined by the Board including reviewing and commenting on any business plans or strategic plans presented whether annual or multi-year.
- (c) The composition of the Planning Committee shall be 4 members of the Board, comprised of 2 Directors who are nominees of each Shareholder.

31. Audit Committee:

- (a) The Board shall establish an Audit Committee.
- (b) The Committee shall have the mandate and responsibilities determined by the Board including reviewing and commenting on the financial statements of TPASC Inc. and reporting thereon to the Board before they are approved.
- (c) The composition of the audit Committee shall be 4 members of the Board, comprised of 2 Directors who are nominees of each Shareholder.

32. Sports Advisory Council:

- (a) The Board shall establish a Sports Advisory Council to provide advice and guidance to the Board and TPASC Inc.'s management in connection with TPASC's plans, objectives, challenges and opportunities.
- (b) The Sports Advisory Council may hold such meetings as its members deem appropriate, including an annual planning session at which TPASC management shall have the opportunity to access sports experts.
- (c) Board members will get 30 days' prior notice of meetings.
- (d) The composition of the Sports Advisory Council will be 2 members of the Board, comprised of 1 Director who is a nominee of each Shareholder and up to 9 additional members appointed by the Board who collectively have expertise and knowledge in high performance sports.
- (e) All Board members shall be notified of and be entitled to attend meetings and other functions of the Sports Advisory Council.

33. Community Advisory Council:

- (a) The Board shall establish a Community Advisory Council to provide input, advice and guidance to TPASC Inc.'s Board and management with respect to issues and matters of interest affecting the communities and users served by TPASC.
- (b) The composition of the Community Advisory Council will be 2 members of the Board, comprised of 1 Director who is a nominee of each Shareholder and up to 9 additional members appointed by the Board who represent the community, the University (including students) and other user group constituencies.
- (c) The Community Advisory Council may hold such meetings as it deems appropriate.
- (d) All Board members shall receive 30 days' prior notice of and be entitled to attend other functions/activities of the Community Advisory Council.

34. Shareholder Approvals:

TPASC Inc. shall not authorize, undertake, or carry out any of the following without prior approval of the Shareholders:

- (a) any of the matters to be approved at the annual meeting of TPASC Inc. or any other matters requiring Shareholder approval under this Agreement;
- (b) any business or activity other than the operation of TPASC;
- (c) any material activity not provided for in an approved budget or approved business or strategic plan;
- (d) any financing arrangement or line of credit not in an approved budget;
- (e) Mortgage, encumber, sell, lease, exchange or otherwise dispose of assets except in the ordinary course of business or as contemplated in any approved budget;
- (f) issue of Shares of, or redeem, purchase for cancellation or otherwise acquire any outstanding Shares of, TPASC Inc.;
- (g) amalgamate or merge with or into any other corporation;
- (h) such other matters as are the purview of the Shareholders.

35. Shareholder Meetings:

- (a) An annual meeting of Shareholders shall be held at least once in each calendar year at the registered office of TPASC Inc. or elsewhere within Toronto upon not less than 10 days nor more than 50 days notice.
- (b) A quorum of Directors may call a special meeting of the Shareholders.
- (c) A quorum for a meeting of Shareholders shall be both Shareholders.
- (d) 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.
- (e) Meetings of the City and the University, in their capacity as Co-Owners and Shareholders, may be held consecutively or concurrently.

36. Governance and Finance Liaisons:

- (a) The City Manager and the Vice-President of University Operations, or their designates, shall be the Governance Liaisons with responsibility for ensuring compliance with their respective organization's internal governance requirements in connection with requirements contemplated in this Agreement.
- (b) Each Co-Owner shall appoint its Governance Liaison as the proxy to represent the Shareholder at meetings of the Shareholders and to execute consent resolutions.
- (c) The City's CFO and the Vice-President of University Operations, or their designates, shall be the Finance Liaisons of their respective organization with responsibility for supporting financial functions and reporting relating to the Project and TPASC Inc.
- (d) The principles and provisions in Section 5 also apply as appropriate to the Governance and Finance Liaisons with respect to Shareholder matters.
- (e) Any designate for the City Manager, Vice-President of University Operations or the City CFO shall be the same person as their respective designate if any under the Co-Ownership Agreement.

37. Indemnity, Insurance:

- (a) TPASC Inc. shall indemnify all current and former Directors and officers of TPASC Inc., the Shareholders of TPASC Inc. to the extent they exercise the rights, powers, duties and liabilities of a Director, as appropriate.
- (b) TPASC Inc. shall effect and maintain throughout the term of this Agreement directors' and officers' liability insurance.

38. Auditor, Financial Matters:

- (a) Public Sector Accounting Board ("PSAB") Generally Accepted Accounting Principles ("GAAP") will be followed as applicable.
- (b) The fiscal year of TPASC Inc. shall end on December 31.
- (c) The Board will recommend an auditor for consideration by the Shareholders at the annual meeting, determined on the basis of a competitive process.
- (d) TPASC Inc. shall maintain its bank accounts with such financial institutions as the Board may determine, and all banking instruments shall require the signatures of any 2 officers or Directors as the Board may from time to time determine.
- (e) The Board shall approve signing authorities or thresholds for the purposes of management of account funds, purchasing, expenditure commitments, and entering into contracts and agreements.
- (f) TPASC Inc. shall prepare annually a business plan for Shareholder approval.
- (g) TPASC Inc. shall prepare an annual operating budget and an annual capital budget for the Project including TPASC for each financial year of TPASC Inc. at least 90 days prior to the commencement of such financial year for consideration and approval by the Board and the Shareholder.
- (h) The operating budget shall reflect the approved business plan and shall contain a detailed monthly budget, comparison statements from the previous financial year, a cash flow/liquidity analysis for TPASC and a timeline for contributions by the Shareholders as contemplated by the applicable Agreements.
- (i) The capital budget shall reflect the approved business plan and shall contain a statement of the nature and amount of all major maintenance and capital expenditures to be incurred during such financial year.
- (j) TPASC Inc. shall maintain capital reserve accounts and shall prepare an investment strategy for consideration by the Board.
- (k) TPASC Inc. shall prepare quarterly financial statements and variance reports for consideration by the Board.
- (l) TPASC Inc. shall cause to be prepared and delivered to the Audit Committee and the Board, no later than 90 days after the end of each fiscal year of TPASC Inc., audited financial statements for such fiscal year consisting of at least a balance sheet, income statement and statement of changes in financial position, accompanied by a report of the Auditors and a management report, and such other information as may be requested by the Shareholders.
- (m) TPASC Inc. shall maintain its Books and Records and each Shareholder shall be entitled, upon reasonable notice, to access the Books and Records at reasonable times during normal business hours.

39. Legacy Fund Contributions:

- (a) 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.
- (b) TPASC Inc. shall be subject to the Legacy Fund Agreements.
- (c) The provisions of Section 17 of the Co-Ownership Agreement apply.

40. Confidentiality:

- (a) The Shareholders shall not communicate or disclose to any Person, or use for any purpose other than the Project (or their own internal purposes), any Confidential Information acquired by the Shareholders.
- (b) The Shareholders may disclose Confidential Information to its directors, officers, employees; professional advisors, auditors and bankers; Toronto City Council, a Toronto City Councillor, the Governing Council or a Governor of the University, provided that such disclosure shall only be made to the extent necessary and with the requirement that such Person, as applicable, undertakes to maintain such Confidential Information in the strictest confidence.

41. General Matters:

- (a) Circumstances constituting a default by a Shareholder and the rights of the non-defaulting Shareholder are appropriately protected.
- (b) Any disagreement arising between Shareholders in connection with the interoperation of the Agreement will be addressed by a dispute resolution procedure and, if unresolved, will be referred to arbitration.
- (c) Prior rights or obligations which have accrued or arisen under this Agreement shall survive the termination of this Agreement.

ATTACHMENT 2

TORONTO PAN AM SPORTS CENTRE

DESCRIPTION OF PREMISES

Description of Toronto Pan Am Sports Centre Lands:

Co-Owned Lands at Street Address “875 Morningside Avenue, Toronto”:

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.

and

Access Drive Lands:

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

Adjacent Parking Lands:

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

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.