

**AMENDED AND RESTATED LAND INVENTORY AGREEMENT**

**BETWEEN**

**THE CITY OF EDMONTON**

**- and -**

**KATZ GROUP PROPERTIES INC.**

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATIONS .....3  
2. PURCHASE AND SALE OF ROAD LANDS.....13  
3. PURCHASE OF WAM LANDS AND BRIDGE LANDS BY CITY .....13  
4. PURCHASE PRICE AND REVENUE FOR BRIDGE LANDS.....13  
5. GATEWAY LEASE .....17  
6. SUBDIVISION MATTERS .....18  
7. OPTIONS TO PURCHASE.....19  
8. OPTIONS AFTER TERMINATION DATE.....20  
9. RIGHT OF FIRST OFFERS .....21  
10. CAVEATS.....22  
11. CITY OBLIGATIONS .....22  
12. NOTICES.....22  
13. GOVERNING LAW.....23  
14. NO WAIVER .....23  
15. CAPACITY OF CITY .....24  
16. FURTHER ASSURANCES.....24  
17. NO MERGER .....24  
18. SCHEDULES.....24  
19. SEVERABILITY .....24  
20. TIME OF ESSENCE.....25  
21. ENUREMENT/ASSIGNMENT .....25  
22. PARAMOUNTCY .....25  
23. SALES TAXES.....25  
24. COSTS .....25

**AMENDED AND RESTATED LAND INVENTORY AGREEMENT**

**THIS AMENDED AND RESTATED LAND INVENTORY AGREEMENT** is made effective as of the 10<sup>th</sup> day of February, 2014 (the "Effective Date").

**BETWEEN:**

**THE CITY OF EDMONTON**  
(hereinafter referred to as the "City")

- and -

**KATZ GROUP PROPERTIES INC.**  
(hereinafter referred to as the "Owner")

**WHEREAS:**

- A. The City and the Owner are the parties to a Land Inventory Agreement dated October 28, 2011, as amended by the Land Inventory First Amending Agreement dated December 12, 2012 and a Land Inventory Second Amending Agreement dated effective March 15, 2013, and as extended by letters dated April 26, 2013, May 31, 2013, June 27, 2013, July 25, 2013, September 30, 2013, October 10, 2013, October 18, 2013, October 25, 2013, November 1, 2013, November 8, 2013, November 29, 2013, December 13, 2013, January 23, 2014, and February 5, 2014 (collectively herein called the "Original Agreement");
- B. Certain of the transactions contemplated by the Original Agreement have been completed since the date of the Original Agreement and the parties have agreed to amend certain of the terms and conditions of the Original Agreement; and
- C. The City and the Owner are desirous of setting out all the arrangements for the land transactions contemplated between the Owner and the City with respect to the downtown Arena project in this Amended and Restated Land Inventory Agreement.

**NOW THEREFORE** in consideration of the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the Owner and the City agree as follows:

**1. DEFINITIONS AND INTERPRETATIONS**

1.1 In this Agreement the capitalized terms defined below will have the meanings set forth below:

1.1.1 "102" means EAD Property Holdings (102) Corp.;

1.1.2 "102 Street Costs" has the meaning set forth for that term in section 7.5 hereof;

- 1.1.3 **"102 Street Roadway"** means the public roadway to be constructed on a portion of the WAM Lands in the approximate location shown on the attached Schedule "A";
- 1.1.4 **"Acquisition Date"** means October 31, 2011, being the date upon which the City completed the acquisition of the WAM Lands and the Bridge Lands from the WAM Vendor and the Bridge Vendor as contemplated herein;
- 1.1.5 **"Agreement"** or **"hereto"**, **"herein"**, **"hereunder"**, **"hereof"** and similar expressions when used in this Agreement and the attached Schedules refer to the whole of this Agreement and the attached Schedules and not to any particular article, section or other portions hereof, and any reference to an article or section by number means the appropriate section or article of this Agreement and all attached Schedules unless the context is expressly to the contrary or otherwise required and any reference to a Schedule by letter or number means the appropriate Schedule attached to this Agreement;
- 1.1.6 **"Agreement for Sale"** means the agreement for sale of the South Bridge Lands made between 102 as buyer and the City as vendor, dated concurrently herewith;
- 1.1.7 **"Affiliate"** means a corporation that directly or indirectly controls, is controlled by or is under common control with a party as the concept of control is used in the Business Corporations Act (Alberta), R.S.A. 2000, c. B-9, as amended from time to time). In respect of a partnership or joint venture, "Affiliate" means a partnership or joint venture in which a party holds a majority of the partnership or joint venture interests;
- 1.1.8 **"Arena"** means the multipurpose sports and entertainment facility to be utilized, inter alia, as a professional hockey arena, associated food, beverage, retail, and entertainment areas, associated public gathering and circulation areas within the facility, ice plant, parking garage and loading facilities, to be constructed in downtown Edmonton on the Arena Lands;
- 1.1.9 **"Arena Facilities"** means any or all of the following which are or may be located wholly or partially on the east side of the Arena: the loading dock servicing the east side of the Arena at grade, the access lane(s) providing access to the loading dock and underground parkade for the Arena and a portion of the Corridor on the mezzanine level in the approximate location shown in Schedule "A";
- 1.1.10 **"Arena Lands"** means the lands to be subdivided out of the WAM Lands and the City Lands, which lands shall be owned by the City and upon which will be situate the Arena, the Corridor (or a portion thereof), together with the portion of the Wintergarden located north of 104 Avenue, the Arena Facilities and the Community Rink, an approximation of which areas are shown on the attached Schedule "A";

- 1.1.11 **"Block I/J"** means the portion of the WAM Lands and the City Lands to be created by registration of a subdivision plan as contemplated by section 8.1, an approximation of which is shown on the attached Schedule "A";
- 1.1.12 **"Block I/J Purchase Price"** means the purchase price for Block I/J, established in accordance with Schedule "G";
- 1.1.13 **"Block K"** means the portion of lands to be subdivided out of the WAM Lands and the City Lands, as contemplated by section 8.2, an approximation of which area is identified as Block K and shown on the attached Schedule "A". For clarity, Block K will not include the area on which the Arena Facilities are located;
- 1.1.14 **"Block K Purchase Price"** means the purchase price for Block K established in accordance with Schedule "G";
- 1.1.15 **"Block Options"** means the options to purchase each of Block I/J and Block K granted by the City to the Owner as described in sections 8.1 and 8.2;
- 1.1.16 **"Bridge Lands"** means the North Bridge Lands and the South Bridge Lands;
- 1.1.17 **"Bridge Lands Subdivision Costs"** means the Subdivision Costs totaling 16(1) relating to preparation and registration of the Bridge Lands Subdivision Plan;
- 1.1.18 **"Bridge Lands Subdivision Plan"** means the plan of subdivision registered at the Land Titles Office as Plan #1321953 that created the titles to the North Bridge Lands and the South Bridge Lands;
- 1.1.19 **"Bridge Purchase Agreement"** means the agreement in writing dated May 11, 2009 wherein 672884 Alberta Ltd. agreed to sell and 1453351 Alberta Ltd. agreed to purchase the Bridge Lands, which has been assigned to the Owner and subsequently assigned to the City, pursuant to which the City became the owner of the Bridge Lands;
- 1.1.20 **"Bridge Vendor"** means 672884 Alberta Ltd.;
- 1.1.21 **"City"** means the City of Edmonton, a municipal corporation;
- 1.1.22 **"City Lands"** means:
- 1.1.22.1 the Road Lands; and

1.1.22.2 the land legally described as:

Plan 9724372

Block 9E

Lot 3

EXCEPTING THEREOUT ALL MINES AND MINERALS

- 1.1.23 **"City Legal Costs"** means the City legal costs in the aggregate sum of \$75,000.00 paid by or on behalf of the City in connection with the WAM Purchase Agreement and the Bridge Purchase Agreement, which are allocated to each parcel of land, as described in the attached Schedule "G-1";
- 1.1.24 **"City Purchase Price"** means the purchase price payable by the City to 102 for the Bridge Lands, in the event the Owner exercises the Put Option, in the sum of \$34,386,682.32 less the amount of the Deferred Balance which remains outstanding as at the Closing Date;
- 1.1.25 **"Closing Date"** shall mean 12:00 noon on the particular closing date for a transaction contemplated by this Agreement as determined in accordance with the terms of this Agreement;
- 1.1.26 **"Commercial Development"** means the commercial development which may be undertaken by the Owner or its Nominee on Block K, the North Bridge Lands or the South Bridge Lands (which, for certainty, does not include the construction of any part of the Arena, the Block K Arena Facilities or the Wintergarden);
- 1.1.27 **"Community Rink"** means an ice rink to be located on the Arena Lands in the approximate location shown on Schedule "A" attached, which will serve the needs of the City and the community and also be used by the National Hockey League team, the Edmonton Oilers, and the Western Hockey League team, the Edmonton Oil Kings, as a practice rink, further particulars of which are contained in the Master Agreement;
- 1.1.28 **"Corollary Agreements"** means the Wintergarden Agreement, the Wintergarden Retail Agreement, the Plaza Agreement, any other agreements required or contemplated for the purpose of governing the respective parties rights and obligations to any lands or interests therein, and any Required Easements in connection therewith;
- 1.1.29 **"Corridor"** means the public walkway at the mezzanine level of the Arena (and the stairs, escalators and elevators located at the south end thereof which transports users from the mezzanine level down to the grade level), which public walkway connects the LRT Link to the Wintergarden, in the approximate location shown on Schedule "A";
- 1.1.30 **"Deferred Balance"** means \$16(1), being the South Bridge Lands Purchase Price less the South Bridge Lands Initial Payment;

- 1.1.31 **"Dispute Resolution Process"** means the dispute resolution process contemplated in paragraph 26 of the Master Agreement;
- 1.1.32 **"EAC"** means Edmonton Arena Corp., a corporation which is related to the Owner;
- 1.1.33 **"Gateway"** means Gateway Casinos and Entertainment Limited;
- 1.1.34 **"Gateway Lease"** means the lease dated the 23rd day of June 2009 between Gateway Casinos and Entertainment Inc. as tenant (which interest has been assigned to Gateway) and WAM Vendor as landlord (which interest has been assigned to the City);
- 1.1.35 **"Interest Rate"** means, for the initial 5 (five) year term of this Agreement commencing on the Acquisition Date, a fixed rate equal to 1.796% per annum, and thereafter, at a fixed rate equal to the 5 year Alberta Capital Finance Authority (ACFA) rate to be established on November 1, 2016, as posted by ACFA or any successor entity or organization;
- 1.1.36 **"Landing"** means that portion of the Wintergarden (which includes the base of the Wintergarden) which is situated on the Landing Parcel;
- 1.1.37 **"Landing Parcel"** means the parcel of land to be created by subdivision pursuant to section 5.7 herein, in the approximate location shown on Schedule "A", but which, at the option of the Owner, may exclude the subsurface area below the Landing Parcel;
- 1.1.38 **"LRT Link"** means a public area to be owned by the City, including any elevators, escalators and stairs required to move pedestrians from the LRT station located north of the Arena to the Corridor, in the approximate location shown on Schedule "A";
- 1.1.39 **"Master Agreement"** means the master agreement dated August 29, 2013 between the City and EAC with regard to the planning, design, servicing, construction, operation, maintenance and repair of the Arena, the Wintergarden, the Corridor, the LRT Link, the Community Rink, and other matters, all as described therein;
- 1.1.40 **"Morguard Agreement"** means the agreement between the City and Morguard NAR (Alberta) Holdings Limited for the purchase and sale of the Morguard Lands and includes all ancillary or corollary agreements relating thereto;
- 1.1.41 **"Morguard Lands"** means a portion of the lands legally described as Plan 9724372, Lot 1, Block 9E to be acquired by the City pursuant to the Morguard Agreement at the west boundary of the Arena Lands;
- 1.1.42 **"Municipal Easements"** means in relation to any lands, any rights, restrictions, covenants, easements, rights of way or other agreements

which the Municipality may require in connection with any subdivision, development permit, building permit or other development approval;

- 1.1.43 **"Municipality"** means the City of Edmonton acting in its capacity as the authority which approves and regulates subdivision, servicing and development;
- 1.1.44 **"Net Revenues"** means all revenues (including, without limitation, rents, license fees or other payments) arising from any parcel of land, less any direct costs incurred in generating those revenues, including payments made on account of municipal property taxes. Unless otherwise specifically provided, no deemed or imputed taxes will be included in any calculation of Net Revenues ;
- 1.1.45 **"Nominee"** means a nominee designated by the Owner to take title to any parcel of land described herein, which is an Affiliate or permitted assignee of the Owner, including, without limitation, 102, which is an Affiliate of the Owner;
- 1.1.46 **"North Bridge Lands"** means the northerly portion of the Bridge Lands, which has been created by the registration of the Bridge Lands-Subdivision Plan, and is legally described as Plan 1321953, Block 2, Lot 1;
- 1.1.47 **"North Bridge Lands Purchase Price"** means the purchase price for the North Bridge Lands being the sum of 16(1) (inclusive of the sum of 16(1) , being the Subdivision Costs applicable to the North Bridge Lands);
- 1.1.48 **"Option Terms"** means the terms applicable to each of the options to purchase granted in Articles 8 and 9 and to the Put Option granted in Article 9, which are described in Schedule "B";
- 1.1.49 **"Owner"** means Katz Group Properties Inc., a corporation established under the laws of Alberta, and includes its Nominees;
- 1.1.50 **"Owner Land Costs"** means those fees, deposits, payments and other costs or expenses made by or on behalf of the Owner pursuant to the WAM Purchase Agreement and the Bridge Purchase Agreement prior to the City's assumption of the WAM Purchase Agreement and Bridge Purchase Agreement, plus the Owner's legal and rezoning costs, which are all detailed in Schedule "G-1" to this Agreement;
- 1.1.51 **"Permitted Encumbrances"** means in respect of any parcel of land, those specific encumbrances, liens and interests described in Schedule "C" and in respect of all parcels of land:
- 1.1.51.1 any easements, rights of way, restrictive covenants, servitudes or other similar rights in land including, without limiting the generality of the foregoing, any Municipal Easements or rights



of way for sewers, drains, gas and water mains, electric items, power, telephone or cable television conduits, poles, wires and cables which are required pursuant to the subdivisions of the WAM Lands and Bridge Lands and approved by the City and the Owner during the subdivision process;

- 1.1.51.2 the reservations, limitations, provisos and conditions in any original grants from the crown of any of the lands or interests therein and statutory exceptions to title under section 61 of the Land Titles Act (Alberta);
- 1.1.51.3 in respect of any purchase, and as to that purchaser, such encumbrances, liens, instruments and charges as may have been made or caused to be made by that purchaser in respect of its purchase of those lands;
- 1.1.51.4 any Required Easements;
- 1.1.52 **"Plaza"** means the plaza which may be constructed on a portion of the Bridge Lands, as contemplated by section 5.5;
- 1.1.53 **"Plaza Agreement"** means an agreement respecting the Plaza contemplated by section 5.5;
- 1.1.54 **"Proportionate Share"** when used in relation to any cost or allocation among various parcels of land means the proportion, expressed as a percentage, that the area of the relevant parcel bears to the total area of the affected parcels of land;
- 1.1.55 **"Purchase Price"** means, unless otherwise specified herein, the purchase price applicable to any parcel of land, established in accordance with this Agreement, exclusive of Sales Taxes;
- 1.1.56 **"Put Option"** means the option described in section 9.1.2 hereof;
- 1.1.57 **"Required Easements"** means, in relation to any lands, any rights, restrictions, covenants or easements required to be granted by neighboring land owners as a condition of subdivision or development approval or relating to the structural support of, servicing of, or public or emergency access to or from those lands and the use and maintenance of such areas including such easements or encroachment agreements from or on any of the parcels of land described herein, as may be required on finalization of the locations of the Arena, the Arena Facilities, the Corridor, the LRT Link, the Plaza, the Landing, the Landing Parcel, or the Wintergarden but does not include any Municipal Easements;
- 1.1.58 **"Retail Area"** means the segregated retail space located in the Landing which comprises approximately 13,000 square feet, more or less;

1.1.59 **"Road Lands"** means those lands legally described as:

Plan 9623481

All that portion of road right of way which lies north of 104 Avenue on said plan EXCEPTING THEREOUT ALL MINES AND MINERALS

- and -

Plan 9724372

Block 9E

All that portion of Walkway within limits of said Block 9E

EXCEPTING THEREOUT ALL MINES AND MINERALS

And which are shown on the attached Schedule "D";

1.1.60 **"Sales Taxes"** means sales tax, social service tax, value added tax, goods and services tax or any other similar tax, charge, duty or rate imposed by any government or authority, Irrespective of whether the same is created or modified after the Closing Date;

1.1.61 **"South Bridge Lands"** means the portion of the Bridge Lands, created by registration of the Bridge Lands Subdivision Plan and legally described as:

Plan 1321953

Block 2

Lot 2

Area: 0.743 Hectares (1.84 acres) More or Less

and

All Mines and Minerals within, upon or under Plan B1, Block 2, Lots 185 to 187 Inclusive and Lot 202

Excepting thereout all mines and minerals

1.1.62 **"South Bridge Lands Initial Payment"** means the sum of \$5,000,000 payable on the South Bridge Lands Possession Date by the Owner or its Nominee to the City and to be applied to the South Bridge Lands Purchase Price;

1.1.63 **"South Bridge Lands Possession Date"** means the 10<sup>th</sup> Working Day following the date this Agreement is executed and delivered and released from escrow;

1.1.64 **"South Bridge Lands Purchase Price"** means the sum of ~~16(1)~~ being the purchase price for the South Bridge Lands (inclusive of the sum of ~~16(1)~~ , being the Subdivision Costs applicable to the South Bridge Lands) to be satisfied by payment of the South Bridge Lands Initial Payment and the payment of the Deferred Balance, as more particularly described in the Agreement for Sale;

1.1.65 **"Subdivision Application"** means the consolidation and subdivision application to be submitted by the City with the approval of the Owner to consolidate and then subdivide the WAM Lands and the City Lands into Block I/J, Block K, the Arena Lands, the 102 Street Roadway, and the LRT Link.

1.1.66 **"Subdivision Costs"** means all application fees, endorsement fees, plan of survey costs that are associated with a subdivision (but only to the extent such costs are approved by the Owner in the subdivision process);

1.1.67 **"Subdivision Plans"** means:

1.1.67.1 the WAM Lands Subdivision Plan; and

1.1.67.2 the Bridge Lands Subdivision Plan;

1.1.68 **"Termination Date"** means the date a Termination Event occurs;

1.1.69 **"Termination Event"** means the termination of the Master Agreement, in accordance with section 27.3(a) or 27.4(a) thereof;

1.1.70 **"Termination Option"** means the option to purchase the WAM Lands described in section 9.1.1 hereof;

1.1.71 **"Terms and Conditions"** means the terms and conditions of sale set forth in the attached Schedule "E".

1.1.72 **"WAM Lands"** means those lands legally described as:

Plan 9724372  
Block 9E  
Lot 2  
EXCEPTING THEREOUT ALL MINES AND MINERALS

and

Plan 8622223  
RAILWAY RIGHT OF WAY  
CONTAINING 2.14 HECTARES MORE OR LESS  
EXCEPTING THEREOUT:            HECTARES            (ACRES) MORE OR LESS  
A) Plan 9623481 – ROAD            0.278            0.69  
EXCEPTING THEREOUT ALL MINES AND MINERALS

1.1.73 **"WAM Lands Purchase Price"** means the purchase price payable by the Owner to the City for the WAM Lands, in the event the Termination Option is exercised, calculated in accordance with Schedule "G";

1.1.74 **"WAM Lands Subdivision Costs"** means the Subdivision Costs relating to the WAM Lands;

- 1.1.75 **"WAM Lands Subdivision Date"** means the date the WAM Lands Subdivision Plan is registered at the Land Titles Office;
- 1.1.76 **"WAM Lands Subdivision Plan"** means the final plan of subdivision that upon registration at the Land Titles Office shall create the titles to, inter alia, the Arena Lands, the LRT Link, Block I/J, and Block K. For certainty, the term WAM Lands Subdivision Plan does not include any consolidations or preliminary subdivision applications or other subdivision plans which may be registered prior to the registration of the final plan of subdivision which creates the titles to, inter alia, the Arena Lands, the LRT Link, Block I/J, and Block K;
- 1.1.77 **"WAM Purchase Agreement"** means the Agreement in writing dated April 22, 2009 and made between Katz Group Properties Inc. as purchaser and the WAM Vendor wherein the Owner agreed to purchase the WAM Lands from the WAM Vendor, which Purchase Agreement has been assigned to the City and pursuant to which the City became the Owner of the WAM Lands;
- 1.1.78 **"WAM Vendor"** means WAM First Street LP, by its general partner, WAM First Street GP Ltd.;
- 1.1.79 **"Wintergarden"** means the public enclosed bridge structure to be constructed and to be owned by the City spanning 104 Avenue and connecting the Arena at the main concourse level to the north and to the North Bridge Lands to the south, including the Landing and including the stairs, escalators and elevators located therein;
- 1.1.80 **"Wintergarden Agreement"** means the Wintergarden Agreement contemplated in section 5.6 respecting the Wintergarden, to be executed concurrently herewith;
- 1.1.81 **"Wintergarden Retail Agreement"** means an agreement(s) respecting the Retail Area, as contemplated in section 5.6, the key terms of which are set out in the attached Schedule "I";
- 1.1.82 **"Working Days"** means days other than Saturdays, Sundays and statutory holidays in the Province of Alberta;
- 1.2 In this Agreement, any reference to "Lands" or "lands" shall mean and include the land and any and all improvements, appurtenances and permanent fixtures located thereon;

1.3 The Schedules to this Agreement (which shall form part of this Agreement) are:

Schedule "A" – Sketch with approximate areas of Arena Lands, Community Rink, Plaza, Wintergarden, Landing Parcel, Corridor, Wintergarden Retail Area, Block I/J, Block K, and 102 Street Roadway

Schedule "B" – Option Terms

Schedule "C" – Permitted Encumbrances

Schedule "D" – Road Lands

Schedule "E" – Terms and Conditions

Schedule "F" – Owner Land Costs

Schedule "G" – Purchase Price Calculations

Schedule "H" – The Plaza Principles

Schedule "I" – Wintergarden Retail Agreement Terms

1.4 This Amended and Restated Land Inventory Agreement amends and restates the Original Agreement as of the Effective Date and the Original Agreement is entirely superseded and replaced by this Amended and Restated Land Inventory Agreement as of the Effective Date.

**2. PURCHASE AND SALE OF ROAD LANDS**

2.1 The City and the Owner acknowledge that the rezoning of the WAM Lands pursuant to Bylaw # 15490 took effect upon the City's transfer to the Owner of all of its interest in the Road Lands. Accordingly, the City has sold and transferred and the Owner has purchased the Road Lands pursuant to the Terms and Conditions and subject only to the Permitted Encumbrances. The Closing Date for the transfer of the Road Lands to the Owner was November 30, 2011. The Owner immediately transferred the Road Lands back to the City pursuant to the Terms and Conditions and subject only to the Permitted Encumbrances. Each of the City and the Owner has paid to the other valuable consideration in the sum of ~~16(1)~~ (~~16(1)~~ per square foot) as consideration for the Road Lands and there were no adjustments.

**3. PURCHASE OF WAM LANDS AND BRIDGE LANDS BY CITY**

3.1 The City and the Owner acknowledge that the Owner was entitled to purchase the WAM Lands from the WAM Vendor pursuant to the WAM Purchase Agreement and the Bridge Lands from the Bridge Vendor pursuant to the Bridge Purchase Agreement. The Owner has transferred its interest in the WAM Lands and the Bridge Lands to the City and the City has assumed all the obligations of the Owner by assignment and assumption of the obligations of the Owner under the WAM Purchase Agreement and the Bridge Purchase Agreement, respectively, both effective as of the date of the Assignment Agreement made between the parties dated October 28, 2011 (other than the rights under the undertakings described in section 8.07 of the WAM Purchase Agreement which were retained by the Owner).

**4. PURCHASE OF MORGUARD LANDS BY CITY**

4.1 The City will be negotiating an agreement to acquire the Morguard Lands from Morguard NAR (Alberta) Holdings Limited for a purchase price of ~~16(1)~~ payable

by the City and otherwise on terms and conditions agreed to by the City pursuant to the Morguard Agreement.

## **5. PURCHASE AND REVENUE FOR BRIDGE LANDS**

### **5.1 Payment of North Bridge Purchase Price**

The parties acknowledge that the Owner has paid the North Bridge Lands Purchase Price, including the Bridge Lands Subdivision Costs attributable to the North Bridge Lands and the North Bridge Lands have been transferred to 102 at the direction of the Owner.

### **5.2 Sale and Transfer of South Bridge Lands**

The City shall sell the South Bridge Lands to 102 and 102 shall purchase the South Bridge Lands from the City pursuant to and on the terms and conditions contained in the Agreement for Sale which shall be executed and delivered concurrently with the execution and delivery of this Agreement.

### **5.3 Adoption by the Nominees**

To the extent the Owner stipulates a Nominee to acquire any interest in a parcel of land pursuant to this agreement, the Owner will cause such Nominee to execute and deliver to the City, an adoption agreement adopting and assuming the obligations of the Owner herein in respect of the lands to be acquired by it and containing the agreement of the Nominee that payment or performance of any obligation of the City pursuant to this Agreement will be fully satisfied by payment or performance in favor of the Owner or the Nominee. 102 will execute an adoption agreement in the form agreed between the parties in respect of the North Bridge Lands and the South Bridge Lands concurrently with the execution of this Agreement.

### **5.4 Bridge Revenues**

All Net Revenues applicable to the Bridge Lands will continue to be collected by the City and shall be payable by the City to the Owner, as described in the Original Agreement, until the South Bridge Lands Possession Date. The City acknowledges it has entered into a lease with Imperial Parking Corporation on the Bridge Lands which is terminable on 30 days' notice (which lease has been approved by the Owner and in respect of which any amendments or terminations thereof are subject to the prior written consent of the Owner and the City both as to form and substance). Pursuant to the terms and conditions of the Agreement for Sale, the City will assign and transfer that lease to 102 as of the South Bridge Lands Possession Date. Subject only to the provisions of the Agreement for Sale, any Net Revenues arising under the lease and any other revenues accruing from the Bridge Lands will be paid to or to the order of the Owner within 15 days of receipt of same by the City.

### **5.5 Plaza Agreement**

The City and the Owner intend that, in the event the Commercial Development on the

North Bridge Lands or the South Bridge Lands proceeds and the Owner wishes to construct a Plaza area on some or all of those lands which is to be made available as a public space, the City and the Owner will execute a Plaza Agreement in a form to be agreed between the parties, based upon the principles described in Schedule "H" together with any Required Easements in connection with the Plaza.

#### 5.6 Wintergarden Agreement and Wintergarden Retail Agreement

The City and the Owner agree that as part of the Arena project the Wintergarden is to be constructed with ownership of the Wintergarden to be retained by the City. The City and EAC shall execute the Wintergarden Agreement concurrently herewith. The City and EAC will also execute a Wintergarden Retail Agreement relating to the Retail Area in a form acceptable to the parties, acting reasonably, reflecting the key terms set forth in Schedule "I" attached. The Owner agrees that the value of the retail space will be determined pursuant to section 6.3 of the Master Agreement. Accordingly, upon completion of construction of the Wintergarden and concurrent with the transfer to the City of the Landing Parcel, the City, Owner and 102 agree that 102 shall be entitled to reserve all rights to the Retail Area. These rights will constitute an interest in land and will include any Required Easements to ensure support to and access and egress to and from the Retail Area. The parties will act reasonably and promptly in determining the form of the Wintergarden Retail Agreement by a date which is 60 days prior to the date the Wintergarden is projected to be substantially complete and ready for use. If the parties fail to reach an agreement on the form of the Wintergarden Retail Agreement, the matter or matters in dispute will be resolved in accordance with the Dispute Resolution Process. The date the Wintergarden is projected to be substantially complete will be conclusively determined by the project architect responsible for the construction of the Wintergarden. The parties agree to promptly execute and deliver the Wintergarden Retail Agreement and all the Required Easements and consents as may be mutually agreed to or as may be required under the Dispute Resolution Process.

#### 5.7 Landing Parcel

Provided construction of the Wintergarden proceeds, the Owner, 102 and the City will cooperate to effect a subdivision of the North Bridge Lands to create the Landing Parcel. The City will pay all Subdivision Costs for the Landing Parcel. Upon completion of such subdivision, 102 will, in consideration of the sum of \$1.00: a) convey title to the Landing Parcel to the City (subject only to the reservation of rights to 102 in respect of the Retail Area and any Required Easements to ensure adequate support to and access and egress to the Wintergarden Retail Area described in section 5.6 hereof); and b) grant any necessary encroachment for the Wintergarden to encroach into the airspace above the North Bridge Lands, which encroachment agreement will constitute a Required Easement under this Agreement. The Owner will have the right, at its cost, to create a parking area underneath the Landing Parcel, and the City and the Owner will sign and deliver all Required Easements in that regard which Required Easements will confirm that any liability to the City arising from the construction or existence of the parking area beneath the Landing Parcel will be the responsibility of 102. The City will cooperate with the creation of a separate parcel (by condominium or strata title) for the parking area beneath the Landing Parcel if requested by 102, and will sign and deliver all

necessary consents and subdivision documents as may be required in that regard. Any increased construction or maintenance costs in connection with the Wintergarden which arise as a result of the existence of or construction of the parking area beneath the Landing Parcel will be borne by 102. 102 will also grant a working easement to the City over the North Bridge Lands permitting access to the City, its agents and contractors as required for the construction of the Wintergarden in a location and of a size reasonably required by the City for the purpose of construction of the Wintergarden. The City will, as consideration for this working easement, pay to 102 an amount equal to any loss in parking revenue as a result of the working easement, payable monthly in arrears on the last day of each month or portion thereof during the term of the working easement. In the event there is a loss of parking revenue due to 102's own construction occurring on the North Bridge Lands, then the City will pay only the sum of \$1 to 102 for the working easement.

#### 5.8 Pedestrian Easement

102 shall grant the City a pedestrian access easement to allow pedestrian access to and from the Landing and the Landing Parcel in a location to be established by the Owner which shall be sufficient to accommodate pedestrian access to and egress from the Landing and the Landing Parcel to and from 103 Street. This pedestrian access easement shall be in a form and content satisfactory to the parties acting reasonably. If the parties cannot agree to the form and content by the date the Wintergarden is substantially complete then the form and content of the pedestrian access easement shall be conclusively determined through the Dispute Resolution Process.

#### 5.9 Arena Facilities

The parties acknowledge that the precise locations of the Arena Facilities are still uncertain, but the parties are aware that the Arena Facilities will be required as an integral part of the Arena Project. Accordingly, the Arena Facilities will be located on:

- 5.9.1 a separate strata title or titles; or
- 5.9.2 a separate conventional title; or
- 5.9.3 the Arena Lands.

In all events, the title to the Arena Facilities will be retained by the City and will be leased to EAC as part of the Arena premises and the Subdivision Costs in connection with the creation of title to the Arena Facilities will be borne by the City.

#### 5.10 Dispute Resolution

The City (in its capacity as an owner and vendor of land, and not acting in its capacity as a Municipality) and the Owner will act reasonably and promptly in finalizing the boundaries of the Arena Facilities, the terms of all Required Easements, the subdivision plans applicable to the Arena Facilities and all agreements required in connection with the Arena Facilities, and will make all such amendments to the lease of the Arena and Arena Lands as may be required. If the parties do not execute any and all such



agreements within 60 days of the registration of the WAM Lands Subdivision Plan, the matter in dispute will be resolved in accordance with the Dispute Resolution Process and the parties agree to promptly execute and deliver all the Required Easements and consents or agreements as may be required in the forms determined by such Dispute Resolution Process.

## 6. GATEWAY LEASE

6.1 The City and the Owner acknowledge that Gateway leases a certain portion of the WAM Lands pursuant to the Gateway Lease and that the Gateway Lease contains a right of termination of the Gateway Lease by the Owner. The parties acknowledge that portions of the WAM Lands subject to the Gateway Lease may be required in connection with the construction of the Arena. The parties shall, subject always to the terms of the Gateway Lease and acting reasonably, jointly determine when, or if, the notice of termination contemplated by Schedule "F" of the Gateway lease is to be served on Gateway. After the notice of termination has been served on Gateway up to the date of termination of the Gateway Lease the City and the Owner shall, subject always to the terms of the Gateway Lease, jointly determine if they wish to negotiate with Gateway the execution by Gateway of any amendments to the existing Gateway Lease or any new lease with Gateway affecting the Arena Lands. In the event the termination fee of ~~16(1)~~ (or such lesser amount as may be paid or payable pursuant to the Gateway Lease) (herein called the "Termination Fee") is paid or payable by the City pursuant to a termination notice consented to by the Owner, then the Termination Fee shall be added to the purchase price payable to the City for Block I/J. If the Owner acquires Block I/J, possession will be subject to the Gateway Lease.

6.2 Notwithstanding section 6.1, the City will serve the notice of termination contemplated in Schedule "F" of the Gateway Lease if directed in writing by the Owner to do so, subject to the following:

6.2.1 the WAM Lands Subdivision Plan has first been registered; and

6.2.2 the Owner has provided written notice to the City in accordance with this Agreement to exercise the Block I/J Option contained in section 8.1;

If the Block I/J Option is exercised pursuant to this section then the Closing Date for the completion of the purchase of Block I/J shall be 2 years thereafter, to coincide with termination of the Gateway Lease and the ~~16(1)~~ Termination Fee (if paid or payable by the City) shall be payable by the Owner to the City on the Closing Date.

6.3 The parties will cooperate and act reasonably in respect of all matters relating to dealing with Gateway in respect of the Gateway Lease, including, without limitation, any required relocation of parking in order to facilitate the commencement of construction of the Arena. The foregoing does not in any way constitute an obligation or agreement of the Owner to provide or bear costs associated with relocation of parking.

## **7. SUBDIVISION MATTERS**

- 7.1 The City shall consult with the Owner as to the proposed Subdivision Application and once approved by both the City and the Owner, the City shall submit the Subdivision Application to the Municipality which application will request that any and all reserve requirements be deferred to the Arena Lands.
- 7.2 All Subdivision Costs associated with the Subdivision Application shall be initially borne by the City. The Subdivision Costs in connection with the Bridge Lands Subdivision Plan have been included in the North Bridge Lands Purchase Price and the South Bridge Lands Purchase Price. Unless otherwise specified, subsequent subdivision application(s) and registration costs applicable to the Bridge Lands will be borne by the party seeking the further subdivision. The Subdivision Costs for the WAM Lands Subdivision Plan shall be included in the purchase price for the applicable parcels as contemplated in Schedule "G".
- 7.3 The City shall, in its capacity as an owner of land and not in its capacity as the Municipality, act reasonably and in good faith to obtain subdivision approval to the WAM Lands Subdivision Plan, fulfill the conditions of subdivision and obtain final subdivision endorsement and registration of the WAM Lands Subdivision Plan prior to June 30, 2014 or such later date as the parties may agree. The City shall keep the Owner fully apprised of the status of the Subdivision Application at all times and provide the Owner with all such documents and correspondence relating to the Subdivision Application as the Owner may reasonably request, from time to time, together with a copy of the proposed WAM Lands Subdivision Plan. The City shall obtain the written approval of the Owner, acting reasonably, to the proposed WAM Lands Subdivision Application and WAM Lands Subdivision Plan prior to submitting for subdivision approval and for final subdivision endorsement and registration. The Owner shall have the right to withhold its consent to the ultimate registration of the WAM Lands Subdivision Plan if such plan requires dedication of lands for reserves or cash payments in lieu thereof or immediate or accelerated payment by the Owner of the deferred reserve which arose from the Bridge Lands Subdivision Plan.
- 7.4 The parties acknowledge that the size and location of all the areas of land are approximate and the parties agree to act reasonably and in good faith in approving the final areas and outline of all such lands. Upon approval of the WAM Lands Subdivision Plan by both parties acting reasonably and promptly, the City shall promptly proceed to apply for subdivision approval and registration of the approved WAM Lands Subdivision Plan. Upon registration of same, the City shall promptly deliver copies of the titles created upon the registration of the WAM Lands Subdivision Plan to the Owner.
- 7.5 102 Street Roadway  
The City agrees to construct the 102 Street Roadway as a public roadway concurrent with the construction of the Arena. The costs of constructing the 102 Street Roadway, which costs shall include the market value of the land on which the 102 Street Roadway is constructed (the "102 Street Costs") will initially be borne by the City. The City shall, in the City's sole and unfettered discretion, either:

7.5.1 initiate a local improvement to cover the 102 Street Costs and the parties acknowledge that this local improvement solely benefits Block I/J. Notwithstanding when the Owner exercises the Block I/J Option, the Owner agrees that if the Owner exercises the Block I/J Option, it shall be responsible for the entire amount of the local improvement levy and shall reimburse the City for any portion of the local improvement levy paid by the City; or

7.5.2 add the 102 Street Costs to the Block I/J Purchase Price.

The City shall keep the Owner informed as to which alternative it is electing and as to the amount of the 102 Street Costs.

## **8. OPTIONS TO PURCHASE**

### **8.1 Block I/J Option to Purchase**

The City hereby grants to the Owner the option to purchase Block I/J on the Option Terms. The purchase price shall be the Block I/J Purchase Price, calculated in accordance with Schedule "G". The Block I/J Option may be exercised by the Owner at any time commencing on the date hereof and ending at 5:00 pm on the fifth anniversary of the WAM Lands Subdivision Date, but the completion of the purchase and sale created by the exercise of the option is subject to the WAM Lands Subdivision Plan being registered at the Land Titles Office to create Block I/J by June 30, 2014, or such later date as the parties may agree (which is a true condition precedent which may not be waived by either party). In the event the condition precedent described in this section is not satisfied by the date described herein (or as extended by an agreement between the parties), the agreement created by the exercise of the Block I/J Option for the purchase and sale of Block I/J will terminate.

### **8.2 Block K Option to Purchase**

The City hereby grants to the Owner an option to purchase Block K, on the Option Terms. The purchase price shall be the Block K Purchase Price, set forth in Schedule "G". The Block K Option may be exercised by the Owner at any time commencing on the date hereof and ending at 5:00 pm on the fifth anniversary of the WAM Lands Subdivision Date, but the completion of the purchase and sale created by the exercise of the option is subject to the WAM Lands Subdivision Plan being registered at the Land Titles Office to create Block K by June 30, 2014 or such later date as the parties may agree (which is a true condition precedent which may not be waived by either party). In the event the condition precedent described in this section is not satisfied by the date described herein (or as extended by an agreement between the parties), the agreement created by the exercise of the Block K Option for the purchase and sale of Block K will terminate. If the Block K Option is exercised prior to the completion of the construction of the Arena, the Owner shall, in consideration of the sum of \$1.00, grant to the City a working easement over Block K, in a form and content satisfactory to the parties, acting reasonably, and in a manner that will not interfere with the Owner's Commercial Development on Block K.

## 9. OPTIONS AFTER TERMINATION DATE

9.1 The City grants the Owner the following options, exercisable by notice in writing from the Owner to the City at any time commencing on the Termination Date and continuing for a period of 60 days thereafter (the "Termination Options Term"):

9.1.1 to purchase from the City, all of the WAM Lands for the WAM Lands Purchase Price on the Option Terms (the "Termination Option"); or

9.1.2 to require the City to repurchase the Bridge Lands from 102 for the City Purchase Price on the Option Terms (the "Put Option").

The Owner shall be entitled to exercise either the Termination Option or the Put Option during the Termination Options Term, but not both. The Put Option and the Termination Option expires and may not be exercised by the Owner at any time following the expiry of the Termination Options Term or the registration of the WAM Lands Subdivision Plan. If the Put Option is exercised, the Owner must restore the Bridge Lands to the condition they were in at the time the title thereto was transferred to the Owner or 102, as the case may be, provided that the Owner shall not be required to effect any restoration in respect of any improvements made by the City.

9.2 If the Termination Option is exercised by the Owner within the Termination Options Term then:

9.2.1 the Owner shall pay the Deferred Balance and shall purchase the WAM Lands from the City for the WAM Lands Purchase Price in accordance with the Terms and Conditions and subject to the Permitted Encumbrances;

9.2.2 the Closing Date shall be the sixtieth day following the exercise of the Termination Option or if same is not a Working Day, on the next following Working Day;

9.2.3 upon payment to the City of the WAM Lands Purchase Price and the Deferred Balance, the completion of the conveyance of the WAM Lands and the South Bridge Lands to the Owner as required herein and discharge of any caveat registered in respect of the Agreement for Sale on the South Bridge Lands, all further rights and obligations of the City and the Owner pursuant to this Agreement shall be at an end, and the parties shall have no further obligations or liabilities to the other pursuant to this Agreement (other than those arising from the Option Terms).

9.3 If the Put Option is exercised by the Owner within the Termination Options Term, then:

9.3.1 the City shall purchase the Bridge Lands from 102 for the City Purchase Price in accordance with the Terms and Conditions, and subject to the Permitted Encumbrances;

9.3.2 the Closing Date shall be the sixtieth day following the exercise of the Put Option or if same is not a Working Day, on the next following Working Day.

9.3.3 upon completion of the transfer of the Bridge Lands to the City, payment of the City Purchase Price to 102 as required herein and discharge of any caveat registered in respect of the Agreement for Sale on the South Bridge Lands, all further rights and obligations of the City and the Owner pursuant to this Agreement shall be at an end, and the parties shall have no further obligations or liabilities to the other pursuant to this Agreement (other than those arising from the Option Terms).

9.4 If, following the Termination Date, the Owner does not exercise the Termination Option or the Put Option, within the Termination Options Term, then the Deferred Balance with any accrued and unpaid interest and any other amounts due under the Agreement for Sale will be immediately due and payable to the City as described in the Agreement for Sale. In that event, the Owner shall pay an amount equal to the value of the Deferred Reserve Caveat registered as #132 116 373 (the "DRC"), being \$~~16(1)~~ (the DRC Value) to the City on the earliest of:

- 9.4.1 5 years following the date of the Agreement for Sale; or
- 9.4.2 the Closing Date of the sale of either of the North Bridge Lands or the South Bridge Lands (other than to EAD Holdings (SB) Ltd.); or
- 9.4.3 the date upon which a building permit or a development permit for foundations and footings is issued for either the North Bridge Lands or the South Bridge Lands (other than any permits issued in respect of the Wintergarden).

102 will grant a charge (the "Encumbrance") on its entire interest in the North Bridge Lands and the South Bridge Lands as security for the obligation to pay the DRC Value. The Encumbrance shall be registered subject only to the Permitted Encumbrances and, in the case of the North Bridge Lands, shall also be registered subject to the existing encumbrances respecting 102's financing on the North Bridge Lands or any substitutions or replacements thereof. Upon payment of the Deferred Balance, and execution, delivery and registration of the Encumbrance as herein contemplated, all further rights and obligations of the City and the Owner pursuant to this Agreement shall be at an end and the parties shall have no further obligations or liabilities to the other pursuant to this Agreement (other than those arising from the Option Terms). The City shall immediately deliver a registerable discharge of the Encumbrance to the Owner if the GMP (as defined in the Master Agreement) does not cause the Arena/Wintergarden Budget to be exceeded and does not cause the individual maximum Project Costs for the Community Rink, Corridor and LRT Link to be exceeded (all as contemplated by section 27.3(a) of the Master Agreement.)

## **10. RIGHT OF FIRST OFFERS**

10.1 Upon the expiry or early termination of the term of the Block Options, the City hereby grants the Owner a right of first offer for each of Block I/J and Block K (each a "Parcel") in accordance with the provisions of section 10.2. The term for each right of first offer granted hereunder shall be 5 years from the expiry or earlier termination date of the relevant Block Option.

- 10.2 If the City decides in its sole and unfettered discretion, to sell any Parcel during the term of the subject right of first offer, the City shall first make a written offer to sell the Parcel to the Owner, which offer shall specify that the offer is made pursuant to this section 10.2, set out and describe the price (the "Offer Price") and the other terms and conditions for and on which the City is willing to sell the Parcel to the Owner (the "Offer"). The Offer shall be open for acceptance for 60 days (the "Acceptance Period") after receipt of the Offer by the Owner in accordance with the notice provisions of this Agreement, and shall be exercised by the Owner delivering notice in writing thereof (the "Exercise Notice") to the City during the Acceptance Period and specifying in the Exercise Notice that the Owner wishes to purchase the Parcel.
- 10.3 During the Acceptance Period the parties will negotiate in good faith to establish a mutually agreeable price and terms for the Parcel, but if at the end of the Acceptance Period the City and the Owner have not reached an agreement on any amendments to the Offer or the Owner has not provided the Exercise Notice to the City, then the City may sell the Parcel to any one at a price and on terms acceptable to it in its sole and unfettered discretion.

#### **11. CAVEATS**

- 11.1 The Owner shall be entitled to register caveats on title to the affected lands in respect of its interests pursuant to sections 5.2, 8.1, 8.2, and 9.1 hereof. The Owner shall promptly discharge any caveat in respect of which the interest has expired, been extinguished or terminated in accordance with the terms hereof.

#### **12. CITY OBLIGATIONS**

- 12.1 The City acknowledges and agrees that the options to purchase referred to in Article 8 and 9 and the Put Option referred to in Article 9 and the rights of first offer referred to in Article 10 are significant and valuable to the Owner and the Owner shall pay separate consideration in the sum of \$10.00 in respect of each option herein granted and in respect of each right of first offer herein granted, which sums were paid on October 31, 2011 (other than in respect of the Block Options and the Put Option, which will be paid on execution of this Agreement). The City agrees not to sell or otherwise dispose of or enter into any agreement to sell or dispose of all or any part of the South Bridge Lands or all or any part of the WAM Lands, the City Lands or the Morguard Lands, other than strictly in accordance with the terms of this Agreement. The parties further acknowledge that each and every parcel of the lands described herein are unique and a breach of the parties respective rights and obligations hereunder would not be compensable by damages. Each of the parties will be entitled to seek relief and enforcement of its rights hereunder by way of injunction, specific performance or other equitable remedies.

#### **13. NOTICES**

- 13.1 Notice in writing or other correspondence required or permitted to be given to either party pursuant to this Agreement shall be sufficiently given when transmitted by facsimile or electronic mail (addressed as if to be mailed in the manner hereafter

provided) and transmitted to the following facsimile number(s) or email, or when personally delivered or mailed by registered mail, postage prepaid, addressed:

to the Owner as follows:

Katz Group Properties Inc.  
1702 Bell Tower  
10104 – 103 Avenue  
Edmonton, AB T5J 0H8  
Attention: John D. Karvellas, Q.C.  
Facsimile: (780) 425-6160  
E-mail: jkarvellas@katzgroup.ca

to the City as follows:

The City of Edmonton  
20<sup>th</sup> Floor, Century Place  
9803 – 102A Avenue  
Edmonton, AB T5J 3A3  
Attention: Rick Daviss  
Facsimile: (780) 496-6557  
E-mail: Rick.Daviss@edmonton.ca

or to any other address as may be designated in writing by the Owner and the City. Notice given by registered mail, if posted in Alberta, shall conclusively be deemed to have been received on the 5<sup>th</sup> Working Day following the date on which such notice is mailed. In the event of a postal strike, notice may only be given by personal delivery or sent by fax or email. Notices given by facsimile or electronic mail shall be deemed delivered on the Working Day next following confirmation of sending.

#### **14. GOVERNING LAW**

- 14.1 This Agreement and the terms of any agreement of purchase and sale arising herefrom shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein.

#### **15. NO WAIVER**

- 15.1 The waiver of any covenant, condition or provision of this Agreement or any agreement of purchase and sale arising herefrom must be in writing. The failure of any party at any time to require strict performance by the other party of any covenant, condition or provision shall in no way affect such party's right thereafter to enforce such covenant, condition or provision, nor shall the waiver by any party of any breach of any covenant, condition or provision hereof be taken or held to be taken as a waiver of any future breach of any such covenant, condition or provision.

**16. CAPACITY OF CITY**

- 16.1 Notwithstanding any other provision contained in this Agreement, it is expressly understood and agreed between the City and the Owner that the City, in entering into this Agreement, is doing so in its capacity as an owner, vendor or purchaser of real property, as the case may be, and not in its capacity as a regulatory, statutory or approving body pursuant to any law of the Province of Alberta and nothing in this Agreement shall constitute the granting by the City of any approval or permit as may be required pursuant to the Municipal Government Act, R.S.A. 2000 Ch. M-26, and any amendments thereto, and any other legislation in force in the Province of Alberta. The City, as far as it has the legal capacity to do so in its capacity as a contracting party and as a land owner, shall be bound to comply with and carry out the terms and conditions stated in this Agreement, but nothing in this Agreement shall restrict or fetter the discretion of the City, its municipal council, its officers, servants or agents, in the full exercise of its powers and duties as a municipal government, as a municipal council, or as a regulatory, statutory or approving body. In addition, the Dispute Resolution Process contemplated herein shall not bind the Municipality in its capacity as regulatory, statutory and approving body nor shall it be utilized to determine the form of any Municipal Easements.

**17. FURTHER ASSURANCES**

- 17.1 Each of the parties hereto covenants and agrees with the other that each shall, from time to time and at all times hereafter, make, do, and execute or cause or procure to be made, done or executed such further acts, deeds and assurances, consents and approval as may be necessary for the more effectually carrying into effect the terms of this Agreement and any agreement of purchase and sale arising herefrom.

**18. NO MERGER**

- 18.1 It is expressly agreed to by the City and the Owner that the covenants and provisions herein contained and contained in each agreement arising from or contemplated hereby shall continue beyond the closing of the sale of a subject parcel of land and accordingly, they shall not merge with the registration at the Land Titles Office of any such parcel of land.

**19. SCHEDULES**

- 19.1 Any Schedule attached hereto shall form part of this Agreement. All definitions contained in this Agreement shall have the same meaning and application in the Schedules unless otherwise stated.

**20. SEVERABILITY**

- 20.1 Should any provision of this Agreement, including the Schedules hereto, be illegal or unenforceable for any reason whatsoever, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall remain in force and be binding as though such provision had not been included.



**21. TIME OF ESSENCE**

- 21.1 Time is of the essence in this Agreement and any agreement of purchase and sale contemplated herein and no extension or variation of this Agreement operates as a waiver of this provision.

**22. ENUREMENT/ASSIGNMENT**

- 22.1 This Agreement shall enure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement shall be assignable by the Owner to any corporation or entity affiliated with the Owner without the prior written consent of the City. This Agreement may not be otherwise assigned by either party without the prior written consent of the other party, which consent may be arbitrarily withheld.

**23. PARAMOUNTCY**

- 23.1 The City and the Owner acknowledge that the Master Agreement, and the Ancillary Agreements described therein and certain other additional agreements contemplated thereby (collectively, the "Other Agreements") have been or may be executed between the City and the Owner or its Affiliates. The City and the Owner acknowledge and agree that in the event of an express conflict between the terms and conditions of the Other Agreements and this Agreement that relate to matters relating to the acquisitions and dispositions of interests in land, the terms of this Agreement will prevail to the extent of any such inconsistency. In the event of an express conflict between the terms and conditions of any Corollary Agreements and this Agreement the terms of such Corollary Agreements will prevail to the extent of any such inconsistency. The Original Agreement is entirely superseded by this Agreement.

**24. SALES TAXES**

- 24.1 All amounts payable hereunder are exclusive of any applicable Sales Taxes.

**25. COSTS**

- 25.1 The Owner represents and warrants to the City that the Owner Land Costs comprise only those costs that the Owner or its affiliates considered were reasonable and that were directly incurred by the Owner or its affiliates, in the rezoning and acquisition of the WAM Land and Bridge Lands and preparation of the Original Agreement. The Owner shall permit the City to review the Owner's invoices and receipts and interest calculations in respect of such Costs but the Owner shall be entitled to redact such information as may be necessary to preserve the confidentiality thereof, and there shall be no further negotiation in respect of the credit or payment of same.
- 25.2 The City represents and warrants to the Owner that the City Legal Costs comprise only those costs that the City considered were reasonable and that were directly incurred by the City in the acquisition of the WAM Lands and Bridge Lands and preparation of the Original Agreement. The City shall provide to the Owner evidence, including, without limitation, a copy of the invoice, but the City shall be entitled to redact such information

as may be necessary to preserve the confidentiality thereof, and there shall be no further negotiation in respect of the credit or payment of same.

**IN WITNESS WHEREOF** the parties hereto have caused their corporate seals to be affixed by the hands of the proper officers authorized in that behalf, all to be effective as of the Effective Date.

**THE CITY OF EDMONTON**

Legally Reviewed and  
Approved as to Form:


  
\_\_\_\_\_  
Law Branch  
**CARL R.A. ARGO**  
Barrister & Solicitor

Per:

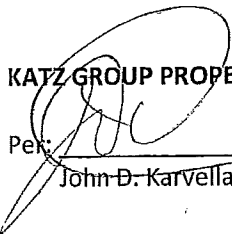
  
\_\_\_\_\_  
As represented by Simon  
Farbrother City Manager

Approved by City Council  
January 23, 2013, Item #6.2&  
October 14, 2011, Item #3.1

Approved as to Content:

  
\_\_\_\_\_

**KATZ GROUP PROPERTIES INC.**

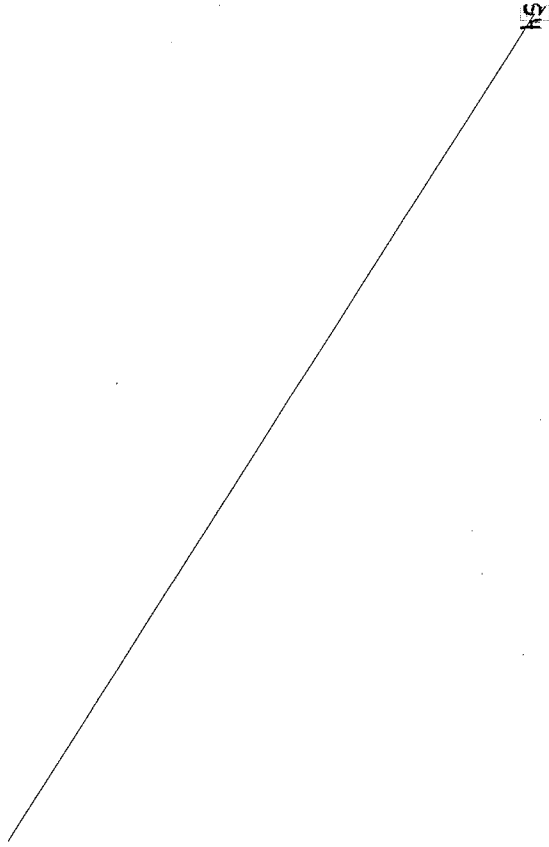
  
Per: \_\_\_\_\_  
John D. Karvellas, Director (Seal)

**SCHEDULE "A"**

**Sketches in Schedules A-1, A-2, A-3 and A-4 attached with approximate areas of Arena Lands, Community Rink, Plaza, Wintergarden, Landing Parcel, Corridor, Wintergarden Retail Area, Block I/J, Block K, 102 Street Roadway, Corridor, and LRT Link**

Schedule A-1

19



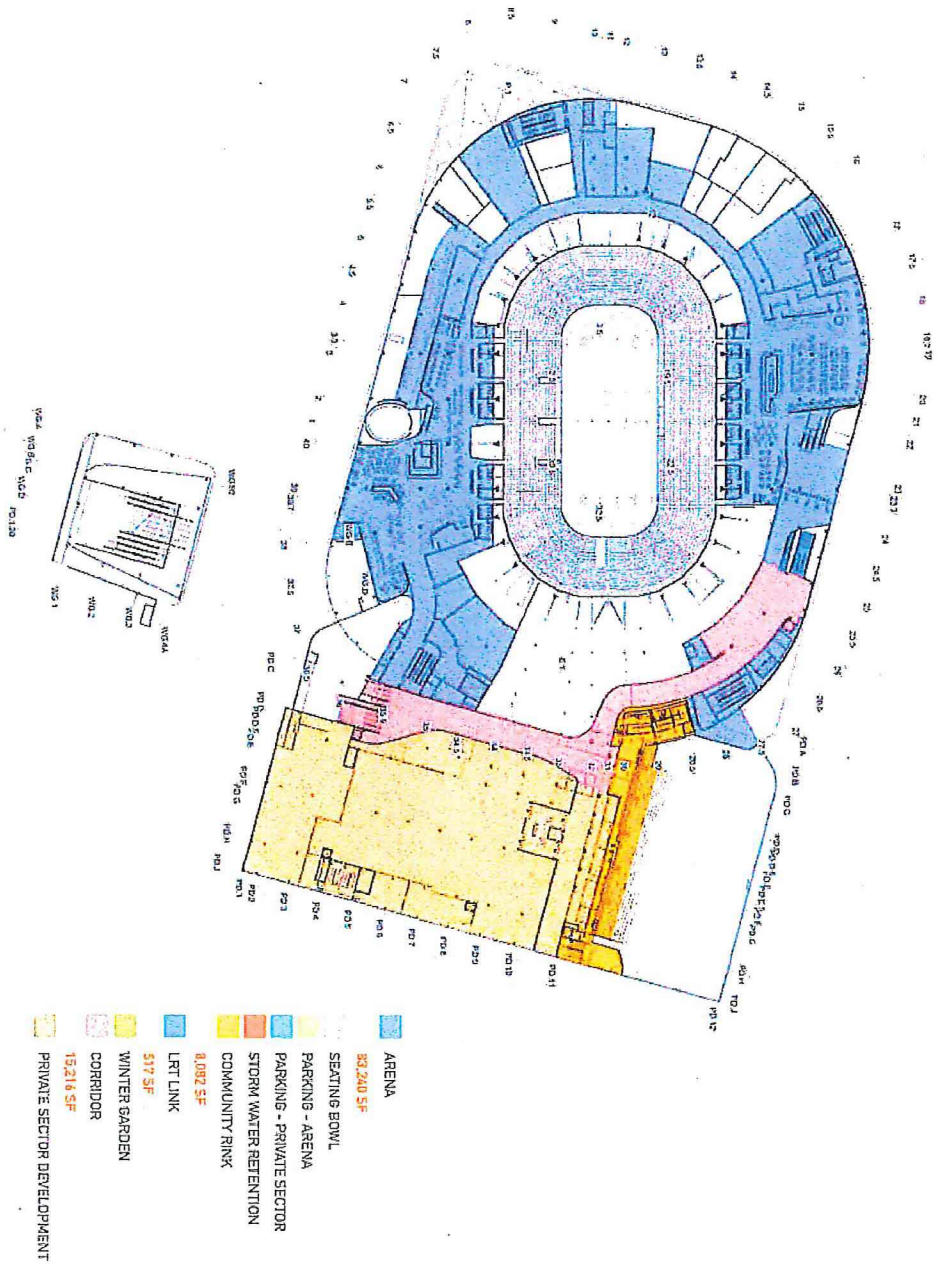


EDMONTON, ALBERTA

ARENA & RELATED FACILITIES PROJECT

8.23.2013

CLUB / MEZZANINE LEVEL



Schedule A-4

16



## **SCHEDULE "B"**

### **Option Terms**

1. All options (including the Put Option and Termination Option described in Article 9) are to be exercised by the party entitled to exercise an option providing written notice to the other in accordance with the notice provisions contained in the Agreement, prior to 5:00 p.m. on the day of expiration of the applicable Option term.
2. Unless otherwise agreed, the Closing Date will be 30 days from the date an option or put is exercised or if same is not a Working Day, on the next following Working Day.
3. A binding agreement of Purchase and Sale arising from the exercise of any option or put option will be constituted upon issuance of a notice in accordance with the terms hereof and such purchase and sale shall be concluded on the Terms and Conditions described in this Agreement.

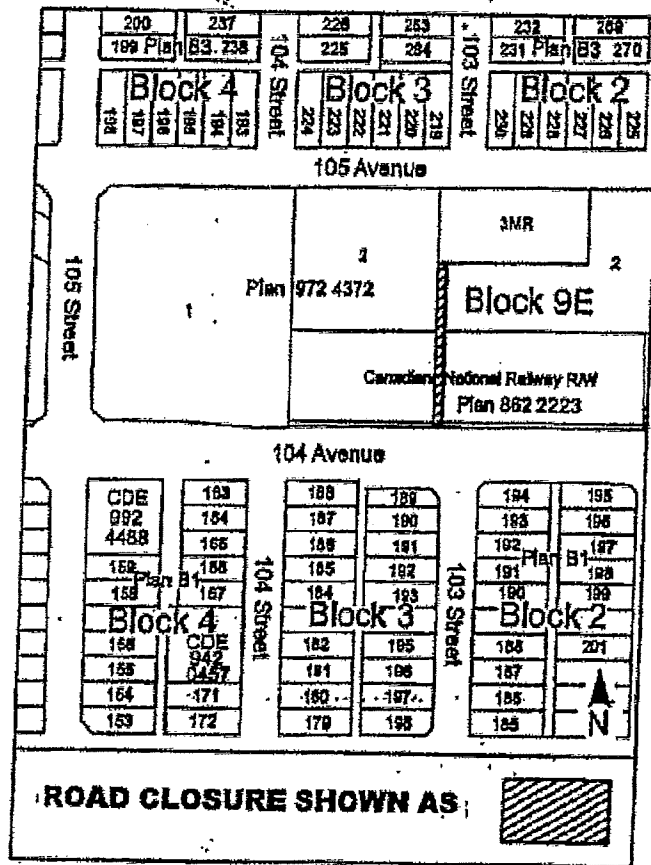


**SCHEDULE "C"**  
**Permitted Encumbrances**

<b>WAM Lands</b>	<p>With respect to Plan 9724372, Block 9E, Lot 2:          Utility Right of Way #942 124 052          Utility Right of Way #972 383 685          Caveat #972 383 687 re: Development Agreement          Caveat #092 204 165 re: Lease          Caveat #102 399 654 by BNY Trust Company          Caveat #102 399 655 by BNY Trust Company          Notice of Security Interest re: Fixtures #102 401 986 by BNY Trust Company          Caveat re: Agreement Charging Land #132 374 913 by Computershare Trust Company of Canada          Caveat re: Assignment of Rents and Leases #132 374 914 by Computershare Trust Company of Canada          Notice of Security Interest re Fixtures #132 374 915 by Computershare Trust Company of Canada</p> <p>With respect to Railway Plan 8622223:          Utility Right of Way 942 213 011          Utility Right of Way 972 013 555          Caveat #092 204 165 re: Lease          Caveat #102 399 656 by BNY Trust Company          Caveat #102 399 657 by BNY Trust Company          Notice of Security Interest re: Fixtures #102 401 988 by BNY Trust Company          Deferred Reserve Caveat #132 116 373          Caveat re: Agreement Charging Land #132 374 916 by Computershare Trust Company of Canada          Caveat re: Assignment of Rents and Leases #132 374 917 by Computershare Trust Company of Canada          Notice of Security Interest re: Fixtures #132 374 918 by Computershare Trust Company of Canada          The restrictive covenant contemplated in Schedule "F" of the Gateway Lease, if registered or required to be registered</p>
<b>Block I/J or Block K</b>	<ul style="list-style-type: none"> <li>• the Permitted Encumbrances noted above</li> <li>• the restrictive covenant contemplated in Schedule "F" of the Gateway Lease, if registered or required to be registered</li> <li>• Municipal Easements agreed to by both parties</li> </ul>
<b>North Bridge Lands and South Bridge Lands</b>	<ul style="list-style-type: none"> <li>• Wintergarden Retail Agreement</li> <li>• Plaza Agreement</li> <li>• Wintergarden Agreement</li> </ul>
<b>City Lands</b>	<p>with respect to Lot 3, Block 9E, Plan 9724372</p> <ul style="list-style-type: none"> <li>• Utility Right of Way #972 383 685</li> </ul> <p>with respect to the Road Lands</p> <ul style="list-style-type: none"> <li>• Utility Right of Way #112 334 004 (but City is responsible to ensure that this instrument does not interfere with the construction of the Arena or the surrounding public infrastructure)</li> <li>• Public Walkway #112 334 003</li> </ul>

**SCHEDULE "D"**

**BYLAW 15491**



**Legal Description of Road Lands:**

**First:**

**Plan 9623481**

**All that portion of road right of way which lies north of 104<sup>th</sup> Avenue on said plan**

**Excepting thereout all mines and minerals**

**Second:**

**Plan 9724372**

**Block 9E**

**All that portion of walkway within the limits of said Block 9E**

**Excepting thereout all mines and minerals**

## SCHEDULE "E"

### Terms and Conditions

#### 1. CONVEYANCE OF LAND

- 1.1 A conveyance as contemplated herein shall occur on the Closing Date and in the manner herein stated. Unless otherwise specifically provided herein, the Purchase Price, as adjusted, shall be payable by the purchaser to the vendor on the Closing Date.
- 1.2 The vendor covenants and agrees that on or before the Closing Date, it shall transfer the title to the subject land to the purchaser, free and clear of all liens, encumbrances and charges, subject only to the Permitted Encumbrances;
- 1.3 The transfer of land and other conveyancing documents shall be prepared by the vendor, at its expense, and all fees payable in connection with the registration of the transfer of land shall be paid by the purchaser. Conveyancing documents will be delivered to the Purchaser's lawyer at least 10 Working Days prior to the Closing Date (or such other reasonable time as may be required by current Land Titles registration times) on reasonable trust conditions generally utilized in the City of Edmonton.
- 1.4 The vendor and the purchaser acknowledge and agree that, unless otherwise agreed, the payment and discharge of all real property taxes, irrigation charges, drainage district rates and amortized local improvement levies or taxes and all water, gas, fuel, electricity and other similar or usual accounts payable, rentals, tax and operating cost recoveries, prepaid rents or damage deposits and other similar or usual prepaid expenses and other matters which are usually the subject matter of adjustment in commercial transactions in the City of Edmonton, shall be adjusted as of 11:59 p.m. on the subject Closing Date.
- 1.5 Unless otherwise specifically provided or agreed, the vendor shall provide to the purchaser vacant possession on the Closing Date. In the event the purchaser agrees to accept an existing tenancy, then assignment documents, notices to tenants and tenant estoppels will be required as part of the completion of the purchase.
- 1.6 Notwithstanding any provisions contained in this Agreement, it is expressly agreed to by the parties that all Sales Taxes which may be charged, levied or assessed as a result of the purchase shall be paid by the purchaser. If the purchaser is a GST registrant, and has the obligation to pay GST directly to the relevant taxing authority, then the purchaser shall provide a statutory declaration to the vendor confirming the purchaser's registration number and shall indemnify and save harmless the vendor from any claims, liabilities or damages which the vendor may incur in regards to the payment by the purchaser of the GST.
- 1.7 Any monies which are not paid when due hereunder shall bear interest at the Interest Rate until paid. Payments received after 2:00 p.m. on any day shall bear interest to the next Working Day.

- 1.8 All fixtures and improvements on the lands remain at the risk of the vendor until the Closing Date and proceeds of insurance shall be held in trust for the parties as their interest may appear.
- 1.9 In any case where the purchase price for a parcel of lands is calculated based on a price per square foot, the aggregate purchase price for that parcel will be calculated based on the actual square foot area of the particular parcel which is being conveyed to the purchaser.

## 2. REPRESENTATIONS, WARRANTIES AND AGREEMENTS

2.1 The vendor represents to and warrants and agrees with the purchaser as follows:

- 2.1.1 that the vendor is a corporation validly existing under the laws of the Province of Alberta and has done all necessary corporate acts to give full effect to the transactions contemplated herein, all of which constitute valid and binding obligations of the vendor;
- 2.1.2 that, except as otherwise stated herein, there are not now nor will there be as at the Closing Date, any lien or rights to lien or other claims, monetary or otherwise by third parties against the subject land other than Permitted Encumbrances, but to the extent that any such lien, right to lien, or claims do or will so exist and have not been caused by the purchaser, the vendor hereby indemnifies and saves harmless the purchaser in respect of all liabilities, claims or demands made or brought against the purchaser in respect thereof;
- 2.1.3 that unless otherwise specifically provided or agreed, all leases and rights of occupancy shall be terminated as of the Closing Date so that the purchaser shall have vacant possession on the Closing Date;
- 2.1.4 that there are no claims, actions, proceedings or investigations, existing or pending against the vendor affecting the subject land or to the vendor's knowledge threatened against the vendor affecting the subject land;
- 2.1.5 there are no contracts or agreements entered into by the vendor relating to the subject lands which have not been disclosed to the purchaser. To the best of the vendor's knowledge, the vendor is not in breach of any contract with respect to the lands;
- 2.1.6 the vendor shall not enter into any lease, agreement, arrangement or understanding with any person, firm or corporation whatsoever conferring upon such person, firm or corporation any right to lease, use or occupy the lands or any portion thereof without the prior written consent of the purchaser; and
- 2.1.7 the vendor is not a "non-resident" of Canada within the meaning of the Income Tax Act (Canada).

2.2 The purchaser represents to and warrants with the vendor as follows:

2.2.1 that the purchaser is a corporation validly existing under the laws of the Province of Alberta and has done all necessary corporate acts to give full effect to the transactions contemplated herein, all of which constitute valid and binding obligations of the purchaser;

2.3 The vendor and purchaser covenant with the other that the aforesaid warranties and representations made or given by each of them shall be true and correct as at the Closing Date and that they shall not be discharged by or merged in the transfer of the title to the subject land, but shall survive the Closing Date and shall remain in full force and effect.

### 3. AS IS WHERE IS

3.1 Notwithstanding any other term or condition in this Agreement, the purchaser shall take title to and possession of the subject land on the understanding and agreement that:

3.1.1 there are no agreements, conditions, warranties or representations relating to the subject land, other than as expressly stated herein or in the Master Agreement;

3.1.2 except as provided herein, the vendor does not warrant:

3.1.2.1 the quality, condition or sufficiency of the subject land for any use or purpose;

3.1.2.2 the adequacy of any and all utility services either to or on the subject land;

3.1.2.3 the absence or presence of hazardous substances, in, on, or under the subject land

3.1.3 the subject land is acquired by the purchaser on a strictly "as is, where is" basis and the purchaser shall take title to and possession of the subject land at its own risk, with all faults and imperfections whatsoever; and

3.1.4 the purchaser shall satisfy itself as to the condition of the subject land and the fitness for its intended use.

For the purposes of this section, the term "hazardous substances" includes but is not limited to, biological materials and agents (whether hazardous, in fact, or not), petroleum products and by products, any contaminants, pollutants, dangerous substances, hauled liquid wastes, toxic substances, industrial wastes, hazardous wastes, hazardous materials, hazardous chemicals, and hazardous substances as defined in any federal, provincial or municipal legislation.

**SCHEDULE "F"**

**Owner Costs**

16(1)

LAND INVENTORY AGREEMENT

**SCHEDULE "G"**

**Purchase Price Calculations**

16(1)



16(1)



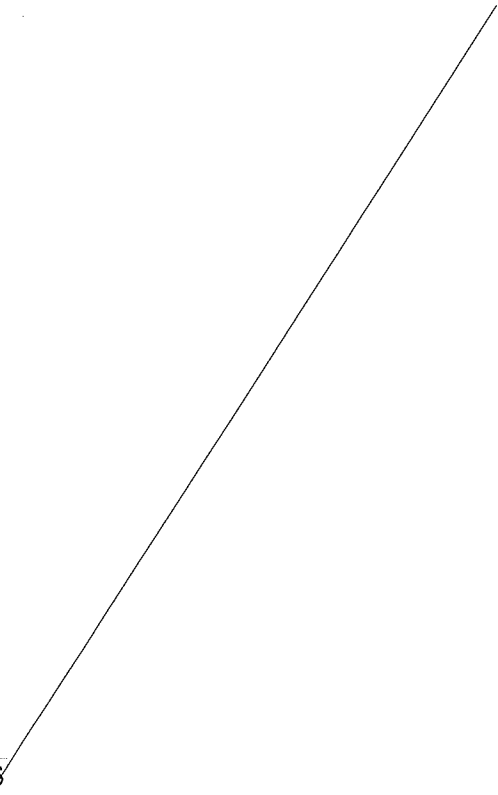


**SCHEDULE "G-1"**

**Final**

**LAND INVENTORY AGREEMENT  
SCHEDULE G-1**

16



## SCHEDULE "H"

### Statement Of Principles For Plaza

The City and the Owner wish to set forth the non-binding principles to be reflected in a Plaza Agreement (the "Plaza Principles") if and when the Owner determines, in its sole discretion, to construct the Plaza.

#### 1. INTERPRETATION

1. Capitalized words in this Schedule "H" would have the meanings set forth in the Amended and Restated Land Inventory Agreement ("LIA") unless such capitalized word is specifically defined in this Schedule "H";
2. The City and the Owner acknowledge that the parties' intention is that the principles contained in this Schedule "H" would form the basis of a formal Plaza Agreement relating to the Plaza.
3. Notwithstanding the parties' intentions, this Statement of Principles does not create legally binding obligations on either party but reflects the current understanding of the parties with respect to a Plaza Agreement.

#### 2. PLAZA

- (a) The Plaza is the surface area of a portion of the Bridge Lands which final configuration would be mutually agreed to by the City and Owner.
- (b) The Owner would grant the City a pedestrian public access easement on the Plaza (the "Plaza Easement"). The Plaza Easement would be in a form and content satisfactory to the City.
- (c) The capital improvements to the Plaza ("Capital Improvements") would be determined by the Owner.
- (d) All of the Capital Improvements located on, in or under the Plaza would be constructed by the Owner at its sole cost.

#### 3. PARKADE UNDER PLAZA

- (a) If the Owner decides, in its sole discretion, to construct an underground parkade below all or a portion of the Plaza, the Owner would provide all necessary structural supports for the Plaza, at the Owner's sole cost and expense including all maintenance of any necessary structural supports.

#### 4. PROGRAMMING FOR PLAZA

- (a) If, in the opinion of the Owner, the Plaza is of sufficient size to accommodate outdoor programming, then, the Owner, at its option, will have the exclusive right to schedule programming in the Plaza from time to time.

- (b) All costs and expenses associated with the Plaza programming would be at the sole cost and expense of the Owner. The Owner would carry such liability insurance and other insurance coverage as determined by the City's Risk Manager, or his designate, acting reasonably.

5. **PLAZA AGREEMENT**

- (a) The City and the Owner acknowledge that the intention of the parties is that the above Plaza Principles would be reflected in a formal Plaza Agreement between the parties. This Statement of Principles does not create legally binding obligations on either party but reflects the current understanding of the parties with respect to the Plaza Principles and a Plaza Agreement.

## Schedule "I"

### Wintergarden Retail Agreement Terms

1. Capitalized words in this Schedule "I" would have the meanings set forth in the Amended and Restated Land Inventory Agreement ("LIA") unless such capitalized word is specifically defined in this Schedule "I";
2. The City and the Owner acknowledge that the parties' intention is that the principles contained in this Schedule "I" would form the basis of a formal Wintergarden Retail Agreement relating to the Retail Area;
3. The Retail Area comprises about 6200 square feet at street level and potentially about 7000 square feet at the pedestrian bridge level, in the Landing, as shown in blue on the plan attached and marked "I-1";
4. The rights to the Retail Area will be reserved by 102 in the transfer of the Landing Parcel to the City. The Owner and 102 may elect to have these rights effectively, be held by an entity specified by the Owner (such entity being the "Purchaser"); the method for the Purchaser to hold these rights may be by way of a very long term lease (100 years, with renewal rights), or by retaining or reserving a separate title to the retail area as a strata title;
5. The amount payable by the Purchaser for the Retail Area will be the fair market value of the Retail Area at the time of completion of the Wintergarden, expected to be summer of 2016, which amount shall be payable within 30 days of determination of the fair market value. The City shall direct such amount to be paid as follows and in the following order:
  - a. To the extent that the aggregate all-in cost of design and construction of the Wintergarden exceeded \$50,000,000.00, the amount payable by the Purchaser shall be paid to EAC; and
  - b. Once EAC has received the full amount due under (a) above, any balance payable by the Purchaser shall be divided equally between the City and EAC and paid accordingly by the Purchaser;
6. The Purchaser will be obligated to pay a reasonable share of the operating costs and capital maintenance costs for the Wintergarden. Also, if the utilities for the Retail Area are not separately metered, then the Purchaser shall pay its proportionate share of utilities; the City and the Purchaser will negotiate in good faith with a view to agreeing on a fair and reasonable proportionate share for the Retail Area, and the Dispute Resolution Process shall apply if the City and the Purchaser are unable to agree;
7. The Retail Agreement will contain such further terms as the parties (the City and the Purchaser) may determine appropriate to govern their relationship either as tenant and landlord (in the case of a long term lease) or as owners of a strata title of the Landing; and
8. Some, perhaps all, of the provisions contemplated above could be contained in a long term lease or other documents, depending on how the Owner and the City ultimately decide to deal with the matters referred to in 2 above

Schedule "1-1"

16(1)

