

THIS AGREEMENT made as of the      day of May, 2017 between

**THE CORPORATION OF THE CITY OF LONDON**

(the "City")

**LONDON OPTIMIST SPORTS CENTRE**

("LOSC")

**WHEREAS:**

- A. LOSC operates an indoor soccer facility at 295 Rectory Street in the City of London known as the "BMO Centre";
- B. LOSC wants to expand the BMO Centre;
- C. LOSC has applied to the City for a grant to be used towards the cost of expanding the BMO Centre;
- D. The City has agreed to make a grant to LOSC subject to the terms and conditions of this Agreement;

NOW THEREFORE IN CONSIDERATION of the sum of \$10.00 now paid by the LOSC to the City, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants and other terms and conditions in this Agreement, the parties hereby covenant, promise and agree each with the other as follows:

**1. Definitions**

In this Agreement, the following definitions will apply:

- (a) "Agreement" means this grant agreement, including all schedules to this Agreement, as may be amended from time to time;
- (b) "Building" means the building located on the Property known municipally as 295 Rectory Street, in the City of London;
- (c) "City" means The Corporation of the City of London;
- (e) "Council" means the council of the City;
- (f) "Grant" means the grant in the total amount of \$800,000.00 by the City to LOSC made in accordance with the terms of this Agreement;
- (g) "Property" means the Property municipally known as 295 Rectory Street in the City of London, upon which the Building is situate as more particularly described on Schedule "A";
- (h) "Treasurer" means the City Treasurer and Chief Financial Officer and any successor officer appointed or designated as responsible for the service areas included in that office;

**2. Grant**

(1) Subject to LOSC complying with the terms and conditions set out in this Agreement, the City shall make the Grant to LOSC in the total amount of \$800,000.00 to be used solely for the purpose of constructing an addition to the Building, as herein provided, and for no other purpose.

(2) The Grant shall be disbursed to LOSC in four (4) equal instalments of \$200,000.00 each, on the following schedule:

- Upon the issuance of a building permit for the construction of the addition to the Building;
- Upon certification that the roof of the addition is complete;

- Upon substantial completion of the Building addition;
- Upon LOSC vacating the property at 6 Cuddy Boulevard

and subject to LOSC being in compliance with all of the material terms and conditions set out in this Agreement at the time of each payment.

### **3. Use of Grant Funds**

(1) LOSC covenants and agrees that the Grant provided to it by the City shall be used solely for the purpose of financing the construction of an addition to the Building (including applicable development and building permit fees) and for no other purpose. LOSC covenants and agrees that should, in the opinion of the City acting reasonably, any portion of the Grant be used for any purpose other than constructing an addition to the Building, as herein provided, then that portion of the Grant that has been disbursed under this Agreement by the City to LOSC shall immediately be deemed to be a loan which shall immediately become due and payable by LOSC upon demand by the City.

### **4. Security**

As collateral security for the advance of the Grant and the performance of all the obligations of LOSC in this Agreement, LOSC shall charge and mortgage to the City all of its rights, title and interest in the Property and the Building.

LOSC agrees to execute and register at its expense and deliver to the City a charge in favour of the City in form and content satisfactory to the Treasurer, to secure LOSC's obligations in this Agreement against the title to the Property. The City acknowledges that its charge shall rank as a second charge behind an existing first charge in favour of Bank of Montreal registered on August 18, 2011 as Instrument No. ER781734, as such charge may be amended, restated, renewed or replaced from time to time. During the term of this Agreement, the City agrees that it may, in its sole discretion but acting reasonably, postpone its charge to or agree to register its charge in priority behind an institutional lender on such terms and conditions as the Treasurer, acting reasonably, may require. The City also acknowledges that its second charge may also be registered subsequent to certain notices of lease and such other instruments as LOSC, acting reasonably, may register or permit to be registered on the Property from time to time.

### **5. Covenants of LOSC**

(1) LOSC shall provide the Treasurer with proof of ownership of the Property, whenever requested by the City.

(2) LOSC covenants and agrees that the Building shall be used solely for the purposes of providing recreational and community programs and event space for the citizens of London and surrounding area including, but not limited to, the hosting, promotion and presentation of indoor soccer, other sports and recreational activities, police training, sports expos and trade shows, community, association and religious festivals and other like programs and events ("the Activities").

(3) LOSC covenants and agrees to construct the addition to the Building, and to use and operate the Property and Building in conformity with the Certificate of Property Use issued by the Ministry of the Environment and Climate Change dated February 18, 2016 and attached as Schedule "C".

(4) LOSC shall be responsible for obtaining all approvals, permits and licences required as necessary for the constructing of an addition to the Building.

(5) LOSC shall establish and maintain financial and administrative procedures which ensure the accurate recording and reporting of its operations and which maintain adequate administrative and financial control, and shall maintain accounting procedures consistent with sound operating practices in accordance with generally accepted accounting principles.

(6) LOSC shall notify the City, in writing, immediately upon any of the following acts occurring:

- (a) the bankruptcy or insolvency of LOSC; the filing against LOSC of a petition in bankruptcy; the making of an authorized assignment or proposal for the benefit of creditors by LOSC; the appointment of a receiver or trustee for LOSC or for any assets of LOSC or the institution by or against LOSC of any other type of insolvency proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, or otherwise;
- (b) the institution by or against LOSC of any formal or informal proceeding for the dissolution or liquidation of LOSC, or the winding up of the affairs of the LOSC;
- (c) if LOSC ceases or threatens to cease to carry on operations or makes or agrees to make a bulk sale of assets without complying with applicable law or commits or threatens to commit an act of bankruptcy;
- (d) if LOSC ceases to be a non-share capital, non-profit Ontario corporation.

(7) LOSC shall notify the City, in writing, immediately if any certificate, statement, representation, warranty or audit report furnished before or after the date of execution of this Agreement, by or on its behalf pursuant to or in connection with this Agreement, or otherwise (including, without limitation, the representations and warranties contained in this Agreement), or any inducement to the City to enter into this or any other agreement with LOSC:

- (a) proves to have been false or inaccurate in any material respect at the time as of which the facts set forth therein were stated or certified; or
- (b) if upon the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, representation, statement, warranty or audit report, which change shall not have been disclosed to the City at or prior to the time of such execution.

(8) LOSC shall, by notice in writing, immediately notify the Treasurer of each LOSC board of directors' meeting at which any of the matters set out in clause (6) or (7) will be discussed and shall permit the Treasurer or his or her designate to attend any such meeting.

(9) LOSC shall, in each year, pay all realty taxes on the Property.

(10) If, at any time after this Agreement is entered into, LOSC becomes aware that it is or may be in default of any material provision of this Agreement, LOSC shall give written notice immediately to the Treasurer of the actual or possible default.

(11) The notice shall contain the detailed reasons and justification for the actual or possible default, the proposed remedy for such default and the proposed time within which such default shall be remedied by LOSC.

## 6. Indemnity

LOSC hereby agrees that it shall, from time to time, and at all times hereafter, well and truly save, keep harmless and fully indemnify the City, up to an amount not to exceed the amount of

\$1,000,000.00 from and against any and all actions, claims and demands whatsoever which may be brought against or made upon the City and against any and all loss, liability, claims, judgments, costs, demands or expenses whatsoever which the City may sustain, suffer or be put to resulting from or arising out of:

- (a) this Agreement;
- (b) the obligations of LOSC under this Agreement;
- (c) the failure of LOSC, its consultants, contractors, agents or employees to exercise reasonable care, skill or diligence in carrying out any renovation work to the Building; or
- (d) any act or omission of LOSC, its agents, servants, consultants, contractors, employees or by anyone for whom LOSC is at law responsible relating to any renovation work or thing required to be performed or rendered under this Agreement by LOSC. LOSC shall indemnify and save the City harmless from and against any and all losses, expenses and damages of every kind and nature whatsoever which it may now or hereafter incur relating to all insured and uninsured damage to property installed, property in transit and contractors' tools and equipment during the course of the renovation work to the Building.

Notwithstanding the foregoing, the parties acknowledge and agree that the foregoing indemnity, to the extent that any loss, liability, claims, judgments, costs, demands or expenses exceed the amount of \$1,000,000.00, shall not extend nor apply to any pre-existing environmental condition in respect of the Property (save and except for that part of the Property consisting of the additional lands which LOSC acquired from Canadian National Railway Company ("CN") on November 22, 2012) for which the City previously agreed to indemnify LOSC, its officers, directors, employees, agents and members, related to the previous use of the Property by CN, and which indemnity the City granted to and in favour of such parties as an inducement by the City to LOSC to purchase the Property and to sell to the City the property at 6 Cuddy Boulevard.

## **7. Insurance**

(1) LOSC shall keep and maintain in force during the currency of this Agreement commercial third party general liability insurance with limits of not less than \$2,000,000.00 dollars per person for each occurrence of property damage or loss or personal injury or death. Such coverage shall include any person or body whose interests may be affected by the renovation work or the use of the Building for the purposes of a community resource centre as an additional named insured, and shall contain provisions for:

- (a) cross-liability/severability of interest as between the insured and the City;
- (b) blanket contractual liability;
- (c) owner's and contractor's protective liability;
- (d) products or completed operations liability;
- (e) contingent employers liability, and
- (f) contractor's contingent liability;

(2) Employee dishonesty insurance in an amount not less than \$100,000.00. The City shall be shown on the Policy as a Named Obligee, with respect to loss of funds or assets related to the services and programs described in your funding Application to the City;

(3) Standard all risk property insurance covering the building and all contents owned or leased by LOSC in an amount meeting the requirements of a 90% co-insurance clause and with a deductible of no more than \$5,000.00;

(4) Where the City, acting reasonably, requires the amount of insurance coverage increased, or requires LOSC to obtain other special insurance or requires any policy to be extended, then LOSC shall obtain such extended, increased or special insurance, provided that the cost of obtaining such insurance is not, in LOSC's discretion acting reasonably, prohibitive.

(5) LOSC further agrees that the coverage provided by the policies specified in this Agreement will not be cancelled or permitted to expire by LOSC until thirty (30) days after written notice of expiry or cancellation has been delivered to the Treasurer and such cancellation or expiration has been approved by him or her.

(6) LOSC shall ensure that:

(a) any professionally designated consultant retained by it, with respect to the construction of the addition to the Building or any subsequent maintenance or repairs relating to the Building, purchases and maintains in force a policy of professional liability insurance in an amount not less than \$2,000,000.00 dollars in the aggregate for each occurrence of damage, loss, injury or death to persons or property; and

(b) a true copy of the certificate of the Ontario Association of Architects Indemnity Plan, in respect of any Architect retained by LOSC, is delivered to the City.

(7) LOSC shall keep and maintain in force during the currency of this Agreement builder's risk property insurance or all-risk installation floater insurance, as appropriate, covering the renovation work construction on an all-risks basis including resultant damage from error or design and faulty workmanship and covering all mobile equipment and equipment to be installed on the Property and in the Building to the full replacement cost of the Building and including all contractors as additional insureds and a waiver of subrogation in favour of the City.

(8) LOSC shall furnish to the City, prior to receipt of funds from the City, evidence of the policies of insurance, described above on City form no. 0788 or such other form acceptable to the Treasurer and renewal of such form upon each insurance renewal until expiry of this Agreement.

(9) LOSC covenants and agrees to promptly implement all the recommendations of any liability or fire insurance company by which LOSC may be insured, which regulations may be necessary to maintain such insurance.

## **8. Right Of Audit**

(1) LOSC agrees that the City's auditor, or any professional advisor retained by the City and designated in writing by the City auditor, may audit and inspect accounts, records, receipts, vouchers, and other documents relating to the Grant and shall have the right to make copies and to take extracts. For the purposes of this clause, audit includes any type of audit.

(2) LOSC shall make available all facilities, physical and otherwise, for the audits and inspections and shall furnish the City and its authorized representatives with all of the information as it, or they, may from time to time require with reference to the accounts, records, receipts, vouchers and other documents.

(3) LOSC shall cause all accounts, records, receipts, vouchers and other documents, required under this clause, to be preserved and kept available for audit and inspection at any reasonable time, and from time to time, until the expiration of 10 years from the date of disbursement of the Grant under Section 2, or until the expiration of such lesser or greater period of time as approved in writing by the City.

(4) The City covenants to keep and hold any information and documentation disclosed by LOSC to the City's auditor or its professional advisors, in connection with this Agreement, in the strictest

confidence and not to disclose such information and documentation to any other party without the prior written consent of LOSC or as may be required by applicable law.

#### **9. Annual Audited Financial Statements**

LOSC shall, during each year of the term of this Agreement and within 3 months following the expiry of each fiscal year end of LOSC, deliver to the Treasurer a copy of its annual audited financial statements for such fiscal year which financial statements shall be prepared in accordance with generally accepted accounting principles and which statements shall commence with the audited financial statements for the 2017 fiscal year end. In the event that, during the term of this Agreement, LOSC is no longer required by Canada Revenue Agency to prepare audited financial statements, then LOSC agrees to provide and the City agrees to accept such financial statements as LOSC may prepare (based upon such other level of financial statement review as may then be acceptable to Canada Revenue Agency) at such time. The City covenants to keep and hold any information and documentation disclosed by LOSC to the City, in connection with this Agreement, in the strictest confidence and not to disclose such information and documentation to any other party without the prior written consent of LOSC or as may be required by applicable law.

#### **10. Acknowledgment of City**

LOSC shall, at the request of the City, install at a mutually agreed and appropriate location and maintain during the term of this Agreement, one or more signs or a plaque, indicating the City's financial support for the renovation of the Building.

#### **11. City of London Days at BMO Centre**

LOSC agrees that the City shall have the right to use the Building for up to three community-sponsored events annually on a "rent free basis" provided the City or event sponsor pay for all direct and out of pocket expense incurred by LOSC, and in accordance with the policy attached as Schedule "B".

#### **12. Repayment of Grant**

- (1) Subject to section 3 of this Agreement the Grant shall be forgivable by the City over an 8 year period whereby the City shall forgive 1/8 of the value of the Grant annually on the anniversary date of the payment of the last instalment pursuant to Section 2(2) hereof, until the Grant is totally forgiven.
- (2) The City shall have the right to declare that LOSC has breached this Agreement and cause this Agreement and the obligations of the City under it to terminate:
  - (a) if LOSC fails to fulfil all of the material terms, conditions and obligations set out in this Agreement and such failure shall continue unremedied for a period of ten (10) days after the earlier of LOSC's knowledge of such failure or receipt of written notice from the City; provided that, in the event that such failure cannot reasonably be remedied with such ten (10) day period, for such longer period of time as LOSC may require (and the City may approve) to remedy such failure, provided that LOSC can demonstrate to the City that it is actively and diligently pursuing such remedy;
  - (b) if LOSC becomes insolvent, or commits any act of insolvency or makes any assignment for creditors, or

- (c) if LOSC assigns or transfers or attempts to assign or transfer this Agreement;
  - (d) If LOSC transfers, sells, leases, mortgages or otherwise disposes of all or substantially all of the Property or its interest in the Property;
  - (e) if LOSC ceases to use the Property solely for the Activities;
  - (f) if LOSC ceases to be a non-share capital, non-profit Ontario Corporation, or
  - (g) if LOSC ceases to exist.
- (3) Any declaration as to termination made under this clause shall be made in writing and delivered by the City to LOSC in the manner specified in this Agreement for the giving of notices to LOSC.
- (4) If the City has terminated this Agreement in accordance with this clause, the City shall have no further responsibility or liability with regard to this Agreement and LOSC shall forthwith repay to the City the unforgiven balance of the Grant. It is understood and agreed that these conditions are for the sole benefit of the City and may be waived in whole or in part by the City at any time.

### **13. Right of First Refusal to Purchase**

During the Term of this Agreement, LOSC grants to the City a Right of First Refusal ("ROFR") to purchase the Lands on the following terms and conditions:

- a. If at any time during the Term of this Agreement, LOSC makes or receives a bona fide offer (in each case an "Offer") to or from any person which the LOSC wishes to accept, pursuant to which such person is to purchase or otherwise acquire directly or indirectly the Lands or any part or parts thereof, then the LOSC shall promptly provide the City with written notice that the LOSC desires to sell the Property or the applicable part or parts thereof in accordance with the provisions of the Offer (the "Offer Notice"). A true copy of the Offer shall accompany such Offer Notice.
- b. The City shall have twenty-one (21) business days following receipt of the Offer Notice within which to deliver to LOSC an offer to purchase the Property or such part or parts thereof on the terms and conditions contained in the Offer, without material amendment, except that the City shall be entitled to a credit towards the purchase price equal to the amount of the Grant (the "ROFR Offer"). In the event the City so issues the ROFR Offer, LOSC shall countersign such offer whereupon a binding agreement to purchase, on terms as set out therein, shall have been entered into between LOSC and City in respect of the Property or applicable part thereof.
- c. If City has not delivered the ROFR Offer as aforesaid to LOSC within the aforementioned 21 business day period, City shall be deemed not to have exercised the right of first refusal herein and LOSC may proceed to dispose of the Property in accordance with the original Offer, without material amendment, provided that the provisions of this Section 13 shall survive the sale and continue to apply.
- d. If LOSC does not sell or transfer the Property or such part or parts thereof on the terms and conditions set out in the Offer without material amendment within ninety (90) days after the expiration of the twenty-one (21) business day period noted above, or if LOSC proposes to make a material amendment to the Offer, then the provisions of this Section 13 shall continue to apply.

### **14. Term**

The parties agree that the term of this Agreement shall commence on date of this Agreement,

and shall continue until the Grant is totally forgiven pursuant to Section 13(1) hereof, unless otherwise terminated prior to such date in accordance with the provisions of this Agreement.

### 15. Enurement

(1) This Agreement shall enure to the benefit of and be binding upon LOSC, its successors and permitted assigns. LOSC shall not assign or in any way transfer this Agreement or any of its rights, privileges, duties or obligations under this Agreement without the prior written consent of the City which consent may be unreasonably withheld or delayed.

(2) This Agreement shall enure to the benefit of and be binding upon the City, its successors and assigns.

### 16. Notice

(1) Any notice or consent (including any invoice, statement, request or other communication) required or permitted to be given by any party to this Agreement to any other party shall be in writing and shall be delivered or sent by registered mail (except during a postal disruption or threatened postal disruption), or facsimile transmission or other electronic communication or other means of prepaid recorded communication to the applicable address set forth below:

(a) in the case of the City to:

The Corporation of the City of London

300 Dufferin Ave, PO Box 5035

London ON N6A 4L9

Attention: City Clerk

Fax:

Email:

(b) in the case of LOSC to:

BMO Centre

295 Rectory Street

London, ON N5Z 0A3

Attention: President, London Optimist Sports Centre

Fax:

Email:

(2) Any notice delivered personally shall be deemed to have been validly and effectively given and received on the date of such delivery provided same is on a business day (Monday to Friday, other than a statutory holiday).

(3) Any notice sent by registered mail shall be deemed to have been validly and effectively given and received on the third business day following the date of mailing.

(4) Any notice sent by facsimile transmission or other electronic communication or other means of prepaid recorded communication shall be deemed to have been validly and effectively given and received on the business day next following the date on which it was sent (with confirmation of transmittal received).

(5) Either party to this Agreement may, from time to time by notice given to the other party, change its address for service under this Agreement.



**17. Entire Agreement**

This Agreement constitutes the complete and exclusive statement of the Agreement between the parties, which supersedes all proposals, oral or written, and all other communications or representations between the parties, relating to the subject matter of this Agreement.

**18. Illegality**

If one or more of the phrases, sentences, clauses or articles contained in this Agreement is declared invalid by a final and unappealable order or decree of any court of competent jurisdiction, this Agreement shall be construed as if such phrase, sentence, clause or paragraph, had not been inserted in this Agreement.

**19. Amendment**

This Agreement may be changed only by a written amendment signed and sealed by authorized representatives of the parties.

**20. Gender, Number**

Words importing the masculine gender shall include the feminine and neuter, and the singular shall include the plural where the meaning or context so requires.

**21. Headings**

The article numbers, article headings, clause numbers and clause headings contained in this Agreement are inserted for convenience of reference only and are not to be considered when interpreting this Agreement.

**22. Covenants**

Each obligation of the City or of LOSC expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes. The covenants, representations, warranties, and indemnity of LOSC set forth in this Agreement shall survive the expiry of the term of this Agreement.

**23. Governing Law**

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

**24. Time of Essence**

Time shall be of the essence of this Agreement and every part of this Agreement.

**25. Further Assurances**

The City and LOSC shall, at their sole expense, promptly execute such further documentation with respect to the Grant to give effect to this Agreement as the City or LOSC, as the case may be, may reasonably require from time to time.

**IN WITNESS WHEREOF** the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper signing officers in that behalf duly authorized.

**THE CORPORATION OF THE CITY OF LONDON**

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Matt Brown, Mayor

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Catharine Saunders, City Clerk

**LONDON OPTIMIST SPORTS CENTRE**

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Name:

Title:

I/We have authority to bind the corporation

**SCHEDULE "A"**

**DESCRIPTION OF LAND** – 295 Rectory Street, London

Part of Lot 12, Concession "C", geographic Township of London, City of London,  
County of Middlesex designated as Part 1 on 33R-12706 and Part 1 on 33R-18331,  
Being all of PIN 08310-0031

## SCHEDULE "B"

### CITY OF LONDON DAYS AT THE BMO CENTRE

Objective: The City of London shall have the right to use the Building for up to three community-sponsored events annually on a "rent free basis" provided the City or event sponsor pay for all direct and out of pocket expense incurred by LOSC including, but not limited to, costs for cleaning/custodial staff, garbage removal, security, equipment use and office administration.

Types of Eligible Events: the Following events will be eligible:

1. City of London-sponsored events such as opening ceremonies for sporting and major community celebrations, which have not previously used the facility in accordance with normal rental or use arrangements.
2. Nor-for-profit sporting events which are of provincial or national significance, including championships for high schools, colleges or universities located within the City of London, which have not previously used the facility in accordance with normal rental or use arrangements.
3. Major not-for-profit civic events which are celebrations or charity events of a local, community wide nature and have a direct benefit to the London community, which have not previously used the facility in accordance with normal rental or use arrangements.

Maximum Event Days: the following conditions will apply:

1. The City is limited to three events per year.
2. No group can have more than one event per year.
3. No group can have more than two event days over a five-year consecutive period, unless an exemption is approved by the Municipal Council due to unique circumstances.

Event Dates: The City of London shall provide sixty (60) days prior notice to BMO Centre for use of the Building for a community-sponsored event, and the date of the event may not conflict or compete with events previously arranged or booked by BMO Centre.

Requirements of User Groups: users of the Building under this policy will:

1. Be responsible for all direct and out-of-pocket expenses which are incurred.
2. Be responsible for entering into an agreement with BMO Centre for use of the Building and all obligations arising from that agreement.
3. Be responsible for all advertising, sponsorship and ticketing for the event subject to any conditions set out by BMO Centre.

City Contact: The City Clerk will be the primary contact for user groups and will be delegated responsibility to co-ordinate this policy.

Approval: Municipal Council approval is required for all events under this policy.

**SCHEDULE "C"**

**CERTIFICATE OF PROPERTY USE**