



City of Hamilton

SOLE VOTING MEMBER OF THE HAMILTON TOURISM DEVELOPMENT CORPORATION AGENDA

Meeting #: 23-001
Date: December 14, 2023
Time: 9:30 a.m.
Location: Council Chambers
Hamilton City Hall
71 Main Street West

1. CEREMONIAL ACTIVITIES

2. APPROVAL OF AGENDA

(Added Items, if applicable, will be noted with *)

3. DECLARATIONS OF INTEREST

4. APPROVAL OF MINUTES OF PREVIOUS MEETING

5. COMMUNICATIONS

5.1 Hamilton Tourism Development Corporation and Municipal Accommodation Tax Overview

*Referred from Hamilton Tourism Development Corporation Board of Directors,
November 30, 2023*

Recommendation: Be received

6. STAFF PRESENTATIONS

7. CONSENT ITEMS

8. DISCUSSION ITEMS

8.1 Hamilton Tourism Development Corporation Board of Directors Report 23-001
(November 30, 2023)

9. MOTIONS
10. NOTICES OF MOTION
11. SHAREHOLDER RESOLUTIONS
 - 11.1 Appointment and Remuneration of Auditor, 2023 Budget, Board of Directors Resolutions, Lines of Credit, Shareholder Resolutions
12. GENERAL INFORMATION / OTHER BUSINESS
13. PRIVATE AND CONFIDENTIAL
14. ADJOURNMENT

Hamilton Tourism Development Corporation and Municipal Accommodation Tax Overview



Presentation to: The Board of Directors, Hamilton Tourism Development Corporation

Presentation by: Manager of Tourism and Events, City of Hamilton

Meeting: November 30, 2023



PRESENTATION PURPOSE

To provide an overview of the

- 1) Governance structure of the Hamilton Tourism Development Corporation (Corporation)
 - role of its Board of Directors
 - role of City Council as the Sole Shareholder of the Corporation.
- 2) Municipal Accommodation Tax (MAT) implementation in Hamilton.
- 3) Resolutions for approval at today's Board of Directors meeting.

HAMILTON TOURISM DEVELOPMENT CORPORATE GOVERNANCE

February 23, 2022: Council approved the Business Case to incorporate a municipal service corporation to function as the eligible tourism entity and receive 50% of the MAT funds.

The Business Case outlined:

- the purpose of the corporation
- its mandate, objectives, principles
- governance structure
- accountability; and
- reporting matters.

HAMILTON TOURISM DEVELOPMENT CORPORATE GOVERNANCE

August 2, 2022: The non-profit, non-share capital corporation, named "Hamilton Tourism Development Corporation, was incorporated.

- City is the Sole Voting Member.
- Sole Voting Member is represented by City Council.
- Council is responsible to safeguard the Corporation's funds.

November 16, 2022: Council approved the Council Member appointments to the Corporation for the 2022-2026 Term of Council.

- Board of Directors comprised of 3 Council members – Councillor Cassar, Councillor Hwang, and Councillor Spadafora.
- Responsible to supervise the management of the business and affairs of the Corporation. Corporation.

MUNICIPAL ACCOMMODATION TAX (MAT)

2017:

The Province of Ontario grants municipalities the authority for municipalities to implement MAT on transient accommodation stays of 29 nights or less.

MAT to provide revenue to support destination marketing and tourism development initiatives, including investing in hosting significant tourism festivals and events that positively impact the local economy.

The Province requires municipalities to share a minimum of 50% of MAT with an eligible tourism entity; in Hamilton's case, this is the Corporation.

MAT IMPLEMENTATION IN HAMILTON

August 12, 2022: Council approved

- 1) By-law No. 22-209 establishing a mandatory MAT at a rate of 4%, effective January 1, 2023, on transient accommodation stays.
- 2) The Ontario Restaurant Hotel Motel Association as the MAT collection agent.
- 3) The City's MAT Reserve Policy No FPAP-RE-004.
- 4) Two line of credit agreements between the Corporation and the City.

As of September 30, 2023, MAT revenue collected = \$1,578,000

Total 2023 Year-End MAT Revenue = \$2.2 Million (estimate)

Corporation's 2023 MAT Reserve funds = \$1,094,200 (estimate)

BOARD OF DIRECTORS MEETINGS

November 30, 2023: Business of the Corporation's first Board of Directors meeting

- (i) the appointment of the Corporation's officers
- (ii) approval of the Corporate By-Law
- (iii) approval of the 2023 Budget
- (iv) approval of the Corporation's MAT Reserve Fund Policy, and
- (v) provision of signing authority

Early 2024: Board of Directors meeting

- (i) 2024 budget
- (ii) Business Plan
- (iii) recommendations on implementing the Business Plan

**HAMILTON TOURISM DEVELOPMENT CORPORATION BOARD
OF DIRECTORS
REPORT 23-001**

12:30 p.m.

Thursday, November 30, 2023

Room 192, 1st Floor

Hamilton City Hall, 71 Main Street West

Present: **Board of Directors:**
Councillor M. Spadafora (Chair)
Councillor T. Hwang (Vice-Chair)

Officers:
J. Summers, Vice-President
S. Hesmer, Treasurer
T. Bates, Acting Secretary

Absent: Councillor C. Cassar
J. Thorne, President

Also Present: G. Mater, Acting City Manager
D. McKenna, Solicitor
R. McHugh, Manager of Tourism and Events
P. Mulholland, Senior Project Manager, Tourism and Events
S. Salamone, Legislative Assistant

**THE HAMILTON TOURISM DEVELOPMENT CORPORATION BOARD OF DIRECTORS
PRESENTS REPORT 23-001, AND RESPECTFULLY RECOMMENDS:**

1. APPOINTMENT OF CHAIR AND VICE-CHAIR (Item 1)

- (a)** That Councillor Spadafora be appointed Chair of the Hamilton Tourism Development Corporation Board of Directors for the 2022-2026 term of Council.

- (b)** That Councillor Hwang be appointed Vice-Chair of the Hamilton Tourism Development Corporation Board of Directors for the 2022-2026 term of Council.

2. Shareholder Resolutions (Item 7.1)

1. APPOINTMENT OF OFFICERS

BE IT RESOLVED that the following individuals, having consented to act as officers of the Corporation, are hereby appointed to the offices indicated next to their names, commencing on the date hereof and continuing thereafter until their successors are duly appointed:

- (i) Jason Thorne – President;
- (ii) John Summers – Vice-President; and
- (iii) Shelley Hesmer – Treasurer.

2. APPROVAL OF CORPORATE BY-LAW

BE IT RESOLVED that By-Law No. 1 of the Corporation, a copy of which is attached hereto, is hereby approved and enacted, as of the date hereof, as the sole by-law of the Corporation and continuing thereafter until amended or replaced by the Board of Directors of the Corporation.

3. APPROVAL OF THE 2023 BUDGET

BE IT RESOLVED that the 2023 Budget, a copy of which is attached hereto, be approved and adopted as of the date hereof.

4. SIGNING AUTHORITY RE: CERTAIN AGREEMENTS

BE IT RESOLVED that the President of the Corporation is hereby authorized and directed to execute, on behalf of the Corporation:

- (i) an Operating Agreement between the Corporation and the City of Hamilton, a copy of which is attached hereto as, together with any necessary ancillary documents and/or agreements;
- (ii) a Line of Credit Agreement with the City of Hamilton, a copy of which is attached hereto, for financial support to an upset limit of Two Million Dollars (\$2,000,000) to be used for certain business operation expenses, together with any necessary ancillary documents and/or agreements; and
- (iii) a Line of Credit Agreement with the City of Hamilton, a copy of which is attached hereto, for financial support to an upset limit of Two Hundred Fifty Thousand Dollars (\$250,000) to be used for

certain business administration expenses, together with any necessary ancillary documents and/or agreements.

5. MUNICIPAL ACCOMMODATION TAX RESERVE FUND POLICY

BE IT RESOLVED that the Corporation's Municipal Accommodation Tax Reserve Fund Policy, a copy of which is attached hereto, be approved and adopted as of the date hereof.

6. CONFIRMATORY ACTIONS

BE IT RESOLVED that the officers of the Corporation are, and each acting alone is, hereby authorized to do and perform any and all such acts, including execution of any and all documents and certificates, as such officers shall deem necessary or advisable, to carry out the purposes and intent of the foregoing resolutions.

THE FOREGOING RESOLUTIONS are hereby consented to by the Board of Directors of the Corporation pursuant to the provisions of the *Not-for-Profit Corporations Act* (Ontario).

FOR INFORMATION:

(a) APPROVAL OF AGENDA (Item 1)

The Committee Clerk advised there were no changes to the agenda:

The Agenda for the November 30, 2023 meeting of the Hamilton Tourism Development Corporation Board of Directors, be approved, as presented.

(b) DECLARATIONS OF INTEREST (Item 2)

There were no declarations of interest.

(c) STAFF PRESENTATIONS (Item 8)

(i) Hamilton Tourism Development Corporation and Municipal Accommodation Tax Overview (Item 8.1)

Ryan McHugh, Manager of Tourism and Events, City of Hamilton, addressed Committee respecting Hamilton Tourism Development Corporation and Municipal Accommodation Tax Overview, with the aid of a presentation.

The Presentation from Ryan McHugh, Manager of Tourism and Events, City of Hamilton, was received and referred to the Sole Voting Member of the Hamilton Tourism Development Corporation for information.

(d) DISCUSSION ITEMS (Item 10)

(i) Hamilton Tourism Development Corporation By-Law No. 1 (Item 10.1)

For further disposition of this matter, refer to Item 2(2).

(ii) Approval of the 2023 Budget (Item 10.2)

For further disposition of this matter, refer to Item 2(3).

(iii) Signing Authority for Certain Agreements (Item 10.3)

(1) Operating Agreement (Item 10.3(a))

(2) Line of Credit - Business Operations (Item 10.3(b))

(3) Line of Credit – Administrative (Item 10.3(c))

For further disposition of this matter, refer to Item 2(4).

(iv) Municipal Accommodation Tax Reserve Fund Policy (Item 10.4)

For further disposition of this matter, refer to Item 2(5).

(e) GENERAL INFORMATION AND OTHER BUSINESS (Item 15)

Staff was directed to include in the Business Plan for the Hamilton Tourism Development Corporation a clear delineation between the realm of influence and the work of the Hamilton Tourism Development Corporation and those of Tourism Hamilton, along with a list of upcoming activities and how each entity is involved in the activities.

(f) ADJOURNMENT (Item 15)

There being no further business the Hamilton Tourism Development Corporation Board of Directors meeting was adjourned at 1:04 p.m.

Respectfully submitted,

Councillor M. Spadafora
Chair, Hamilton Tourism Development
Corporation Board of Directors

Tamara Bates, Legislative Coordinator
Acting Secretary to Hamilton Tourism
Development Corporation Board of Directors

HAMILTON TOURISM DEVELOPMENT CORPORATION
(the "Corporation")

RESOLUTIONS OF THE SOLE VOTING MEMBER OF THE CORPORATION

WHEREAS the City of Hamilton is the sole voting member of the Corporation ("Sole Voting Member");

AND WHEREAS the Sole Voting Member is authorized to hold shares in the Corporation and to exercise the rights attributed thereto, pursuant to Subsection 203(1) of the *Municipal Act*, 2001, SO 2001, c25 ("Act"), but the Corporation is not an Offering Corporation within the meaning ascribed to that term in the *Business Corporations Act*, R.S.O. 1990, c. B.16 ("OBCA");

AND WHEREAS the Corporation is a corporation incorporated and existing under the *Not-for-Profit Corporations Act*, 2010, SO 2010, c.15 ("*Not-for-Profit Corporations Act*");

AND WHEREAS the Council of the City of Hamilton are sitting as representatives of the Sole Voting Member of the Corporation;

NOW THEREFORE the Council of the City of Hamilton, acting in its capacity as representative of the Sole Voting Member of the Corporation, RESOLVES AS FOLLOWS:

1. APPOINTMENT AND REMUNERATION OF AUDITOR

BE IT RESOLVED that the undersigned, being the Sole Voting Member, hereby authorizes the President of the Corporation to appoint an auditor for the Corporation for the 2023 fiscal year at such remuneration as may be fixed by the President of the Corporation, the President of the Corporation being hereby authorized to fix such remuneration.

2. 2023 BUDGET

BE IT RESOLVED that the 2023 budget of the Corporation, a copy of which is attached hereto as Appendix A, as approved by the Board of Directors of the Corporation, is received by the Sole Voting Member.

3. RECEIVE BOARD OF DIRECTORS' RESOLUTIONS

BE IT RESOLVED that the November 30, 2023 Board of Directors' Resolution, a copy of which is attached hereto as Appendix B, is received by the Sole Voting Member.

4. SOLE VOTING MEMBER APPROVAL RE: LINES OF CREDIT

BE IT RESOLVED:

- (i) That the Sole Voting Member approves the Corporation entering into a Line of Credit Agreement with the City of Hamilton, a copy of which is attached hereto as Appendix C, for financial support to an upset limit of Two Million Dollars (\$2,000,000) to be used for certain business operation expenses, together with any necessary ancillary documents and/or agreements;
- (ii) That the Sole Voting Member approves the Corporation entering into a Line of Credit Agreement with the City of Hamilton, a copy of which is attached hereto as Appendix D, for financial support to an upset limit of Two Hundred Fifty Thousand Dollars (\$250,000) to be used for certain business administration expenses, together with any necessary ancillary documents and/or agreements;
- (iii) That the Sole Voting Member approves the Corporation drawing upon the aforementioned line of credit facilities to their respective upset limits and the Treasurer of the Corporation is hereby authorized to request advances from the City of Hamilton as required and at the discretion of the Treasurer, pursuant to the terms and conditions of the respective Line of Credit Agreements; and
- (iv) That the Mayor and City Clerk are hereby authorized and directed to sign and/or dispatch and deliver all other agreements, documents, notices, articles and/or certificates to be signed and/or dispatched or delivered under or in connection with the Direction and Declaration of the Sole Voting Member or to take any action deemed necessary in respect of any of the foregoing.

THE FOREGOING RESOLUTIONS are hereby consented to by the Sole Voting Member of the Corporation entitled to vote on such resolutions and are hereby passed as resolutions of the Corporation pursuant to the *Not-for-Profit Corporations Act*.

DATED as of this 14th day of December 2023.

CITY OF HAMILTON

Per: _____
Andrea Horwath
Mayor

Per: _____
Janet Pilon
Acting City Clerk

**HAMILTON TOURISM DEVELOPMENT CORPORATION
 2023 DRAFT OPERATING BUDGET
 November 30, 2023**

FISCAL PERIOD: January 1 to December 31, 2023

	2023 Draft Budget
Revenue	
Municipal Accommodation Tax Revenue	\$ 1,094,200
Total Revenue	<u>\$ 1,094,200</u>
Expenses	
Software Subscription	\$ 1,190
Professional fees:	
Consulting	5,000
City Staff	27,694
Insurance	3,000
Legal Fees	677
Financial Charges	100
Total Expenses	<u>\$ 37,661</u>
Net Income	<u><u>\$ 1,056,539</u></u>

HAMILTON TOURISM DEVELOPMENT CORPORATION
(the "Corporation")

RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE CORPORATION

1. APPOINTMENT OF OFFICERS

BE IT RESOLVED that the following individuals, having consented to act as officers of the Corporation, are hereby appointed to the offices indicated next to their names, commencing on the date hereof and continuing thereafter until their successors are duly appointed:

- (i) Jason Thorne – President;
- (ii) John Summers – Vice-President; and
- (iii) Shelley Hesmer – Treasurer.

2. APPROVAL OF CORPORATE BY-LAW

BE IT RESOLVED that By-Law No. 1 of the Corporation, a copy of which is attached hereto, is hereby approved and enacted, as of the date hereof, as the sole by-law of the Corporation and continuing thereafter until amended or replaced by the Board of Directors of the Corporation.

3. APPROVAL OF THE 2023 BUDGET

BE IT RESOLVED that the 2023 Budget, a copy of which is attached hereto, be approved and adopted as of the date hereof.

4. SIGNING AUTHORITY RE: CERTAIN AGREEMENTS

BE IT RESOLVED that the President of the Corporation is hereby authorized and directed to execute, on behalf of the Corporation:

- (i) an Operating Agreement between the Corporation and the City of Hamilton, a copy of which is attached hereto, together with any necessary ancillary documents and/or agreements;
- (ii) a Line of Credit Agreement with the City of Hamilton, a copy of which is attached hereto, for financial support to an upset limit of Two Million Dollars (\$2,000,000) to be used for certain business operation expenses, together with any necessary ancillary documents and/or agreements; and
- (iii) a Line of Credit Agreement with the City of Hamilton, a copy of which is attached hereto, for financial support to an upset limit of Two Hundred Fifty

Thousand Dollars (\$250,000) to be used for certain business administration expenses, together with any necessary ancillary documents and/or agreements.

5. MAT RESERVE FUND POLICY

BE IT RESOLVED that the Corporation's MAT Reserve Fund Policy, a copy of which is attached hereto, be approved and adopted as of the date hereof.

6. CONFIRMATORY ACTIONS

BE IT RESOLVED that the officers of the Corporation are, and each acting alone is, hereby authorized to do and perform any and all such acts, including execution of any and all documents and certificates, as such officers shall deem necessary or advisable, to carry out the purposes and intent of the foregoing resolutions.

THE FOREGOING RESOLUTIONS are hereby consented to by the Board of Directors of the Corporation pursuant to the provisions of the *Not-for-Profit Corporations Act* (Ontario).

DATED the 30th day of November 2023.

CITY OF HAMILTON

Tammy Hwang

Craig Cassar

Mike Spadafora

LINE OF CREDIT AGREEMENT - BUSINESS OPERATIONS
(the “**Agreement**”)

THIS AGREEMENT is made as of the ____ day of _____, 2023 (the “**Effective Date**”)

BETWEEN:

CITY OF HAMILTON
(the “**City**”)

-and-

HAMILTON TOURISM DEVELOPMENT CORPORATION
(the “**Borrower**”)

(collectively the “**Parties**” and individually a “**Party**”)

WHEREAS the Borrower is a not-for-profit corporation incorporated pursuant to the *Not-for-Profit Corporations Act, 2010*, SO 2010, c 15., in order to promote tourism and develop tourism products for and within the City of Hamilton;

AND WHEREAS the Borrower desires to obtain from the City a line of credit facility and the City desires to provide to the Borrower a line of credit facility;

AND WHEREAS the Borrower intends to use the line of credit facility to finance certain business activities of the Borrower;

AND WHEREAS City staff report PED20009(c) authorized and directed the Mayor and City Clerk to execute, on behalf of the City, a line of credit agreement between the City and the Borrower, for financial support to an upset limit of Two Million Dollars (\$2,000,000) for the payment of certain business operations expenses incurred by the Borrower;

AND WHEREAS the purpose of this Agreement is to codify the terms and conditions under which the City is prepared to make the aforementioned line of credit facility available to the Borrower.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1

INTERPRETATION

1.1 PREAMBLE. The Parties acknowledge and agree that the statements in the foregoing preamble are true in substance and in fact.

1.2 DEFINED TERMS. All capitalized terms used in this Agreement that are not defined shall have the following meanings:

- (a) “Business Day” means a day that is not a Saturday, a Sunday, a day when the administrative offices of the City are closed, and/or a day considered to be a statutory holiday in the Province of Ontario.
- (b) “Default” or “Event of Default” means the occurrence of any of the events listed in Section 6.1.
- (c) “Governmental Authority” means any federal, provincial, local, municipal or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented by law or by agreement of the Parties with an interest in such dispute.
- (d) “Interest Rate” means the interest payable on the Principal Indebtedness, as further detailed in Section 3.4.
- (e) “line of credit” or “line of credit facility” or “LOC” means the line of credit facility made available to the Borrower by the City pursuant to this Agreement, as more fully described in Article 3.
- (f) “Material Adverse Event” means any circumstance or event that, individually or collectively with other circumstances or events, may reasonably be expected to have an adverse effect on the financial condition or business of the Borrower, as presently conducted or as proposed to be conducted.
- (g) “Maturity Date” means the fifth (5th) anniversary of the Effective Date, unless extended pursuant to the terms and conditions set forth herein.
- (h) “Personal Information” shall have the meaning ascribed to it in the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).
- (i) “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

1.3 CURRENCY. All dollar amounts in this Agreement are stated and shall be paid in Canadian currency.

1.4 SEVERABILITY. If any provision of this Agreement is determined to be void, invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in effect and continue to bind the Parties.

ARTICLE 2

TERM OF AGREEMENT

2.1 TERM. The term of this Agreement shall commence on the Effective Date and remain in effect until December 31, 2027, unless terminated early or extended in accordance with the terms of this Agreement (the “**Term**”). For greater certainty, all of the obligations, covenants, warranties, conditions and agreements of the Borrower pursuant to this Agreement shall survive the termination or expiration of this Agreement until satisfied or until they expire by their nature.

ARTICLE 3

AMOUNT AND TERMS - LINE OF CREDIT

3.1 DESCRIPTION. The City agrees, pursuant to the terms and conditions set forth herein, to provide the Borrower with a line of credit facility up to a maximum amount of Two Million Dollars (\$2,000,000) (the “**LOC**”), representing the maximum aggregate amount of the advances of funds from the LOC (each an “**Advance**”) that may be outstanding from time to time under the LOC (the “**Principal Indebtedness**”), from which the Borrower may draw down, at any time and from time to time during the Term, a principal amount not to exceed at any one time outstanding, as to all such Advances in the aggregate, the Principal Indebtedness.

The Borrower, for value received, hereby pledges to pay to the City the Principal Indebtedness in the manner hereinafter provided, together with interest and any and all other monies which may from time to time be owing hereunder or pursuant hereto.

3.2 PURPOSE. The LOC shall only be used by the Borrower for the payment of certain business operations expenses incurred by the Borrower and shall not be used for any other purposes.

3.3 ACCOUNT OF RECORD. Any record maintained by the City in which the City records the details of the Principal Indebtedness and the amounts re-paid by the Borrower to the City shall constitute *prima facie* evidence of the indebtedness of the Borrower to the City under this Agreement with respect to the Principal Indebtedness and all other amounts owing by the Borrower to the City under this Agreement.

3.4 INTEREST. Interest shall be payable on the Principal Indebtedness at the rate of five and one quarter percent (5.25%) per annum, plus a one quarter percent (0.25%) administrative fee, accrued from day to day, compounded annually and shall be calculated and payable monthly in each year, unless otherwise specified by the City from time to time. Interest at the Interest Rate on all outstanding Advances shall be payable with the then Principal Indebtedness on the Maturity Date.

Interest at the Interest Rate shall accrue on overdue interest and shall be payable on demand by the City.

3.5 BORROWING NOTICES. All Advances shall be made by the City to the Borrower as soon as is practicable following receipt by the City of written request from the Borrower.

3.6 PREPAYMENT. The Borrower may prepay, in whole or in part, the Principal Indebtedness, and all interest accrued on any outstanding Advances, at any time prior to the Maturity Date, without the prior written consent of the City and without payment of premium or penalty.

3.7 REPAYMENT OF OUTSTANDING PRINCIPAL INDEBTEDNESS. The Borrower shall repay the Principal Indebtedness, together with all interest accrued on any outstanding Advances, to the City on the Maturity Date or at such other time as may be specified by the City from time to time.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

4.1 The Borrower hereby represents and warrants to the City, as of the Effective Date, that to the best current actual knowledge of the Borrower:

- (a) the Borrower is a not-for-profit corporation, duly organized and validly existing under the provincial laws of Ontario, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated. The Borrower is duly qualified to conduct business in the Province of Ontario;
- (b) all proceedings required to be taken by or on behalf of the Borrower to authorize the Borrower to execute and deliver this Agreement and to perform the covenants, obligations and agreements of the Borrower hereunder have been duly taken. No consent to the execution and delivery of this Agreement by the Borrower or the performance by the Borrower of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority to which the Borrower is subject or any other Person, other than any such consent which has already been given;

- (c) this Agreement constitutes the valid and legally binding obligation of the Borrower, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity;
- (d) there is no litigation, action, suit, claim, investigation or other proceeding of a material nature by or before any court, tribunal or other governmental agency or Governmental Authority pending or currently threatened against the Borrower that questions the validity of this Agreement or the transactions contemplated herein or that could either individually or in the aggregate have a material and/or adverse effect on the business, operations, assets, conditions, affairs, or prospects of the Borrower, or any Person for whom the Borrower is legally responsible, financially or otherwise;
- (e) the Borrower is not now and has not been subject to any proceeding commenced by or against the Borrower, whether voluntary or involuntary, seeking to have an order for relief entered against the Borrower as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for the Borrower or its assets; and
- (f) no representation or warranty made in this Agreement by the Borrower contains any untrue statement of a material fact or omits to include any material fact necessary to make such representation or warranty not misleading to the City in light of the circumstances in which such representation or warranty is made.

4.2 The Borrower acknowledges and agrees that it shall promptly notify the City of any material change to the representations set out in Section 4.1.

ARTICLE 5 **COVENANTS**

5.1 The Borrower covenants and agrees that during the Term and until all the Principal Indebtedness and/or outstanding interest has been repaid to the City in full, and except as otherwise permitted by the prior written consent of the City, that the following shall apply:

- (a) the Borrower shall remain a valid and existing corporation in accordance with the provincial laws of Ontario and the federal laws of Canada applicable therein;
- (b) the Borrower shall use the funds advanced under the LOC as contemplated by this Agreement for lawful purposes and only in accordance with the terms and conditions set out in this Agreement;
- (c) the Borrower shall pay all amounts owing (including interest, costs and any other applicable charges) under this Agreement;
- (d) the Borrower shall comply with all tax statutes administered by the Ministry of Finance of Ontario and shall file all returns required to be filed under all provincial tax statutes and properly remit all taxes due and payable under such statutes;
- (e) the Borrower shall promptly provide, upon written request from the City, all data, documents and information requested by the City from time to time concerning the Borrower's financial condition and any other documents and/or information as the City may deem necessary in its sole and absolute discretion;
- (f) at any time, the City may conduct an audit, investigation or inquiry in relation to the LOC and the Borrower shall co-operate with the City and provide free access to such staff, documents, books, records and accounts as may be requested by the City;
- (g) the Borrower shall promptly notify the City of the existence or occurrence of any event, which with the passage of time, the giving of notice, or both, would constitute a Default pursuant to this Agreement;
- (h) the Borrower shall promptly notify the City of any event or change in the financial condition of the Borrower which may result in a Material Adverse Event in the financial condition of the Borrower; and
- (i) the Borrower shall promptly notify the City of the occurrence or threatened occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which, if determined adversely, would be a judgment or award against it, and from time to time provide the City with all information requested by the City concerning any such proceedings.

ARTICLE 6 **DEFAULT**

6.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events (each an “**Event of Default**”) shall constitute a default pursuant to this Agreement:

- (a) the failure of the Borrower to pay, when due, any payment of principal and/or interest payable to the City pursuant to this Agreement or any other charge with respect to the Principal Indebtedness, or the amount of any fee or payment required of the Borrower pursuant to this Agreement;
- (b) the failure of the Borrower to observe, perform or comply with any of the terms, warranties, representations, conditions, covenants and/or obligations applicable to the Borrower pursuant to this Agreement;
- (c) if the Borrower makes or has made a false or misleading statement or representation in respect of any matter related to this Agreement, other than in good faith, to the City;
- (d) the occurrence and continuance of any of the following with respect to the Borrower:
 - (i) the voluntary or involuntary filing by it of a petition in bankruptcy or similar proceeding or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee;
 - (ii) an assignment or proposal by it for the benefit of creditors or an admission by the Borrower, in writing, of an inability to pay its debts as they become due;
 - (iii) the entry of a judgment of insolvency against it by any Governmental Authority;
 - (iv) the Borrower becomes insolvent;
 - (v) the Borrower terminates all or substantially all of its business or operations; or
 - (vi) the Borrower takes any steps to dissolve, liquidate or wind itself up.

6.2 ACCELERATION AND TERMINATION OF RIGHTS. If the Borrower commits an Event of Default or any other event which causes the City, acting in good faith, to deem itself at risk, then at the option of the City all monies owing pursuant to this Agreement shall immediately become due and payable to the City upon demand and the City shall not be obligated to make any further Advances or disbursements until such Event of Default has been remedied to the satisfaction of the City in its sole discretion.

6.3 REMEDY. If the Borrower commits an Event of Default then the City, in its sole discretion, may permit the Borrower to commence any necessary action to remedy the Event of Default and/or perform any such covenants or agreements, all in a manner deemed fit by the City. If the City permits any such action by the Borrower to remedy an Event of Default then the Borrower shall have five (5) Business Days from the date the City provided consent to commence any such action and the Borrower shall remedy the Event of Default within a time period to be determined by the City in its sole discretion. Any expenses incurred by the City in respect of the foregoing shall be an indebtedness included in the Principal Indebtedness.

If the Borrower fails to commence or complete the remedy in accordance with this Section then all monies owing pursuant to this Agreement shall immediately become due and payable to the City upon demand.

6.4 REMEDIES CULULATIVE. The Parties acknowledge and agree that the rights and remedies of the City pursuant to this Agreement are cumulative and are in addition to any rights or remedies provided for under applicable law or equity. Any single or partial exercise by the City of any right or remedy shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the City may be lawfully entitled.

ARTICLE 7 **ACCOUNTABILITY**

7.1 FINANCIAL CONTROLS. The Borrower shall ensure that there are adequate financial controls in place to ensure the accuracy, completeness and auditability of the Borrower's financial reporting.

7.2 ACCESS TO RECORDS. The Borrower shall, on forty-eight (48) hours prior written notice from the City, give the City free and unrestricted access to such staff, documents, books, records and accounts as may be required by the City, for the purpose of verifying compliance with this Agreement and proper use of the LOC.

7.3 AUDIT OR INVESTIGATION. At any time, the City, or any representative of the City, may conduct an audit, investigation or inquiry in relation to the LOC and the Borrower shall cooperate with the City and provide free and unrestricted access to such staff, documents, books, records and accounts as may be requested by the City.

In any event, the Borrower shall provide to the City, within sixty (60) days of receiving a written request from the City, an audited financial statement respecting the expenditure of all Advances made to the Borrower pursuant to this Agreement.

7.4 RECORD MAINTENANCE. The Borrower shall keep and maintain:

- (a) all financial records (including invoices) relating to the Principal Indebtedness in a manner consistent with generally accepted accounting practices; and
- (b) all non-financial documents and records relating to the Principal Indebtedness.

ARTICLE 8

INSURANCE AND INDEMNITY

8.1 INSURANCE REQUIREMENTS. During the Term the Borrower shall obtain and maintain, at its own expense, commercial general liability insurance in an amount and with such coverage as may be specified by the City from time to time.

8.2 PROOF OF INSURANCE. The Borrower shall provide the City with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, before the execution of this Agreement by the City, and renewal replacements on or before the expiry of the insurance. The Borrower shall obtain the insurance policies described in this Agreement with an insurance company acceptable to the City, and its commercial general liability insurance policy shall be endorsed to include the City of Hamilton as an additional insured and provide 30 days' written notice of cancellation or material change. Certificate holder for the City will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 Attn: Director of Tourism and Culture. Upon the request of the City, a copy of each insurance policy shall be made available to it.

8.3 INDEMNIFICATION. The Borrower shall defend, indemnify and save harmless the City and its employees, elected officials, representatives and agents (the "**Indemnified Parties**") from and against any and all claims, actions, causes of action, proceedings, interests, demands, losses, costs (including legal fees and expenses), assessments, fees, expenses, injuries, charges, damages, liabilities, and obligations of any kind that may be sustained, incurred, brought, asserted, prosecuted or threatened to be brought or prosecuted in any manner against any of the Indemnified Parties in any way arising out of or in connection with this Agreement or in connection with the operations, activities or business of the Borrower, whether arising directly or indirectly, or due to the result of wilful misconduct or negligent act, omission or delay, on the part of the Borrower, its employees, contractors, agents or voluntary workers, other than any claim arising directly from the gross negligence or wilful misconduct of the Indemnified Parties.

ARTICLE 9
GENERAL CONTRACT PROVISIONS

9.1 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

9.2 LANGUAGE. The Parties have required that this Agreement be drawn up in the English language.

9.3 NOTICE. All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by overnight courier; or transmitted by facsimile or email with the word "NOTICE" written in the subject line. Notices must be sent to a Party at the following addresses, or to such other place as the Party may subsequently designate for its receipt of notices in accordance with this Section:

To City of Hamilton:

Attention: Director, Tourism and Culture Division
Department: Planning and Economic Development
Office Phone No.: +1-905-546-2424

Mailing Address:

City of Hamilton
Tourism and Culture Division
P.O. Box 2040
Hamilton, Ontario L8P 4Y5

With a copy to:

Attention: City Clerk
Department: Corporate Services, City Clerk's Office
Phone No.: +1-905-546-2424 Ext. 4408
Email: Clerk@hamilton.ca

Mailing Address:

City of Hamilton
City Clerk
P.O. Box 2040
Hamilton, Ontario L8P 4Y5

To the Borrower:

Attention: Treasurer, Hamilton Tourism Development Corporation
Office Phone No.: +1-905-546-2424 Ext. 4157

Email: Shelley.Hesmer@hamilton.ca

Mailing Address:

City of Hamilton

Treasurer, Hamilton Tourism Development Corporation

P.O. Box 2040

Hamilton, Ontario L8P 4Y5

9.4 AMENDMENT AND WAIVER. This Agreement may be amended, supplemented or modified only by written agreement signed by each Party. No covenant or condition in this Agreement or Event of Default shall be deemed to be waived or consented to by the City unless such waiver or consent is in writing and signed by an authorized representative of the City. Any waiver granted by the City shall be effective for the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the City pursuant to this Agreement. No waiver of a provision of this Agreement shall operate as a waiver of any other provision or of the same provision on a future occasion. The City may impose any terms and/or conditions on any consent the City may grant to the Borrower pursuant to this Agreement.

9.5 COMPLIANCE WITH APPLICABLE LAWS. The Borrower acknowledges and agrees that it shall comply in all respects with all applicable legal requirements governing its duties, obligations and practices respecting its obligations under this Agreement.

9.6 RELATIONSHIP OF THE PARTIES. The relationship of the Borrower and City under this Agreement is that of independent parties, each acting in its own best interests. Notwithstanding anything in this Agreement to the contrary, this Agreement does not constitute and shall not be construed as constituting a partnership, joint venture or agency between the City and the Borrower. No Party shall have any right to obligate or bind the other Party in any manner whatsoever.

9.7 ASSIGNMENT. Neither Party may assign this Agreement nor the rights granted herein without the express written consent of the other Party. Any assignment that fails to comply with this provision shall be deemed invalid.

9.8 BINDING AGREEMENT. The Parties acknowledge and agree that this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms and conditions contained herein.

9.9 ENUREMENT. The Parties acknowledge that the terms and conditions of this Agreement shall be binding upon, and enure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants,

conditions or provisions contained herein nor any standing or authority to enforce the terms and conditions of this Agreement.

9.10 CONFLICT OF INTEREST. The Parties shall not act in any case where there may be any conflict of interest between them. Immediately upon becoming aware of a conflict of interest situation or a potential conflict of interest situation, the affected Party shall notify the other Party in writing, and both Parties shall forth-with work collaboratively to remove the cause(s) of the conflict of interest.

9.11 COUNTERPARTS. This Agreement and any other document delivered in connection herewith may be executed and delivered in counterparts and by scan or facsimile and each such counterpart, taken together, will constitute one and the same agreement.

9.12 MFIPPA REQUIRED DISCLOSURE. The disclosure of information relating to this Agreement and the Agreement itself are governed in accordance with the disclosure requirements of the applicable laws, including the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M56 (“MFIPPA”). In accordance with MFIPPA, this will notify the Borrower that all correspondence, documentation and information provided to the City or its employees, agents or representatives by the Borrower in connection with or arising out of this Agreement shall become a record of the City. City records are subject to the provisions of MFIPPA, and the City’s obligations under MIFPPA may require records to be released. The Borrower acknowledges that the City is subject to the collection, use and disclosure obligations set out in MFIPPA and that this Agreement is therefore subject to MFIPPA. The Borrower agrees to comply with all applicable privacy legislation, including MFIPPA and the *Personal Information and Electronic Documents Act*, 2000, c.5 (“PIPEDA”).

9.13 DISCLOSURE NOTIFICATION. In accordance with MFIPPA, this will notify the Borrower that any Personal Information that the Borrower provides to the City during the Term is being collected under the authority of the *Municipal Act* (Ontario).

9.14 MFIPPA PUBLIC RECORD. The Borrower’s name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to the City of Hamilton Council and accordingly may become part of the public record.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

CITY OF HAMILTON

By: _____

Name: A. Horwath

Title: Mayor

By: _____

Name: J. Pilon

Title: Acting City Clerk

HAMILTON TOURISM DEVELOPMENT CORPORATION

By: _____

Name: J. Thorne

Title: President

I have authority to bind the corporation.

LINE OF CREDIT AGREEMENT - ADMINISTRATIVE
(the “**Agreement**”)

THIS AGREEMENT is made as of the ____ day of _____, 2023 (the “**Effective Date**”)

BETWEEN:

CITY OF HAMILTON
(the “**City**”)

-and-

HAMILTON TOURISM DEVELOPMENT CORPORATION
(the “**Borrower**”)

(collectively the “**Parties**” and individually a “**Party**”)

WHEREAS the Borrower is a not-for-profit corporation incorporated pursuant to the *Not-for-Profit Corporations Act, 2010*, SO 2010, c 15., in order to promote tourism and develop tourism products for and within the City of Hamilton;

AND WHEREAS the Borrower desires to obtain from the City a line of credit facility and the City desires to provide to the Borrower a line of credit facility;

AND WHEREAS the Borrower intends to use the line of credit facility to finance certain administrative expenses of the Borrower incurred by the Borrower in conducting its business;

AND WHEREAS City staff report PED20009(c) authorized and directed the Mayor and City Clerk to execute, on behalf of the City, a line of credit agreement between the City and the Borrower, for financial support to an upset limit of \$250,000 for the Borrower’s start-up administrative expenses;

AND WHEREAS the purpose of this Agreement is to codify the terms and conditions under which the City is prepared to make the aforementioned line of credit facility available to the Borrower.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1

INTERPRETATION

1.1 PREAMBLE. The Parties acknowledge and agree that the statements in the foregoing preamble are true in substance and in fact.

1.2 DEFINED TERMS. All capitalized terms used in this Agreement that are not defined shall have the following meanings:

- (a) “Business Day” means a day that is not a Saturday, a Sunday, a day when the administrative offices of the City are closed, and/or a day considered to be a statutory holiday in the Province of Ontario.
- (b) “Default” or “Event of Default” means the occurrence of any of the events listed in Section 6.1.
- (c) “Governmental Authority” means any federal, provincial, local, municipal or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented by law or by agreement of the Parties with an interest in such dispute.
- (d) “Interest Rate” means the interest payable on the Principal Indebtedness, as further detailed in Section 3.4.
- (e) “line of credit” or “line of credit facility” or “LOC” means the line of credit facility made available to the Borrower by the City pursuant to this Agreement, as more fully described in Article 3.
- (f) “Material Adverse Event” means any circumstance or event that, individually or collectively with other circumstances or events, may reasonably be expected to have an adverse effect on the financial condition or business of the Borrower, as presently conducted or as proposed to be conducted.
- (g) “Maturity Date” means the fifth (5th) anniversary of the Effective Date, unless extended pursuant to the terms and conditions set forth herein.
- (h) “Personal Information” shall have the meaning ascribed to it in the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).
- (i) “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

1.3 CURRENCY. All dollar amounts in this Agreement are stated and shall be paid in Canadian currency.

1.4 SEVERABILITY. If any provision of this Agreement is determined to be void, invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in effect and continue to bind the Parties.

ARTICLE 2

TERM OF AGREEMENT

2.1 TERM. The term of this Agreement shall commence on the Effective Date and remain in effect until December 31, 2027, unless terminated early or extended in accordance with the terms of this Agreement (the “**Term**”). For greater certainty, all of the obligations, covenants, warranties, conditions and agreements of the Borrower pursuant to this Agreement shall survive the termination or expiration of this Agreement until satisfied or until they expire by their nature.

ARTICLE 3

AMOUNT AND TERMS - LINE OF CREDIT

3.1 DESCRIPTION. The City agrees, pursuant to the terms and conditions set forth herein, to provide the Borrower with a line of credit facility up to a maximum amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the “**LOC**”), representing the maximum aggregate amount of the advances of funds from the LOC (each an “**Advance**”) that may be outstanding from time to time under the LOC (the “**Principal Indebtedness**”), from which the Borrower may draw down, at any time and from time to time during the Term, a principal amount not to exceed at any one time outstanding, as to all such Advances in the aggregate, the Principal Indebtedness.

The Borrower, for value received, hereby pledges to pay to the City the Principal Indebtedness in the manner hereinafter provided, together with interest and any and all other monies which may from time to time be owing hereunder or pursuant hereto.

3.2 PURPOSE. The LOC shall only be used by the Borrower for the payment of certain administrative expenses incurred by the Borrower in conducting its business, including without limitation: bookkeeping services, fees (banking, audit, legal, insurance), computer software and other supplies, and shall not be used for any other purposes.

3.3 ACCOUNT OF RECORD. Any record maintained by the City in which the City records the details of the Principal Indebtedness and the amounts re-paid by the Borrower to the City shall constitute *prima facie* evidence of the indebtedness of the Borrower to the City under this Agreement with respect to the Principal Indebtedness and all other amounts owing by the Borrower to the City under this Agreement.

3.4 INTEREST. Interest shall be payable on the Principal Indebtedness at the rate of five and one quarter percent (5.25%) per annum, plus a one quarter percent (0.25%) administrative fee, accrued from day to day, compounded annually and shall be calculated and payable monthly in each year, unless otherwise specified by the City from time to time. Interest at the Interest Rate on all outstanding Advances shall be payable with the then Principal Indebtedness on the Maturity Date.

Interest at the Interest Rate shall accrue on overdue interest and shall be payable on demand by the City.

3.5 BORROWING NOTICES. All Advances shall be made by the City to the Borrower as soon as is practicable following receipt by the City of written request from the Borrower.

3.6 PREPAYMENT. The Borrower may prepay, in whole or in part, the Principal Indebtedness, and all interest accrued on any outstanding Advances, at any time prior to the Maturity Date, without the prior written consent of the City and without payment of premium or penalty.

3.7 REPAYMENT OF OUTSTANDING PRINCIPAL INDEBTEDNESS. The Borrower shall repay the Principal Indebtedness, together with all interest accrued on any outstanding Advances, to the City on the Maturity Date or at such other time as may be specified by the City from time to time.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

4.1 The Borrower hereby represents and warrants to the City, as of the Effective Date, that to the best current actual knowledge of the Borrower:

- (a) the Borrower is a not-for-profit corporation, duly organized and validly existing under the provincial laws of Ontario, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated. The Borrower is duly qualified to conduct business in the Province of Ontario;
- (b) all proceedings required to be taken by or on behalf of the Borrower to authorize the Borrower to execute and deliver this Agreement and to perform the covenants, obligations and agreements of the Borrower hereunder have been duly taken. No consent to the execution and delivery of this Agreement by the Borrower or the performance by the Borrower of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority to which the

Borrower is subject or any other Person, other than any such consent which has already been given;

- (c) this Agreement constitutes the valid and legally binding obligation of the Borrower, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity;
- (d) there is no litigation, action, suit, claim, investigation or other proceeding of a material nature by or before any court, tribunal or other governmental agency or Governmental Authority pending or currently threatened against the Borrower that questions the validity of this Agreement or the transactions contemplated herein or that could either individually or in the aggregate have a material and/or adverse effect on the business, operations, assets, conditions, affairs, or prospects of the Borrower, or any Person for whom the Borrower is legally responsible, financially or otherwise;
- (e) the Borrower is not now and has not been subject to any proceeding commenced by or against the Borrower, whether voluntary or involuntary, seeking to have an order for relief entered against the Borrower as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief or debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for the Borrower or its assets; and
- (f) no representation or warranty made in this Agreement by the Borrower contains any untrue statement of a material fact or omits to include any material fact necessary to make such representation or warranty not misleading to the City in light of the circumstances in which such representation or warranty is made.

4.2 The Borrower acknowledges and agrees that it shall promptly notify the City of any material change to the representations set out in Section 4.1.

ARTICLE 5 **COVENANTS**

5.1 The Borrower covenants and agrees that during the Term and until all the Principal Indebtedness and/or outstanding interest has been repaid to the City in full,

and except as otherwise permitted by the prior written consent of the City, that the following shall apply:

- (a)** the Borrower shall remain a valid and existing corporation in accordance with the provincial laws of Ontario and the federal laws of Canada applicable therein;
- (b)** the Borrower shall use the funds advanced under the LOC as contemplated by this Agreement for lawful purposes and only in accordance with the terms and conditions set out in this Agreement;
- (c)** the Borrower shall pay all amounts owing (including interest, costs and any other applicable charges) under this Agreement;
- (d)** the Borrower shall comply with all tax statutes administered by the Ministry of Finance of Ontario and shall file all returns required to be filed under all provincial tax statutes and properly remit all taxes due and payable under such statutes;
- (e)** the Borrower shall promptly provide, upon written request from the City, all data, documents and information requested by the City from time to time concerning the Borrower's financial condition and any other documents and/or information as the City may deem necessary in its sole and absolute discretion;
- (f)** at any time, the City may conduct an audit, investigation or inquiry in relation to the LOC and the Borrower shall co-operate with the City and provide free access to such staff, documents, books, records and accounts as may be requested by the City;
- (g)** the Borrower shall promptly notify the City of the existence or occurrence of any event, which with the passage of time, the giving of notice, or both, would constitute a Default pursuant to this Agreement;
- (h)** the Borrower shall promptly notify the City of any event or change in the financial condition of the Borrower which may result in a Material Adverse Event in the financial condition of the Borrower; and
- (i)** the Borrower shall promptly notify the City of the occurrence or threatened occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which, if determined adversely, would be a judgment or award against it, and from time to time provide the City with all information requested by the City concerning any such proceedings.

ARTICLE 6
DEFAULT

6.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events (each an “**Event of Default**”) shall constitute a default pursuant to this Agreement:

- (a) the failure of the Borrower to pay, when due, any payment of principal and/or interest payable to the City pursuant to this Agreement or any other charge with respect to the Principal Indebtedness, or the amount of any fee or payment required of the Borrower pursuant to this Agreement;
- (b) the failure of the Borrower to observe, perform or comply with any of the terms, warranties, representations, conditions, covenants and/or obligations applicable to the Borrower pursuant to this Agreement;
- (c) if the Borrower makes or has made a false or misleading statement or representation in respect of any matter related to this Agreement, other than in good faith, to the City;
- (d) the occurrence and continuance of any of the following with respect to the Borrower:
 - (i) the voluntary or involuntary filing by it of a petition in bankruptcy or similar proceeding or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee;
 - (ii) an assignment or proposal by it for the benefit of creditors or an admission by the Borrower, in writing, of an inability to pay its debts as they become due;
 - (iii) the entry of a judgment of insolvency against it by any Governmental Authority;
 - (iv) the Borrower becomes insolvent;
 - (v) the Borrower terminates all or substantially all of its business or operations; or
 - (vi) the Borrower takes any steps to dissolve, liquidate or wind itself up.

6.2 ACCELERATION AND TERMINATION OF RIGHTS. If the Borrower commits an Event of Default or any other event which causes the City, acting in good faith, to deem itself at risk, then at the option of the City all monies owing pursuant to this Agreement

shall immediately become due and payable to the City upon demand and the City shall not be obligated to make any further Advances or disbursements until such Event of Default has been remedied to the satisfaction of the City in its sole discretion.

6.3 REMEDY. If the Borrower commits an Event of Default then the City, in its sole discretion, may permit the Borrower to commence any necessary action to remedy the Event of Default and/or perform any such covenants or agreements, all in a manner deemed fit by the City. If the City permits any such action by the Borrower to remedy an Event of Default then the Borrower shall have five (5) Business Days from the date the City provided consent to commence any such action and the Borrower shall remedy the Event of Default within a time period to be determined by the City in its sole discretion. Any expenses incurred by the City in respect of the foregoing shall be an indebtedness included in the Principal Indebtedness.

If the Borrower fails to commence or complete the remedy in accordance with this Section then all monies owing pursuant to this Agreement shall immediately become due and payable to the City upon demand.

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ARTICLE 7 **ACCOUNTABILITY**

7.1 FINANCIAL CONTROLS. The Borrower shall ensure that there are adequate financial controls in place to ensure the accuracy, completeness and auditability of the Borrower's financial reporting.

7.2 ACCESS TO RECORDS. The Borrower shall, on forty-eight (48) hours prior written notice from the City, give the City free and unrestricted access to such staff, documents, books, records and accounts as may be required by the City, for the purpose of verifying compliance with this Agreement and proper use of the LOC.

7.3 AUDIT OR INVESTIGATION. At any time, the City, or any representative of the City, may conduct an audit, investigation or inquiry in relation to the LOC and the Borrower shall cooperate with the City and provide free and unrestricted access to such staff, documents, books, records and accounts as may be requested by the City.

In any event, the Borrower shall provide to the City, within sixty (60) days of receiving a written request from the City, an audited financial statement respecting the expenditure of all Advances made to the Borrower pursuant to this Agreement.

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- (a) all financial records (including invoices) relating to the Principal Indebtedness in a manner consistent with generally accepted accounting practices; and
- (b) all non-financial documents and records relating to the Principal Indebtedness.

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8.2 PROOF OF INSURANCE. The Borrower shall provide the City with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, before the execution of this Agreement by the City, and renewal replacements on or before the expiry of the insurance. The Borrower shall obtain the insurance policies described in this Agreement with an insurance company acceptable to the City, and its commercial general liability insurance policy shall be endorsed to include the City of Hamilton as an additional insured and provide 30 days' written notice of cancellation or material change. Certificate holder for the City will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 Attn: Director of Tourism and Culture. Upon the request of the City, a copy of each insurance policy shall be made available to it.

8.3 INDEMNIFICATION. The Borrower shall defend, indemnify and save harmless the City and its employees, elected officials, representatives and agents (the "**Indemnified Parties**") from and against any and all claims, actions, causes of action, proceedings, interests, demands, losses, costs (including legal fees and expenses), assessments, fees, expenses, injuries, charges, damages, liabilities, and obligations of any kind that may be sustained, incurred, brought, asserted, prosecuted or threatened to be brought or prosecuted in any manner against any of the Indemnified Parties in any way arising out of or in connection with this Agreement or in connection with the operations, activities or business of the Borrower, whether arising directly or indirectly, or due to the result of wilful misconduct or negligent act, omission or delay, on the part of the Borrower, its employees, contractors, agents or voluntary workers, other than any claim arising directly from the gross negligence or wilful misconduct of the Indemnified Parties.

ARTICLE 9
GENERAL CONTRACT PROVISIONS

9.1 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

9.2 LANGUAGE. The Parties have required that this Agreement be drawn up in the English language.

9.3 NOTICE. All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by overnight courier; or transmitted by facsimile or email with the word "NOTICE" written in the subject line. Notices must be sent to a Party at the following addresses, or to such other place as the Party may subsequently designate for its receipt of notices in accordance with this Section:

To City of Hamilton:

Attention: Director, Tourism and Culture Division
Department: Planning and Economic Development
Office Phone No.: +1-905-546-2424

Mailing Address:

City of Hamilton
Tourism and Culture Division
P.O. Box 2040
Hamilton, Ontario L8P 4Y5

With a copy to:

Attention: City Clerk
Department: Corporate Services, City Clerk's Office
Phone No.: +1-905-546-2424 Ext. 4408
Email: Clerk@hamilton.ca

Mailing Address:

City of Hamilton
City Clerk
P.O. Box 2040
Hamilton, Ontario L8P 4Y5

To the Borrower:

Attention: Treasurer, Hamilton Tourism Development Corporation
Office Phone No.: +1-905-546-2424 Ext. 4157

Email: Shelley.Hesmer@hamilton.ca

Mailing Address:

City of Hamilton

Treasurer, Hamilton Tourism Development Corporation

P.O. Box 2040

Hamilton, Ontario L8P 4Y5

9.4 AMENDMENT AND WAIVER. This Agreement may be amended, supplemented or modified only by written agreement signed by each Party. No covenant or condition in this Agreement or Event of Default shall be deemed to be waived or consented to by the City unless such waiver or consent is in writing and signed by an authorized representative of the City. Any waiver granted by the City shall be effective for the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the City pursuant to this Agreement. No waiver of a provision of this Agreement shall operate as a waiver of any other provision or of the same provision on a future occasion. The City may impose any terms and/or conditions on any consent the City may grant to the Borrower pursuant to this Agreement.

9.5 COMPLIANCE WITH APPLICABLE LAWS. The Borrower acknowledges and agrees that it shall comply in all respects with all applicable legal requirements governing its duties, obligations and practices respecting its obligations under this Agreement.

9.6 RELATIONSHIP OF THE PARTIES. The relationship of the Borrower and City under this Agreement is that of independent parties, each acting in its own best interests. Notwithstanding anything in this Agreement to the contrary, this Agreement does not constitute and shall not be construed as constituting a partnership, joint venture or agency between the City and the Borrower. No Party shall have any right to obligate or bind the other Party in any manner whatsoever.

9.7 ASSIGNMENT. Neither Party may assign this Agreement nor the rights granted herein without the express written consent of the other Party. Any assignment that fails to comply with this provision shall be deemed invalid.

9.8 BINDING AGREEMENT. The Parties acknowledge and agree that this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms and conditions contained herein.

9.9 ENUREMENT. The Parties acknowledge that the terms and conditions of this Agreement shall be binding upon, and enure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants,

conditions or provisions contained herein nor any standing or authority to enforce the terms and conditions of this Agreement.

9.10 CONFLICT OF INTEREST. The Parties shall not act in any case where there may be any conflict of interest between them. Immediately upon becoming aware of a conflict of interest situation or a potential conflict of interest situation, the affected Party shall notify the other Party in writing, and both Parties shall forth-with work collaboratively to remove the cause(s) of the conflict of interest.

9.11 COUNTERPARTS. This Agreement and any other document delivered in connection herewith may be executed and delivered in counterparts and by scan or facsimile and each such counterpart, taken together, will constitute one and the same agreement.

9.12 MFIPPA REQUIRED DISCLOSURE. The disclosure of information relating to this Agreement and the Agreement itself are governed in accordance with the disclosure requirements of the applicable laws, including the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M56 (“MFIPPA”). In accordance with MFIPPA, this will notify the Borrower that all correspondence, documentation and information provided to the City or its employees, agents or representatives by the Borrower in connection with or arising out of this Agreement shall become a record of the City. City records are subject to the provisions of MFIPPA, and the City’s obligations under MFIPPA may require records to be released. The Borrower acknowledges that the City is subject to the collection, use and disclosure obligations set out in MFIPPA and that this Agreement is therefore subject to MFIPPA. The Borrower agrees to comply with all applicable privacy legislation, including MFIPPA and the *Personal Information and Electronic Documents Act*, 2000, c.5 (“PIPEDA”).

9.13 DISCLOSURE NOTIFICATION. In accordance with MFIPPA, this will notify the Borrower that any Personal Information that the Borrower provides to the City during the Term is being collected under the authority of the *Municipal Act* (Ontario).

9.14 MFIPPA PUBLIC RECORD. The Borrower’s name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to the City of Hamilton Council and accordingly may become part of the public record.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

CITY OF HAMILTON

By: _____

Name: A. Horwath

Title: Mayor

By: _____

Name: J. Pilon

Title: Acting City Clerk

HAMILTON TOURISM DEVELOPMENT CORPORATION

By: _____

Name: J. Thorne

Title: President

I have authority to bind the corporation.