

MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT made this 26th day of July, 2006.

B E T W E E N:

HAMILTON REALTY CAPITAL INC., a corporation incorporated under the laws of the Province of Ontario (the "Corporation"),

-and-

CITY OF HAMILTON, a body corporate incorporated under the City of Hamilton Act (the "City").

WHEREAS the Corporation, the City and FH Investco Inc. are parties to that certain unanimous stakeholders' agreement made as of the date hereof (the "Unanimous Stakeholders' Agreement");

AND WHEREAS pursuant to the Unanimous Stakeholders' Agreement, the Corporation agreed to retain the City to provide management services to the Corporation as more particularly described herein, and the City agreed to provide such services;

AND WHEREAS all capitalized terms not otherwise defined herein shall have the meanings given thereto in the Unanimous Stakeholders' Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties hereto to each of the other parties hereto (the receipt and sufficiency of which are hereby acknowledged), it is agreed between the parties hereto as follows:

1. Management Services

- (a) The Corporation hereby retains the City, and the City hereby agrees to be so retained by the Corporation, to provide the services described in Schedule A attached hereto (the "Management Services").
- (b) The City agrees that the Management Services will be provided on behalf of the City by that individual or individuals (the "Designated Manager") to be designated by the City from time to time. Until otherwise designated by the City in accordance with the terms of this Agreement, the Designated Manager shall be Gord Moodie.
- (c) The City shall act, and shall cause the Designated Manager to act, diligently, faithfully and in an honest manner in the performance of the Management Services.
- (d) The City shall cause the Designated Manager to devote such time as is reasonably required to perform the Management Services and to meet the objectives set forth in the Unanimous Stakeholders' Agreement of rehabilitating the lands and

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buildings in the Redevelopment zone in conformity with the Community Improvement Plan.

- (e) This Agreement and the appointment of the Designated Manager hereunder shall not preclude the City from providing services to others, whether in the nature of the Management Services, or otherwise in furtherance of the Community Improvement Plan.

2. Term

This Agreement shall remain in effect so long as the Unanimous Stakeholders' Agreement is in effect unless earlier terminated in accordance with the provisions of Paragraph 7 hereof.

3. Fees

- (a) In consideration of the provisions of the Management Services, the Corporation shall pay to the City a monthly fee in an amount not to exceed Four Thousand Dollars (\$4,000.00) per month, plus G.S.T., payable in arrears on the 15th day of each month, with the first such monthly payment to be due and payable on the 15th day of the month immediately following execution of this Agreement, pro-rated as necessary for the number of days less than 31 days between the date of execution of this Agreement and the date for payment.
- (b) The City shall invoice the Corporation on or before the 10th day of each month for the fee payable in respect of the immediately preceding month.
- (c) The City shall reimburse the Designated Manager out of the amounts referred to in paragraph 3(a) for all expenses reasonably incurred by the Designated Manager, in the performance of the Management Services, including without limitation, all travel and promotional expenses. The Designated Manager shall provide to the City proper receipts for all such reimbursable expenses.
- (d) The City agrees that it will timely file all tax and other returns and pay all income taxes, goods and services taxes and other taxes or amounts payable by it as a result of the fees earned hereunder and hereby agrees to indemnify and hold harmless the Corporation from and against any all claims, demands, suits, losses, cost and other proceedings which the Corporation may suffer or incur arising from the provision of Management Services by the City pursuant to the terms of this Agreement.

4. Office Premises

During the term of this Agreement, the Corporation, if it deems necessary in its sole discretion, agrees to:

- (a) obtain and maintain suitable office premises (the "office") for the Designated Manager within the Redevelopment Zone;

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- (b) obtain and maintain all equipment reasonably required by the Designated Manager for the operation of any such office including without limitation telephones, computer hardware and software and office supplies; and
- (c) provide such full or part-time support staff for such office as is reasonably required from time to time by the Designated Manager in the performance of the Management Services.

5. Replacement of Designated Manager at Request of the Corporation

- (a) The Corporation shall have the right, upon written notice to the City, at any time during the term of this Agreement to require that the City appoint a replacement Designated Manager to replace the then-designated Designated Manager if the Corporation has just cause. For the purposes of this Agreement "just cause" shall mean theft, fraud or dishonesty by the Designated Manager involving the property, business or affairs of the Corporation which results in material harm to the Corporation or the Corporation's property.
- (b) Within thirty (30) days of receipt of the notice referred to in Subparagraph 5(a) above, the City shall appoint a new Designated Manager to perform the Management Services.

6. Termination

This Agreement shall terminate upon the occurrence of any of the following events:

- (a) upon termination or expiry of the Unanimous Stakeholders' Agreement;
- (b) for any reason upon thirty (30) days prior written notice by one party to the other of them;
- (c) at the option of the Corporation if the City fails to comply with any obligation to be observed by it pursuant to the terms of this Agreement and such failure to comply is not cured within thirty (30) days of written notice from the Corporation to the City;
- (d) at the option of the City if the Corporation fails to comply with any obligation to be observed by it pursuant to the terms of this Agreement and such failure to comply is not cured within thirty (30) days of written notice from the City to the Corporation; or
- (e) if the Corporation commits an act of bankruptcy, becomes insolvent or makes a proposal to its creditors within the meaning of the *Bankruptcy and Insolvency Act* (Canada) (or any successor legislation thereto), if a petition in bankruptcy is filed against the Corporation and is not discharged or disputed bona fide within three (3) days of such filing or if a receiver or other custodian (permanent or temporary) is appointed by private instrument or by court order over the assets of the Corporation, or if an execution or similar process is levied against any of the assets of the Corporation, or if distress or other analogous process is made against

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any of the assets of the Corporation or any steps are taken to wind up or dissolve the Corporation.

Upon termination or expiry of this Agreement, the rights and obligations of the parties hereunder shall cease except for the provisions of Paragraph 6 of this Agreement which shall survive the expiry or termination of this Agreement.

7. **General**

- (a) The parties acknowledge and agree that the City and the Corporation are independent contractors and no partnership, joint venture, agency or employment is created or intended to be created by this Agreement. The City agrees that it has no authority to bind or to attempt to bind the Corporation in any manner or form whatsoever or to assume or to incur any obligation or responsibility for or on behalf of or in the name of the Corporation, except as otherwise provided in the Unanimous Stakeholders' Agreement.
- (b) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereto attorn to the exclusive jurisdiction of the Courts of the Province of Ontario.
- (c) If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected nor impaired but shall be enforced in accordance with their terms.
- (d) This Agreement and the Unanimous Stakeholders' Agreement constitute the entire agreement between the parties hereto and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. No modification or amendment to this Agreement may be made unless agreed to by the parties hereto in writing.
- (e) This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.
- (f) This Agreement may be transmitted by facsimile machine or such other similar device and the reproduction of signatures by facsimile machine or such similar device will be treated as binding as if original. Each party hereto so transmitting this Agreement undertakes to provide each other party hereto a copy of this Agreement bearing its original signature forthwith upon demand.
- (g) The parties hereto covenant and agree to execute such instruments or other documents and to take such actions as they may deem necessary or desirable to give full effect to the terms and conditions of this Agreement.

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(h) All notices, requests, demands or other communications (collectively "Notices") by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery, by facsimile or other electronic transmission or by registered mail (postage prepaid), addressed to such other party or delivered to such other party as follows:

(i) If to the Corporation at:

96 Wellington Street West
22nd Floor
Toronto, ON M5J 2N7
Facsimile No. 416-947-0149

Attention: Mr. Richard Abboud

(ii) If to the City at:

1 James St. S., 8th Floor
Hamilton, Ontario L8P 4R5
Facsimile No. (905) 546-4107

Attention: Ronald M. Marini, Director

with a copy to:


Feltmate Delibato Heagle LLP
200 – 3600 Billings Court
Burlington, ON L7N 3N6
Facsimile No. 905.639.8017

Attention: Ronald J. Weston

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or at such other address as may be given by any of them to the others in writing from time to time, and such Notices shall be deemed to have been received when delivered, one (1) day following the day of transmission or, if mailed, three (3) days following the day of the mailing thereof; provided that if any such Notice shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such Notice shall be deemed to have been received three (3) days following the resumption of normal mail service.


IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.


HAMILTON REALTY CAPITAL INC.

Per: _____
Name: Richard Abboud
Title: President
(I have the authority to bind the Corporation)

CITY OF HAMILTON

Per:  _____ c/s
Name: Terry Whitehead
A Mayor, City of Hamilton

Per:  _____ c/s
Name: Kevin C. Christenson
Clerk, City of Hamilton

OFFICE OF THE CLERK
APPROVED BY COUNCIL
DATE July 12, 2006
REPORT CAW 06-016 ITEM 12
IN 20 YEAR/FILE 2006/4492

SCHEDULE A

Management Services

The Designated Manager:

- shall have the exclusive authority and responsibility for investigating, assessing and coordinating all proposed Capital Expenditures by the Corporation which meet the requirements of the Community Improvement Plan;
- shall have the exclusive authority and responsibility for investigating municipal programs which may be available to assist any Capital Expenditure;
- shall, from time to time, present to the Board of Directors of the Corporation recommendations for Capital Expenditures. Such recommendations shall be accompanied by a report prepared by the Designated Manager containing all relevant information pertaining to the land or building in the Redevelopment Zone which is the subject of the Capital Expenditure; and
- shall undertake such other managerial tasks and duties as reasonably required from time to time by the Board of Directors of the Corporation so long as such tasks and duties are consistent with the objectives of the Unanimous Stakeholders' Agreement and the Community Improvement Plan.

UNANIMOUS STAKEHOLDERS' AGREEMENT

THIS AGREEMENT MADE this 26th day of July, 2006.

B E T W E E N:

HAMILTON REALTY CAPITAL INC., a corporation incorporated under the laws of the Province of Ontario (the "**Corporation**"),

-and-

FH INVESTCO INC., a corporation incorporated under the laws of the Province of Ontario (the "**Investor**"),

-and-

CITY OF HAMILTON, a body corporate incorporated under the *City of Hamilton Act* (the "**City**").

WHEREAS the City has adopted a program for making loans to entities interested in the redevelopment and rehabilitation of lands and buildings located within the Downtown Community Improvement Project Area (the "**Redevelopment Zone**") in the City of Hamilton;

AND WHEREAS the Corporation desires to undertake and/or facilitate the development or rehabilitation of lands within the Redevelopment Zone;

AND WHEREAS the City is prepared to provide financial assistance in the form of loans to the Corporation in an amount not to exceed at any time the sum of Two Million Dollars (\$2,000,000.00), and the Corporation wishes to accept such loan of money for the purpose of developing and rehabilitating the lands and buildings within the Redevelopment Zone subject to the terms and restrictions contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of one dollar (\$1.00) now paid by the parties hereto to each other, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Corporation, Investor and the City hereby agree as follows:

ARTICLE I - DEFINITIONS AND INTERPRETATION

1.01 Definitions

The following terms shall for all purposes of this Agreement, or any amendment hereto, have the respective meanings set forth below unless the context otherwise specifies or requires or unless otherwise defined herein:

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"Acquired Assets" means, with respect to the Corporation, all Property acquired by the Corporation using the Loan;

"Agreement", **"hereto"**, **"herein"**, **"hereof"**, **"hereby"**, **"hereunder"**, and similar expressions shall mean this unanimous stakeholders' agreement and not any particular Article or any particular portion hereof, and include all schedules attached hereto or mentioned herein.

"Board of Directors" means the board of directors of the Corporation from time to time.

"Business Day" means any day, other than a Saturday, Sunday or any other day on which the principal chartered banks located in the City of Hamilton are not open for business during normal banking hours.

"Capital Expenditure" means any expenditure made by any Person for:

- (i) the acquisition of, or the acquisition of the right to acquire, real property (which term includes both land and buildings) in the Redevelopment Zone;
- (ii) the rehabilitation or redevelopment of real property in the Redevelopment Zone; or
- (iii) the advancement of loans to any other Person for the purpose of any of the foregoing.

"Capital Expenditures Satisfaction Date" means the date on which the Corporation has made aggregate Capital Expenditures of not less than Eight Million Dollars (\$8,000,000) provided that no Reimbursable Operating Expenses of the Corporation which have been reimbursed by the City shall be included in such calculation of aggregate Capital Expenditures.

"City's Contributions" means, at any time, the total amount of the funds advanced (and not repaid) at such time by way of loan from the City to the Corporation pursuant to and in accordance with the terms of this Agreement.

"Community Improvement Plan" means the Downtown Hamilton Community Improvement Plan approved by the Council of the City of Hamilton for the rehabilitation of lands and buildings in the Redevelopment Zone.

"Default" means any event which is or which, with the passage of time, the giving of notice or both, would be an Event of Default.

"Designated Manager" has the meaning ascribed thereto in the Management Services Agreement.

"Downtown Renewal Division" means the Downtown Renewal Division of the Planning & Development Department of the City of Hamilton which is responsible for the implementation of the Community Improvement Plan.

"Event of Default" means any one of the events set forth in Section 8.01 hereof.

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"GAAP" means the generally accepted accounting principles described and promulgated by the Canadian Institute of Chartered Accountants which are applicable as at the date on which any calculations made hereunder are to be effective or as of the date of any financial statements referred to herein, as the case may be, applied on a basis consistent with the previous fiscal year.

"Governmental Authority" means the government of any nation, province, territory, municipality, state or other political subdivision of any nation, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, or the application, enforcement, or interpretation of Law.

"Investor's Contributions" means, at any time, the total amount of the funds contributed or loaned (and not returned or repaid at such time) by the Investor to the Corporation pursuant to and in accordance with the terms of this Agreement which for greater certainty shall at all times be at least equal to the amount of the City's Contributions.

"Law" means all laws, (including the common law), by-laws, ordinances, rules, statutes, regulations, treaties, orders, rules, judgments and decrees, and all official directives, rules, guidelines, notices, approvals, orders, policies and other requirements of any Governmental Authority whether or not they have force of law.

"Loan" means all or any part of the funds advanced by way of loan by the City to the Corporation from time to time as contemplated in Section 2.01 hereof.

"Loan Documents" means this Agreement and any document delivered in connection with this Agreement; and "Loan Document" means any one of such Loan Documents.

"Management Services Agreement" has the meaning given thereto in Section 10.01 hereof.

"Material Contract" means any agreement, arrangement or understanding, whether written or oral, which materially affects the business, operations, assets or prospects, financial or otherwise, of the Corporation or its business, and includes without limitation any loan or financial assistance given by the Corporation to any Person and the security provided by such Person to the Corporation pursuant to such loan or financial assistance.

"Operating Grant" has the meaning given thereto in Subsection 2.09(a) hereof.

"Permitted Encumbrances" means, with respect to any Person:

- (a) security granted by the Corporation to the Investor as security for monies advanced by the Investor for the purposes contemplated in this Agreement;
- (b) security granted by the Corporation to any Person for the purposes of obtaining financing from such Person for a Project
- (c) liens for taxes, rates, assessments or other governmental charges or levies not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;

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- (d) undetermined or inchoate liens, rights of distress, and charges incidental to current operations which have not at such time been filed or exercised and of which the Lender has not been given notice, or which relate to obligations not due or payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (e) reservations, limitations, provisos and conditions expressed in any original grants from the Crown or other grants of real or immovable property, or interests therein, which do not materially affect the use of the affected land for the purpose for which it is used by that Person;
- (f) licences, easements, rights-of-way and rights in the nature of easements (including, without limitation, licences, easements, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) which do not materially impair the use of the affected land for the purpose for which it is used by that Person;
- (g) title defects, or irregularities or other matters relating to title which are of a minor nature and which in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (h) the right reserved to, or vested in, any Governmental Authority under the terms of any lease, licence, franchise, grant or permit acquired by that Person, or under any statutory provision, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance of such right;
- (i) encumbrances resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workplace safety insurance, unemployment insurance, surety or appeal bonds, or costs of litigation when required by law, not to exceed \$20,000.00 in aggregate outstanding at any time, liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the ordinary course of business;
- (j) agreements with or security given to a public utility or any Governmental Authority when required by that utility or Governmental Authority in connection with the operations of that Person in the ordinary course of its business or the development or redevelopment or rehabilitation of a Property; and
- (k) any other encumbrances as agreed to in writing by the City.

"Person" is to be broadly interpreted and includes an individual, a corporation, a limited liability company, an unlimited liability company, a partnership, a trust, an incorporated organization, a joint venture, the government of a country or any political subdivision of a country, or an agency or department of any such government, any other Governmental Authority and the executors, administrators or other legal representatives of an individual in such capacity.

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“Project” means any individual project involving a Capital Expenditure.

“Property” means, with respect to the Corporation, all or any portion of the Corporation’s undertaking, property and assets, both real and personal, including, for greater certainty, any share in the capital of a corporation or ownership interest in any other Person.

“Redevelopment Zone” means the geographic area constituting the Downtown Hamilton Community Improvement Project Area more particularly described in Schedule “A” attached hereto.

“Reimbursable Operating Expenses” has the meaning ascribed thereto in Subsection 2.09(c) hereof.

“Repayment Amount” has the meaning ascribed thereto in Section 4.04 hereof.

“Security” means all security held from time to time by or on behalf of the City, securing or intended to secure directly or indirectly repayment of the Obligations and includes all security described in Article 2.04 hereof.

“Termination Date” has the meaning ascribed thereto in Section 4.01 or 4.02 hereof.

“Termination Date Financial Statements” has the meaning ascribed thereto in Section 4.03 hereof.

1.02 Schedules

All schedules, which are attached to this Agreement, are incorporated into this Agreement by reference and are deemed to be an integral part hereof.

1.03 Headings

The division of this Agreement into articles, sections, subsections, paragraphs, subparagraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.04 Gender and Number

In this Agreement, unless there is something in the subject matter or context inconsistent therewith words in the singular number include the plural and such words shall be construed as if the plural had been used and vice versa; and words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

1.05 Applicable Laws

This Agreement shall be governed by and construed in accordance with the laws applicable in the Province of Ontario, and shall be treated, in all respects, as an Ontario contract. Each party to this Agreement irrevocably attorns to and submits to the non-exclusive jurisdiction of the Courts of Ontario with respect to any matter arising under or relating to this Agreement.

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1.06 Currency

Unless otherwise indicated, all dollar amounts referred to in this Agreement are in Canadian funds.

1.07 Accounting Terms

Unless otherwise expressly stated, all accounting terms and principles applicable to this Agreement shall be interpreted and applied in accordance with GAAP.

1.08 Calculation of Time

When calculating the period of time within which or following which any act is to be performed or step is to be taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next Business Day.

ARTICLE II - LOAN AND SECURITY

2.01 Loan

Subject to the terms and conditions hereof, the City agrees to advance to the Corporation from time to time and the Corporation agrees to borrow from the City, such funds as may be necessary for the rehabilitation of lands or buildings within the Redevelopment Zone in accordance with the Community Improvement Plan, up to a maximum amount of Two Million Dollars (\$2,000,000.00) (the "**Loan**"). For greater certainty, the Corporation shall use the proceeds advanced under the Loan solely for Capital Expenditures within the Redevelopment Zone in accordance with the Community Improvement Plan and for no other purpose whatsoever.

2.02 Condition Precedent to Advancement of Funds

- (a) From time to time during the term of this Agreement, the Designated Manager (as defined in the Management Services Agreement) will determine whether a proposed Capital Expenditure meets the requirements of the Community Improvement Plan and the conditions set out in this Agreement including without limitation those set out in Subsections 5.02(a) and (b) hereof. If the proposed Capital Expenditure meets such requirements, the Designated Manager shall provide to the Board of Directors a detailed description of the proposed Capital Expenditure, including a description of the lands or buildings within the Redevelopment Zone to be rehabilitated and the amount of funds required for such rehabilitation;
- (b) If the Board of Directors approves the proposed Capital Expenditure, then the Board of Directors shall make a request in writing to the Designated Manager to obtain the required funds from the City for such approved Capital Expenditure (hereinafter called the "**Project**"), which shall be fifty (50%) percent of the funds required for the Capital Expenditure. The Designated Manager shall cause such funds to be advanced, within ten (10) days of receipt of written request therefor provided that, at the date of such advance:
 - (i) the funds to be advanced do not exceed the amount of the Loan; and

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- (ii) the Investor has concurrently advanced to the Corporation in respect of the Investor's Contributions an amount equal to the amount of the Loan.

2.03 Covenants of the Investor

The Investor hereby covenants that:

- (a) it will advance the funds required to be advanced by it for a Capital Expenditure which has been approved by the Board of Directors; and
- (b) it will maintain an available capital reserve for the purpose of complying with the provisions of Subsection 2.03(a) hereof.

2.04 Security

As general and continuing security for the due payment and performance of the obligations of the Corporation to the City, the following Security shall be granted to the City:

- (a) a debenture agreement from the Corporation in favour of the City, constituting a first-priority encumbrance (subject only to Permitted Encumbrances) on all of the present and future Property of the Corporation (including without limitation all Acquired Assets);
- (b) a general assignment to the City of the rights, entitlements and benefits of the Corporation under any Material Contract, and, where reasonably required by the City, a specific assignment of such Material Contract duly acknowledged by each party thereto;
- (c) such further security agreements, deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge as the City may reasonably request to effectively secure the undertaking, property and assets of the Corporation (including without limitation all Acquired Assets) in the manner contemplated by the security referred to above.

The documents referred to above shall be in form satisfactory to the City and its legal counsel, in their sole discretion, acting reasonably.

2.05 After Acquired Property and Further Assurances

The Corporation shall from time to time execute and deliver all such further deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge in connection with all assets acquired by it (including without limitation all Acquired Assets) and intended to be subject to the Security, including without limitation any insurance on those assets as may be requested by the City from time to time and favourable legal opinions from legal counsel of the Corporation, in a form acceptable to the City, that all such deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge are valid and enforceable in accordance with their respective terms.

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2.06 Registration

The Corporation shall, at its expense, cause to be registered, filed or recorded the Security in all offices in all relevant jurisdictions where such registration, filing or recording is, in the sole discretion of the City, necessary or of advantage to the creation, perfection and preserving of the Security applicable to it. The Corporation shall renew such registrations, filings and recordings from time to time as and when required to keep them in full force and effect and shall, from time to time as reasonably required, provide to the City an opinion of the Corporation's legal counsel that all such registrations, filings and recordings have been made and perfect the security interests created by the Security.

2.07 Subordination Agreement

The City shall from time to time, at the request of the Corporation, execute and deliver to the Corporation, such acknowledgement or agreement as may be necessary for the purposes of subordinating the Security to a Permitted Encumbrance.

2.08 Release of Security

At such time as the Corporation has completed the development, redevelopment or rehabilitation and proposes to effect the sale of a Property and/or Project, the City shall, at the expense and request of the Corporation, enter into such agreements and other instruments as may be necessary to partially release, reassign, reconvey and discharge the Security insofar as it relates to such Property and/or Project. At such time as the Corporation has satisfied in full all of its obligations under this Agreement, the City shall, at the expense and request of the Corporation, without any representations, warranties or recourse of any kind whatsoever, enter into such agreements and other instruments as may be necessary to release, reassign, reconvey and discharge the Security.

2.09 Operating Grant and Annual Operating Expenses

- (a) The City shall grant to the Corporation an operating expense allowance, in the amount of \$250,000 less the amount of the costs and expenses incurred by the City described in Subsection 2.09(d)) hereof (the "**Operating Grant**"), for start-up expenses and ongoing financial and management services as contemplated in Subsection 2.09(b) hereof and for payment of the fees payable to the City under the Management Services Agreement, incurred by the Corporation for the purposes of the rehabilitation or redevelopment of real property in the Redevelopment Zone, provided that such expenses shall be subject to the condition set out in Subsection 5.02 (b) hereof.
- (b) The Investor agrees to provide, at the cost and expense of the Corporation, ongoing financial and management services to the Corporation as may be required from time to time for the purposes contemplated in this Agreement. The Corporation agrees to reimburse the Investor in each year during the term of this Agreement for such services as approved in the Operating Budget to be prepared in each year pursuant to Section 2.10 hereof.

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- (c) The financial and management services to be provided pursuant to Subsection 2.09(b) above which are eligible for reimbursement pursuant to this Section 2.09 (such eligible operating expenses called the "**Reimbursable Operating Expenses**") shall be:
- (i) all rent (including additional rent) for any principal office of the Corporation established within the Redevelopment Zone, if any, and all other operating and marketing expenses incurred in connection with such office;
 - (ii) all insurance and maintenance costs in respect of such office;
 - (iii) reasonable costs and expenses for services rendered to the Corporation, including analysis of, and due diligence investigations with respect to, proposed Capital Expenditures;
 - (iv) all legal and other professional fees incurred in connection with the establishment, and conduct, of its business; and
 - (v) A reasonable administrative fee which shall not exceed fifteen percent (15%) of the expenses described in Subparagraphs (i) to (iv) above.
- (d) Notwithstanding any of the foregoing, the out-of-pocket third party legal and other professional costs of the City to establish the redevelopment program which is the subject matter of this Agreement, and to prepare this Agreement, the Loan Documents, and all related agreements and documents shall be paid out of and deducted from the Operating Grant.
- (e) The parties acknowledge that all fees paid by the Corporation to the City pursuant to the Management Services Agreement are direct expenses of the Corporation and shall not constitute Reimbursable Operating Expenses.

2.10 Annual Operating Budget

In each calendar year during the term of this Agreement, the Designated Manager and the Board of Directors shall approve an operating budget for the Corporation (the "**Operating Budget**") which budget shall set out, inter alia, the anticipated Reimbursable Operating Expenses.

2.11 Holdback

The Corporation shall holdback from the amount payable to the City from time to time pursuant to Subsection 3.01(b) hereof such amount as may be necessary to satisfy the operating expense requirements of the Corporation's Operating Budget for the next-ensuing calendar year. Such amount (hereinafter called the "**Holdback**") shall at all times be sufficient to satisfy such operating expenses and accordingly, the parties agree that the amount withheld from the amount payable to the City pursuant to Subsection 3.01(b) shall be such amount as is necessary to fund or to replenish, as the case may be, the Holdback. For greater certainty, the Corporation shall not at any time retain an amount greater than the amount required to satisfy the operating expense requirements of the Corporation's Operating Budget for the next-ensuing calendar year.

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ARTICLE III - RETURN OF CAPITAL EXPENDITURE

3.01 Return of Capital Contributions

Each Project shall be accounted for as a separate venture commencing on the date of the advance of funds pursuant to Subsection 2.03(a). Interest on the Investor's Contributions shall notionally accrue at the rate of fifteen percent (15%) per annum calculated monthly and compounded semi-annually from the date of its advance and shall be payable to the Investor out of income earned on a Project in the discretion of the Board of Directors. No interest shall accrue on the Loan.

Upon completion of a Project, the Corporation shall pay to the Investor, after satisfying all liabilities incurred in respect of such Project (including, without limitation, all accrued and unpaid notional interest payable to the Investor), the Investor's Contributions in respect of such Project prior to making any payment to the City on account the City's Contributions. Thereafter, any remaining funds in the Corporation shall be paid as follows:

- (a) first, to the City in respect of any prior Project for which it did not receive repayment in full of the City's Contributions for such prior Project;
- (b) secondly, to the City to a maximum of the City's Contributions for such Project, subject to Section 2.11 hereof; and
- (c) the balance to the Investor as a distribution subject to the provisions of Section 3.02 hereof.

3.02 Reserve for Operating Expenses

Notwithstanding the provisions of Subsection 3.01(c) above, the Corporation shall retain such amount as is required to satisfy the operating expense requirements of the Corporation's Operating Budget for the then-current calendar year.

ARTICLE IV - TERMINATION

4.01 Termination of Agreement

Either of the Corporation or the City may terminate this Agreement by giving thirty (30) days prior written notice of such termination (such effective date of termination called the "**Termination Date**") to the other, provided that such notice may only be given on or at any time after the earlier of:

- (a) the Capital Expenditures Satisfaction Date, and
- (b) the date which is ten (10) years following the date hereof.

4.02 Termination by City

The City shall have the further right to terminate this Agreement at any time following the five (5) year anniversary date of this Agreement upon thirty (30) days prior written notice (the "**Termination Date**") to the Corporation and the Investor if the City, acting reasonably,

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determines that the Board of Directors has consistently declined proposed Capital Expenditures without reasonable justification.

4.03 Termination Date Financial Statements

Upon the termination of this Agreement pursuant to Section 4.01 or 4.02 hereof, the accountants of the Corporation will prepare and deliver to all parties to this Agreement, within sixty (60) days of the Termination Date, audited financial statements of the Corporation as at the Termination Date (the "**Termination Date Financial Statements**"), consisting of a balance sheet, statements of income, retained earnings, contributed surplus and changes in financial condition, all prepared in accordance with GAAP consistently applied. The accountants shall also calculate the Repayment Amount and prepare and deliver to all parties to this Agreement, together with the Termination Date Financial Statements, a statement of such calculation.

4.04 Repayment Amount

Within ten (10) days of delivery to the parties of the Termination Date Financial Statements, the Corporation will repay to the City, in full satisfaction of the City's Contributions, the lesser of:

- (a) the City's Contributions; and
- (b) the amount out of the City's Contributions remaining with the Corporation, after satisfying the Corporation's obligation to repay its creditors, the Investor's Contributions and notional interest thereon;

(such amount called the "**Repayment Amount**"). Upon the payment by the Corporation to the City of the Repayment Amount, the Corporation shall have no further obligations to the City under this Agreement.

4.05 Operating Grant and Holdback

Any funds remaining at the Termination Date out of the Operating Grant and/or the Holdback shall be repaid to the City concurrently with payment of the Repayment Amount.

4.06 Indebtedness of the Corporation

Upon the termination of this Agreement, all indebtedness of the Corporation to the City pursuant to this Agreement shall be immediately due and payable. The City shall thereafter be entitled to take any action, remedy or proceeding authorized pursuant to the Loan Documents, at law or in equity.

ARTICLE V - PROVISIONS FOR CONTROL

5.01 Operation and Control of the Corporation During the Term of this Agreement

During the currency of this Agreement, the parties hereto agree that, notwithstanding any provision contained in the Business Corporations Act (Ontario) or the articles or by-laws of the Corporation, without the prior consent of the City, subject to the proviso below, none of the following shall be effected:

- 12 -

- (a) the declaration of any dividend by the Corporation;
- (b) the issuance or sale by the Corporation of any of issued or unissued shares in the capital of the Corporation;
- (c) the redemption or purchase by the Corporation of its issued shares;
- (d) the taking or instituting of proceedings for the winding-up, re-organization or dissolution of the Corporation;
- (e) the sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation;
- (f) the repayment of any loans owing by the Corporation to any Person;
- (g) the hypothecation, mortgage, pledge, charge or other encumbrance of any of the assets of the Corporation, or any shares in the capital of the Corporation, except in accordance with the terms of this Agreement;
- (h) the fixing, paying or changing of any salary, bonus or fee of any director of the Corporation;
- (i) the filing of Articles of Amendment amending the articles of the Corporation;
- (j) the enactment, revocation or amendment of any by-laws of the Corporation;
- (k) the hiring or firing of any employee of the Corporation or the fixing or changing of any salary, bonus or other compensation paid or payable to any such employee;
- (l) the provision of financial assistance, whether by guarantee or otherwise, to any Person, except in accordance with the terms of this Agreement;
- (m) the consideration of any proposal not recommended by the Designated Manager;
- (n) the transfer of any shares in the capital of the Corporation..

Notwithstanding Section 5.01 above, the parties acknowledge and agree that restrictions imposed upon the Corporation shall not apply to any matter or transaction undertaken by the Corporation which is in the ordinary course of the business of the Corporation and for the purposes of the rehabilitation of lands within the Redevelopment Zone, as contemplated in this Agreement.

5.02 Section 108 of the *Business Corporations Act* (Ontario)

The powers of the directors of the Corporation are restricted, pursuant to section 108 of the *Business Corporations Act* (Ontario) (the "OBCA"), to the extent that any determination to fund a Capital Expenditure is conditional upon such Capital Expenditure satisfying the conditions set out in Subsection 2.02(a) hereof. All of the rights, powers, duties and liabilities with respect to any such determination relinquished hereunder by the directors of the Corporation are hereby

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assumed by the City. Without limitation, the powers of the directors of the Corporation shall be restricted, and the obligations of the City shall be performed, as follows:

- (a) all monies advanced to the Corporation by the City pursuant to the provisions of this Agreement shall be segregated from other contributed capital of the Corporation and not used for any purpose other than to contribute to rehabilitating the lands or buildings within the Redevelopment Zone in accordance with the Community Improvement Plan; and
- (b) prior to the advance of any funds by the City to the Corporation for the purpose contemplated in (a) above, the City must be satisfied that the Corporation is the registered owner, assessed owner or tenant of the lands or buildings which are the subject of rehabilitation or is a Person to whom such owner or tenant has assigned the right to receive such funds. For greater certainty, the Corporation is prohibited from making a grant or loan to any Person who is not the registered owner, assessed owner or tenant of the lands or buildings which are the subject of the rehabilitation or is not a Person to whom such owner or tenant has assigned the right to receive such funds.

Notwithstanding the foregoing, the restrictions on the power of the directors of the Corporation as provided above shall not limit, and are not intended to limit, the absolute right of the Board of Directors to elect whether to proceed or not to proceed with a proposed Capital Expenditure.

ARTICLE VI - REPRESENTATIONS AND WARRANTIES

6.01 Representations and Warranties of the Corporation and the Investor

To induce the City to enter into this Agreement, the Corporation and the Investor hereby jointly and severally represent and warrant to the City as follows and acknowledge and confirm that the City is relying upon such representations and warranties in providing the Loan hereunder:

- (a) Status and Power. Each of the Corporation and the Investor is a corporation duly incorporated and organized and existing under the laws of the Province of Ontario and is duly qualified, registered or licensed in all jurisdictions where such qualification, registration or licensing is required to the extent that it is material. The Corporation has all requisite corporate capacity, power and authority to own, hold under licence or lease its properties, to carry on its business as now conducted and to otherwise enter into, and carry out the transactions contemplated by the Loan Documents.
- (b) Authorization and Enforcement of Documents. All necessary action, corporate or otherwise, has been taken by each of the Corporation and the Investor to authorize the execution, delivery and performance of the Loan Documents to which it is a party and each of the Corporation and the Investor has duly executed and delivered each Loan Document to which it is a party. Each Loan Document to which it is a party is a legal, valid and binding obligation of the Corporation and the Investor, enforceable against each of them by the City in accordance with its terms.

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- (c) Authorized and Issued Capital. The authorized capital of the Corporation consists of an unlimited number of common shares, of which 100 common shares have been duly issued and are outstanding. The Investor owns all of the issued and outstanding shares of the Corporation as the shareholder of record and as the beneficial owner, with good and marketable title thereto, free and clear of any and all encumbrances.
- (d) Compliance with Other Instruments. The execution, delivery and performance of the Loan Documents and the consummation of the transactions contemplated therein do not and will not conflict with, result in any breach or violation of, or constitute a default under, the terms, conditions or provisions of the constating documents or by laws of the Corporation or of any law, regulation, judgment, decree or order binding on or applicable to the Corporation or by which the Corporation benefits or to which any of its property is subject or of any material agreement, lease, licence, permit or other instrument to which the Corporation is a party or is otherwise bound or by which the Corporation benefits or to which any of its property is subject and does not require the consent or approval of any other party, or any governmental body, agency or authority.
- (e) Available Capital. The Investor has available to it at least the sum of Two Million Dollars (\$2,000,000), for the purposes of funding Capital Expenditures in accordance with the terms of this Agreement.
- (f) Litigation. There are no actions, suits, inquiries, claims or proceedings pending or threatened against or affecting the Corporation or the Investor before any government, parliament, legislature, regulatory authority, agency, commission, board or court or before any private arbitrator, mediator or referee which in any case or in the aggregate may result in any material adverse change in (i) the condition, financial or otherwise, of the Corporation or the Investor, or (ii) the ability of the Corporation or the Investor to perform its respective obligations under any Loan Document.
- (g) Compliance with Laws. Neither the Corporation nor the Investor is in violation of any mortgage, franchise, licence, judgment, decree, order, statute, rule or regulation relating in any way to the Corporation or to the Investor, as the case may be, to the operation of its business or to its undertaking, property or assets and which would have a material effect on (i) the condition, financial or otherwise, of the Corporation or the Investor, as the case may be or (iii) the ability of the Corporation or the Investor to perform its respective obligations under any Loan Document.
- (h) Taxes. The Corporation has paid all taxes, rates, government fees and dues levied, assessed or imposed upon it and upon its property or any part thereof.
- (i) Full Disclosure. Neither the Corporation nor the Investor is aware of any fact which it has not disclosed or caused to be disclosed to the City in writing which might materially adversely affect the business, operations, investments, property or prospects of the Corporation or the Investor, or materially adversely affect the ability of the Corporation or the Investor to observe and perform their respective obligations under any Loan Document or relating to the Loan.

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6.02 Survival and Repetition of Representations and Warranties

All of the representations and warranties of the Corporation and the Investor contained in Section 6.01 shall survive the execution and delivery of this Agreement and shall, notwithstanding any investigation made at any time by or on behalf of the City or any knowledge of the City or any other Person, shall continue in full force and effect for the benefit of the City during the term of this Agreement and for a period of two (2) years following the termination of this Agreement.

ARTICLE VII - COVENANTS

7.01 General Covenants of the Corporation and the Investor

The Corporation and the Investor hereby jointly and severally covenant and agree with the City that, so long as there is any outstanding indebtedness or obligations hereunder and unless the City otherwise expressly consents in writing:

- (a) Accountants. The accountants of the Corporation shall be such Person as may be nominated from time to time by the Investor and approved by the City, and such accountants shall, at each fiscal year end of the Corporation and at such other times as may be reasonably requested by the City, including in connection with the financial reporting requirements of the Corporation set out in paragraph (b) of this Section 6.01, make an examination of the books and accounts of the Corporation and, for such purposes, they shall have access to all books of account, records and all vouchers, cheques, papers and documents of or which may relate to the Corporation, including those of the Investor to the extent to which such books, records, vouchers, cheques, papers and documents relate to the Corporation.
- (b) Financial Reporting. The Corporation shall furnish the City with the following statements, reports and certificates, all prepared in accordance with GAAP consistently applied:
 - (i) within 120 days after the end of each fiscal year of the Corporation, copies of the Corporation's consolidated and unconsolidated financial statements with respect to such fiscal year and the auditor's report thereon;
 - (ii) within 30 days after the end of each fiscal quarter of the Corporation, copies of the Corporation's financial statements with respect to such fiscal quarter; and
 - (iii) such additional financial or operating reports or statements as the City may, from time to time, reasonably request.
- (c) Corporate Existence. The Corporation shall maintain its corporate existence in good standing and shall not take part in any dissolution, reorganization, amalgamation, merger or any similar proceeding or arrangement
- (d) Conduct of Business. The Corporation shall maintain its principal office within the offices maintained by the Investor provided that the Corporation shall make such arrangements as are reasonably required so that the Corporation shall be able to be

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contacted or notified through the offices maintained by the Downtown Renewal Division. The Corporation shall not conduct any business other than the business of the making of Capital Expenditures pursuant to this Agreement. The Corporation shall conduct its business in such a manner so as to comply in all material respects with all applicable laws and regulations. The Corporation shall carry on and conduct its business in a proper and efficient manner and will keep or cause to be kept proper books of account and shall make therein true and accurate entries of all dealings and transactions in relation to such business, and shall make or cause to be made such books of account available for inspection by the City and its representatives during normal business hours.

- (e) Material Adverse Change. The Corporation shall promptly notify the City of any material adverse change in the financial condition of the Corporation or in the ability of the Corporation to satisfy its obligations under any Loan Document, including without limitation any actions, suits, inquiries, claims or proceedings pending or threatened against or affecting the Corporation before any government, parliament, legislature, regulatory authority, agency, commission, board or court or before any private arbitrator, mediator or referee.
- (f) Taxes. The Corporation shall pay or cause to be paid all taxes, rates, government fees and dues levied, assessed or imposed upon it and upon its property or any part thereof, as and when the same become due and payable.
- (g) Share Certificate Endorsement. All share certificates of the Corporation shall have the following legend endorsed thereon forthwith after the execution of this Agreement:

“The shares represented by this certificate are subject to a unanimous stakeholders agreement made among FH Investco Inc., City of Hamilton and Hamilton Realty Capital Inc., and such shares are not transferable other than in accordance with the terms and conditions of such agreement.”
- (h) Notice of Default. The Corporation shall promptly notify the City of the occurrence of any Default or Event of Default and shall concurrently deliver to the City a detailed statement of a senior officer of the Corporation of the steps, if any, being taken to cure or remedy such Default or Event of Default.

7.02 Amendment of Articles of the Corporation

Upon the request of the City, the Corporation covenants that it shall, and the Investor covenants that it shall cause the Corporation to, amend the articles of incorporation of the Corporation to give effect to any or all of the restrictions set out in Section 5.01 or any other provision of this Agreement.

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ARTICLE VIII - DEFAULT AND REMEDIES

8.01 Events of Default

Upon the occurrence of any one or more of the following events:

- (a) the non payment of any amount due by a party hereunder which is not paid within ten (10) Business Days after written notice to do so;
- (b) the commencement of proceedings for the dissolution, liquidation or winding up of the Investor or the Corporation or for the suspension of the operations of the Investor or the Corporation unless such proceedings are being contested in good faith by proper legal proceedings;
- (c) the Investor or the Corporation admits its inability to pay its debts generally as they become due, or fails to pay its debts generally as they become due, or ceases or threatens to cease to carry on its business, or is adjudged or declared bankrupt or insolvent, or makes an assignment for the general benefit of creditors, or petitions or applies to any tribunal for the appointment of a receiver or trustee for it or for any part of its property, or commences any proceedings relating to it under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for it or for any part of its property, or suffers the appointment of any receiver or trustee;
- (d) any representation or warranty made by a party in this Agreement proves to have been incorrect in any material respect when made or furnished;
- (e) the breach or failure of due observance or performance by a party of any covenant or provision of any Loan Document or of any other document, agreement or instrument delivered pursuant hereto or referred to herein which is not remedied within five (5) Business Days after written notice to do so;
- (f) if there occurs, in the opinion of the City, acting reasonably, a materially adverse change in the financial condition or operation of the Investor or the Corporation;
or
- (g) if any creditor of the Investor or the Corporation takes any action to realize upon any assets of such party, unless the same is being actively or diligently contested by such party in good faith;

the City may, by notice to the Corporation, terminate this Agreement and declare all indebtedness of the Corporation to the City pursuant to this Agreement to be immediately due and payable (which for greater certainty shall include the City's Contributions then outstanding) whereupon all such indebtedness shall immediately become and be due and payable without further demand or other notice of any kind, all of which are expressly waived by the Corporation. The City shall thereafter be entitled to take any action, remedy or proceeding authorized pursuant to the Loan Documents, at law or in equity.

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ARTICLE IX - ARBITRATION

9.01 Binding Arbitration

If any question, dispute or controversy shall occur between any parties hereto relating to the interpretation or implementation of any of the provisions of this Agreement, such dispute shall be resolved by arbitration in accordance with the provisions of the *Arbitration Act*, 1991 (Ontario), as such may be amended from time to time. Such arbitration shall be conducted by a single arbitrator in Hamilton, Ontario. The arbitrator shall be appointed by agreement between the parties or, in default of agreement, such arbitrator shall be appointed by a Judge of the Ontario Superior Court of Justice upon the application of any of the said parties and a Judge of the Ontario Superior Court of Justice shall be entitled to act as such arbitrator, if he so desires. The procedure to be followed in any such arbitration shall be agreed by the parties or, in default of agreement, established by the arbitrator in accordance with the provisions of the *Arbitration Act*, 1991 (Ontario), as such may be amended from time to time. The arbitrator shall have the power to proceed with the arbitration and to deliver his award notwithstanding the default by any party in respect of any procedural order made by the arbitrator. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

ARTICLE X - GENERAL

10.01 Management Services Agreement

Concurrently with the execution of this Agreement, the Corporation, the Investor and the City shall enter into a management services agreement (the "**Management Services Agreement**") in the form attached hereto as Schedule "B", pursuant to which the City will provide certain services to the Corporation in furtherance of the Community Improvement Plan.

10.02 Relationship of Parties

The parties acknowledge that a fiduciary relationship is created by the terms of this Agreement and agree that none of the parties shall use information obtained in the performance of this Agreement in a manner that is inconsistent with the purposes intended by this Agreement.

10.03 Time

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

10.04 Entire Agreement

This Agreement, including the schedules hereto, together with the Loan Documents and other agreements and documents to be delivered under this Agreement constitute the entire agreement between the parties hereto pertaining to the subject matter of this Agreement and shall supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties hereto, and there are no warranties, representations or other agreements between the parties hereto, in connection with the subject matter of this Agreement other than as specifically set forth in this Agreement.

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10.05 Severability

In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

10.06 Non-Merger

The representations, warranties, covenants, agreements and guarantees herein contained all of which were given for the benefit of and relied upon by the respective parties hereto, are conditions upon which the performance of the obligations by the parties herein depends and the completion of the transactions contemplated by this Agreement shall not merge or waive any covenant, condition or representation herein contained, which shall survive.

10.07 Amendments

If at any time during the continuance of this Agreement the parties hereto shall deem it necessary or expedient to make any alteration or addition to this Agreement they may do so by means of written agreement among them which shall be supplemental and form part of this Agreement.

10.08 Waiver

No waiver on behalf of any party hereto of a breach of any of the covenants, conditions, or provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.

10.09 Notice

All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery or by registered mail (postage prepaid), or by facsimile or other electronic transmission, addressed to such other party or delivered to such other party as follows:

- (i) if to the Corporation or the Investor, to:

95 Wellington Street West, 22nd Floor
Toronto, Ontario M5J 2N7

Facsimile No. (416) 947-0149
Attention: Mr. Richard Abboud

- with a copy to –

Goodmans LLP
250 Yonge Street
Suite 2400
Toronto, Ontario M5B 2M6

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Facsimile No. (416) 979-1234
Attention: Stephen K. Belgue

(ii) if to the City or the Downtown Renewal Division, to:

1 James St. S., 8th Floor,
Hamilton, Ontario L8P 4R5

Facsimile No. (905) 546-4107
Attention: Ronald M. Marini, Director

with a copy to the Designated Manager:

1 James St. S., 8th Floor,
Hamilton, Ontario L8P 4R5

Facsimile No. (905) 546-4107
Attention: Mr. Gord Moodie

and with an additional copy to:

Feltmate Delibato Heagle LLP
200 – 3600 Billings Court
Burlington, ON L7N 3N6

Facsimile No. (905) 639-8017
Attention: Ronald J. Weston

or at such other address as may be given by any of them to the others in writing from time to time, and such notices, requests, demands or other communications shall be deemed to have been received when delivered, or, if mailed, forty-eight (48) hours after 12:01 a.m. on the Business Day following the day of the mailing thereof or, if transmitted by facsimile or other electronic transmission, one (1) day following the date of transmission; provided that if any such notice, request, demand or other communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notices, requests, demands or other communications shall be deemed to have been received forty-eight (48) hours after 12:01 a.m. on the Business Day following the resumption of normal mail service.

10.10 Expenses

Unless expressly set out otherwise in this Agreement, each of the parties hereto will bear their own respective costs for legal and accounting expenses and other expenses incurred or paid in connection with this Agreement and the completion of the transactions contemplated by it.

10.11 Counterparts and Facsimile Transmission

This Agreement may be executed in several counterparts, each of which so executed, shall be deemed to be an original and such counterparts together shall be but one and the same instrument. This Agreement may be transmitted by facsimile or such other similar device and

the reproduction of signatures by facsimile or such similar device will be treated as binding as if original and each party hereto so transmitting this Agreement undertakes to provide to each other party hereto a copy of the Agreement bearing original signatures forthwith upon demand.

10.12 Enurement

This Agreement will be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns, but will not be assignable by any of the parties hereto without the written consent of the other parties.

10.13 Further Assurances

At any time and from time to time during the term of this Agreement, each of the parties hereto agrees to execute and deliver to the other party, at the expense of the requesting party, such further instruments and other written assurances as such party may reasonably request in order to evidence or carry out the transactions contemplated by this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

HAMILTON REALTY CAPITAL INC.

Per: _____
Name: Richard Abboud
Title: President
(I have the authority to bind the Corporation)

FH INVESTCO INC.

Per: _____
Name: Richard Abboud
Title: President
(I have the authority to bind the Corporation)

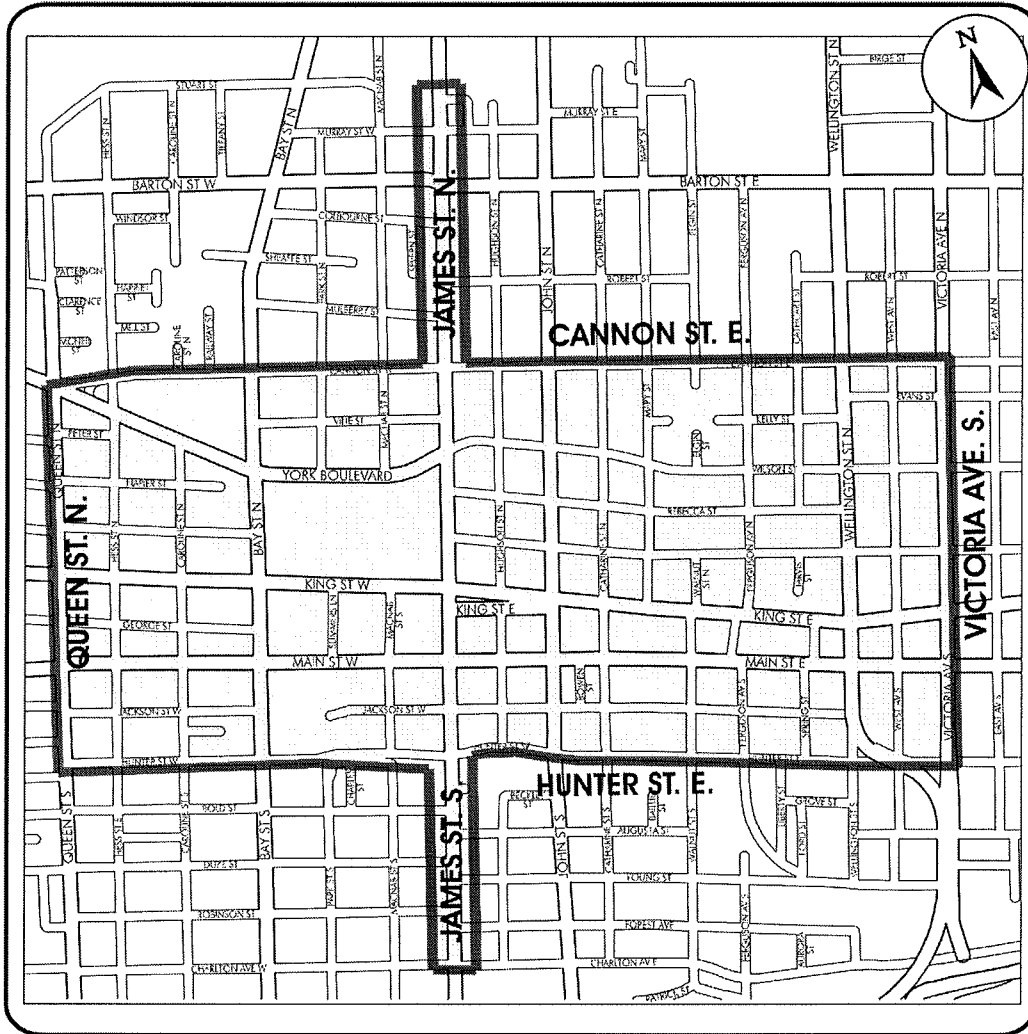
CITY OF HAMILTON

Per: Terry Whitehead c/s
Name: Terry Whitehead
Mayor, City of Hamilton

Per: _____ c/s
Name: Kevin C. Christenson
Clerk, City of Hamilton

OFFICE OF THE CLERK
APPROVED BY COUNCIL
DATE July 12, 2006
REPORT Cow 06-016 ITEM 12
INTL 00 YEAR/FILE 2006/4483

Schedule "A"
Redevelopment Zone



<p>Site of the Application</p>	CITY OF HAMILTON PLANNING AND DEVELOPMENT DEPARTMENT Downtown Hamilton Community Improvement Project Area	
	Filename/number CIPA-JAN-03	
	Date JANUARY, 2003	
	Map Not to Scale Technician: LC	

The Redevelopment Zone is bound by Queen Street, Hunter Street, Victoria Avenue, Cannon Street and properties that have frontage on James Street, south to Charlton Avenue and north to the CN Railway.

Schedule "B"

Management Services Agreement

AMENDING AGREEMENT

THIS AMENDING AGREEMENT made in ~~quadruplicate~~ ^{triplicate} this ~~20th~~ ^{2nd} day of ~~November, 2009.~~ ^{March, 2010}

B E T W E E N:

HAMILTON REALTY CAPITAL INC., a corporation
incorporated under the laws of the Province of Ontario
(hereinafter referred to as the "Corporation")

-and-

FH INVESTCO INC., a corporation incorporated under the
laws of the Province of Ontario .
(hereinafter referred to as the "Investor")

-and-

CITY OF HAMILTON, a municipality incorporated under the
City of Hamilton Act, 1999, S.O. 1999, c. 14
(hereinafter referred to as the "City")

WHEREAS the parties hereto did enter into a Unanimous Stakeholders' Agreement (hereinafter called the "USA") dated July 26, 2006 for the purpose of governing their relationship with respect to certain redevelopment and rehabilitation activities of lands and buildings within the Downtown Community Improvement Project Area (referred to in the USA and hereinafter as the "**Redevelopment Zone**") in the City of Hamilton;

AND WHEREAS the City of Hamilton Council did at its meeting of June 25, 2008, enact By-law 08-166 which expands the boundaries of the Redevelopment Zone described in By-law 07-061;

AND WHEREAS the description of the Redevelopment Zone contained in the USA is no longer correct;

AND WHEREAS both parties have agreed to enter into this Amending Agreement to amend certain terms of the said USA to reflect the new boundaries of the Redevelopment Zone;

NOW THEREFORE this Amending Agreement witnesses that in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency are hereby acknowledged) the parties agree as follows:

1. The terms of the said USA, save as amended herein, shall apply to and be binding upon the parties herein.

- 2. Effective as of the date of this Agreement, the parties agree that the terms of the USA, shall be amended by deleting Schedule "A" and substituting the attached Schedule "A" therefore.
- 3. If any provision of this Agreement is wholly or partially unenforceable for any reason, such unenforceability shall not affect the enforceability of the balance of this Agreement and the provisions of this Agreement shall, if alternative interpretations are applicable, be construed so as to preserve the enforceability of this Agreement.
- 4. This Agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the date first written above.

HAMILTON REALTY CAPITAL INC.



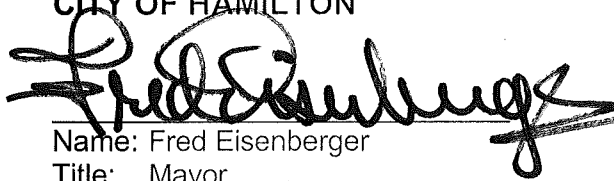
Name: Richard Abboud
Title: President
"I have the authority to bind the Corporation."

FH INVESTCO INC.



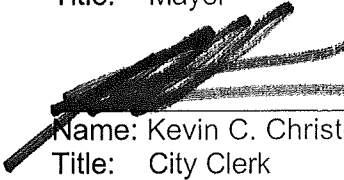
Name: Richard Abboud
Title: President
"I have the authority to bind the Corporation."

CITY OF HAMILTON



Name: Fred Eisenberger
Title: Mayor

Approved
as to form



Name: Kevin C. Christensen
Title: City Clerk

Legal
Services

OFFICE OF THE CLERK	
APPROVED BY COUNCIL	
DATE	SEPT. 16. 2009
REPORT	EDP 09.017 ITEM 6
INT	YEAR/FILE 2010-6739

SCHEDULE "A" REDEVELOPMENT ZONE

Schedule A
Redevelopment Zone



The Redevelopment Zone is bounded by properties that abut Queen Street, Cannon Street, Victoria Avenue and Hunter Street (adjacent to the Downtown Hamilton Community Improvement Project Area portions of the street only) and also includes properties fronting on James Street (including abutting lands provided they are part of the comprehensive redevelopment of an eligible James Street North property) north to the CN Railway and south to Charlton Avenue.