

MUNICIPAL CAPITAL FACILITY AGREEMENT

THIS AGREEMENT dated the * day of , 2022 (the "Effective Date").

BETWEEN:

CITY OF HAMILTON
(hereinafter referred to as the "City")

AND:

[INSERT: HUPEG ENTITY]

(hereinafter referred to as "HUPEG")

WHEREAS:

- A. The City owns the lands known municipally as [101 York Boulevard/ 1 Summers Lane] in the City of Hamilton, which lands are more particularly described in Appendix "A" hereto (the "Lands");
- B. HUPEG will be entering into a lease with the City as landlord and HUPEG as Tenant for the use of the Lands (the "Lease");
- C. HUPEG wishes, pursuant to Section 110 of the Municipal Act, 2001, to enter into an agreement with the City for use of the Lands as a municipal capital facility; and
- D. The City wishes, pursuant to Section 110 of the Municipal Act, 2001, to declare the infrastructure as a municipal capital facility; and,
- E. The Lands will be used for purposes of [Arena: a sports, recreational and entertainment complex; Concert Hall: concert hall and entertainment complex; Convention Centre: convention centre and entertainment complex], thus qualifying the Lands as a class of municipal capital facility described in Ontario Regulation 603/06.

THEREFORE, in consideration of the making of this Agreement and the mutual covenants contained herein, the parties undertake, covenant and agree as follows:

DESIGNATION

- 1. The City will by by-law designate the Lands as a municipal capital facility and for public use.

TERM

2. The term of this Agreement and the designation of the Lands as a municipal capital facility shall be from the Effective Date to the earliest of:
 - (a) The day the Agreement expires, is surrendered or terminates;
 - (b) The day the Lands ceases to be used as a municipal capital facility as that term is described in Ontario Regulation 603/06 or amendments thereto;
 - (c) The day the City ceases to be the landlord without assigning the Lease to its successor; and,
 - (b) The day the HUPEG Entity ceases to be the tenant without assigning the Lease to its successor with landlord consent.

ZONING

3. For the purposes of clarity, the City acknowledges and agrees that neither this Agreement nor the proposed by-law shall in any way affect the zoning of the Lands or the permitted uses of the Lands under applicable laws.

OBLIGATIONS AS COVENANTS

4. Each obligation expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.

ENTIRE AGREEMENT

5. This Agreement contains all the covenants, agreements and understandings between the parties concerning its subject matter.

ENUREMENT

6. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

PARTIAL INVALIDITY

7. If any provision of this Agreement or the application of it to any person or circumstances is held to any extent invalid or unenforceable, the remainder of this Agreement or the application of the provisions to persons or circumstances other than those as to which it is held invalid or unenforceable is not affected.

FURTHER ASSURANCES

8. The parties shall do and execute all such further acts, deeds, instruments or things as may be necessary or desirable for the purpose of carrying out the intent of this Agreement.

COUNTERPARTS

9. this Agreement may be executed in any number of counterparts and delivered by electronic means, each of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

CITY OF HAMILTON

I have authority to bind the Corporation.

HUPEG ENTITY.

I have authority to bind the Corporation.

APPENDIX "A"

**LEGAL DESCRIPTION OF THE LANDS MUNICIPALLY KNOWN AS [XXX],
HAMILTON**

PART 1

Firstly: PIN:

Part of Lot ...

Excluding...