

MASTER AGREEMENT

CITY OF HAMILTON

- and -

HAMILTON URBAN PRECINCT ENTERTAINMENT GROUP L.P.

October 26, 2021

TABLE OF CONTENTS

ARTICLE 1		
DEFINITIONS		2
1.1	Definitions	2
1.2	Schedules	15
ARTICLE 2		
REPRESENTATIONS AND WARRANTIES		15
2.1	Representations and Warranties Regarding the City	15
2.2	Representations and Warranties Regarding HUPEG Entities	17
2.3	Survival of Representations and Warranties, Claims, Etc	18
ARTICLE 3		
TRANSACTIONS		19
3.1	Initial Transactions	19
3.2	Development Transaction	20
ARTICLE 4		
PRE-CLOSING MATTERS		21
4.1	Authorizations	21
4.2	Property Information	21
4.3	Participation of City Representative	23
4.4	Confidentiality	23
4.5	Settlement of Documents	24
4.6	Establishment of Legal Descriptions	25
4.7	Operation Before Closing	26
4.8	Permits and Approvals	27
ARTICLE 5		
OTHER MATERIAL TERMS		27
5.1	Upgrades/Developments	27
5.2	Operations	28
5.3	Naming, Sponsorship and Advertising Rights	29
5.4	Public Realm and District Design	30
5.5	Surcharges for Capital Repairs/Enhancements	30
5.6	Municipal Incentive Programs	30
5.7	Art Gallery of Hamilton	32
5.8	Not Conditional on Government Funding	32
5.9	Affordable Housing	33
5.10	Salvation Army	33
5.11	HUPEG Person	33
5.12	Damage and Destruction	33
5.13	Employees	35
5.14	Skate Canada and CCMA	35
5.15	Community Living	36
5.16	Replacement Parking	36
5.17	Survival	36

ARTICLE 6		
PROVISIONS APPLICABLE TO TRANSACTIONS		37
6.1	Adjustments.....	37
6.2	Registration and Transfer Costs.....	38
6.3	“As Is, Where-Is”.....	38
ARTICLE 7		
CONDITIONS		40
7.1	Threshold Conditions.....	40
7.2	Additional Threshold Conditions for the Subsequent Transaction.....	41
7.3	Closing Conditions Benefiting the City.....	42
7.4	Closing Conditions Benefiting HUPEG Entities.....	44
7.5	Effect of Termination.....	44
7.6	Waiver of Termination Right.....	45
ARTICLE 8		
CLOSING & POST-CLOSING		46
8.1	City’s Closing Documents.....	46
8.2	HUPEG Entities’ Closing Documents.....	48
8.3	Extension of Closing Date.....	51
8.4	Electronic Registration.....	51
ARTICLE 9		
GENERAL		52
9.1	Notices.....	52
9.2	City as Regulatory Authority.....	53
9.3	Obligations as Covenants.....	53
9.4	Covenants of HUPEG.....	53
9.5	One Voice for HUPEG Entities.....	54
9.6	Fees and Costs.....	54
9.7	Index and Headings.....	54
9.8	Invalidity of Provisions.....	54
9.9	Successors and Assigns.....	54
9.10	Designating Applicable HUPEG Entities.....	54
9.11	Tender.....	55
9.12	Amendment of Agreement.....	55
9.13	Further Assurances.....	55
9.14	Entire Agreement.....	55
9.15	Time of Essence.....	56
9.16	Planning Act.....	56
9.17	No-Merger.....	56
9.18	Governing Law.....	56
9.19	Counterparts.....	56
9.20	MOU Superseded.....	56
9.21	Relationship of the Parties.....	56

MASTER AGREEMENT

THIS AGREEMENT made as of the 26th day of October, 2021.

B E T W E E N:

CITY OF HAMILTON

OF THE FIRST PART

- and -

HAMILTON URBAN PRECINCT ENTERTAINMENT GROUP L.P.

OF THE SECOND PART.

WHEREAS the capitalized words used herein have the meaning ascribed thereto in Section 1.1 unless the context otherwise requires;

AND WHEREAS in December, 2017 Hamilton City Council ("**City Council**") adopted a motion to seek opportunities (the "**Initiative**") for private sector participation in the redevelopment of the Arena, the Concert Hall and the Convention Centre (collectively, the "**Entertainment Venues**") in a manner that would eliminate the City's subsidization of those three venues;

AND WHEREAS City Council reaffirmed the Initiative in January, 2019;

AND WHEREAS HUPEG responded to the Initiative by proposing, at its own cost, to redevelop or renovate, as applicable, the Entertainment Venues (and take on the ongoing capital and operating requirements of those facilities, with no subsidy from the City (except as specifically provided in this Agreement or the Closing Documents) (the "**Revitalization Plan**") in consideration of the transfer of certain lands and other consideration from the City, all in accordance with the terms set out in this Agreement;

AND WHEREAS HUPEG is a limited partnership which was created for the purpose of, among other things, carrying out the Revitalization Plan;

AND WHEREAS as of the date hereof, a consortium consisting of Laborers' International Union of North America (also known as "LiUNA"), Meridian Credit Union, Paletta International Corporation and Carmen's Group Inc. has been formed and, as of the effective date of the Closing Documents relating to the Initial Transactions and the Subsequent Transactions, some or all of such parties, and others, will become limited partners of HUPEG, all subject to compliance with the provisions of this Agreement;

AND WHEREAS HUPEG delivered to the City a proposed memorandum of understanding with respect to HUPEG's proposed Revitalization Plan and the transactions that may result therefrom and, following approval by City Council, the City executed such memorandum of understanding (the "**MOU**");

AND WHEREAS the general partner of HUPEG, Hamilton Urban Precinct Entertainment Group GP Inc. will be creating one or more limited partnerships (each of which will

be a HUPEG Person), each to carry out the Revitalization Plan with respect to an Entertainment Venue and HUPEG will carry out the development of the Development Properties;

AND WHEREAS as of the date hereof, a consortium consisting of Carmen's Group Inc., Global Spectrum Facility Management Limited and Live Nation Worldwide, Inc. has been formed and, as of the effective date of the Closing Documents relating to the Initial Transactions and the Subsequent Transactions, some or all of such parties, and others, will become limited partners of the respective aforesaid Entertainment Venue limited partnerships (subject to compliance with the provisions of this Agreement);

AND WHEREAS the City and HUPEG are entering into this Agreement to set out their respective rights and obligations with respect to the Transactions and Revitalization Plan;

NOW THEREFORE in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the parties hereto) the parties hereby covenant, agree and declare as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

The following definitions shall apply in the interpretation of this Agreement:

- (a) **"Acceptable Guarantor"** means, in respect of a particular Guarantee and Indemnity, either a Person that satisfies or a group of Persons that collectively satisfy the Applicable Net Worth Criteria as of the applicable Closing Date;
- (b) **"Additional Property Information"** has the meaning given to it in Section 4.2(b);
- (c) **"Affiliate"** means with respect to any Person, any legal entity which directly or indirectly Controls or is Controlled by such Person or any legal entity which is directly or indirectly Controlled by a second Person which directly or indirectly Controls such Person; provided that, in the case of HUPEG or any HUPEG Person, an "Affiliate" means another HUPEG Person;
- (d) **"Affordable Housing"** means "affordable housing" within the meaning of the City of Hamilton's Municipal Housing Facilities By-Law (By-law 16/233);
- (e) **"AGH"** means the Art Gallery of Hamilton;
- (f) **"Agreed Compensation Value"** means, in respect of a particular Development Property, the Appraised Value of such Development Property;
- (g) **"Agreement"**, **"this Agreement"**, **"the Agreement"**, **"hereto"**, **"hereof"**, **"herein"**, **"hereby"**, **"hereunder"** and similar expressions mean or refer to this Agreement as amended from time to time and any indenture, agreement or instrument supplemental or ancillary hereto or in implementation hereof, and the expressions **"Article"**, **"Section"**, **"Subsection"** and **"Schedule"** followed by a number or letter

mean and refer to the specified article, section, subsection or schedule of this Agreement;

- (h) **"Agreement Period"** means, in the case of any Property and all matters relating thereto, the period commencing on the Execution Date and ending on the Closing of the Transaction relating to such Property;
- (i) **"Applicable Laws"** means all statutes, laws, by-laws, regulations, ordinances and orders of governmental or other public authorities having jurisdiction;
- (j) **"Applicable Net Worth Criteria"** means: (i) in respect of a Guarantee and Indemnity for the Arena Work, Concert Hall Work and the Convention Centre Work, a Net Worth of at least \$25,000,000.00; and (ii) in respect of a Guarantee and Indemnity for the Arena Lease, the Concert Hall Lease and the Convention Centre Lease, a Net Worth of at least \$10,000,000.00 as it relates to operations and not the Work; if a Guarantee and Indemnity relates to more than one of the covenants, obligations and indemnities described in (i) and (ii), the Applicable Net Worth Criteria shall be the sum of such applicable minimums;
- (k) **"Appraised Value"** means the fair market value of the applicable Development Property determined as at the date of termination of this Agreement as it relates to a particular Property by an appraisal to be obtained from a qualified appraiser to be agreed upon by the Parties, which appraisal shall be based on terms of reference to be agreed upon by the Parties.
- (l) **"Arena"** means the premises forming part of the Arena Property, as such premises may be expanded, redeveloped, modified and/or replaced from time to time;
- (m) **"Arena Lease"** means the lease to be entered into between the City and the HUPEG Arena Tenant on the Initial Closing Date, in the form agreed to by the Parties prior to the Document Settlement Deadline in accordance with Section 4.5, pursuant to which, *inter alia*, the HUPEG Arena Tenant is to lease the Arena Property from the City, undertake the Arena Work and assume responsibility for the Operating Agreements relating to the Arena Property;
- (n) **"Arena Property"** means, collectively, the Arena and the lands on which the Arena is located, as agreed upon by the Parties pursuant to Section 4.6(b), but does not include the airspace above the existing Arena (other than to the extent required for the Arena Work);
- (o) **"Arena Transaction"** means the granting of the leasehold interest in the Arena Property pursuant to this Agreement by way of the Arena Lease;
- (p) **"Arena Work"** has the meaning given to it in Schedule A;
- (q) **"Arena Work Performance Documentation"** means, collectively: (i) a Guarantee and Indemnity in respect of the Arena Work, and (ii) either: (A) a construction bond in respect of, and in an amount equal to 100% of the budgeted cost of, the Arena Work, or (B) a letter of credit in respect of, and in an amount equal to 100% of the budgeted cost of the Arena Work, the choice between (A) and (B) to be made by

HUPEG, and none of which will permit reductions for progress or the achievement of milestones;

- (r) **"Assigned Operating Agreements"** means, in respect of any Property, the Operating Agreements for such Property existing on the applicable Closing Date other than the Unassigned Operating Agreements for such Property; for greater certainty, it is confirmed that Assigned Operating Agreements do not include any Inapplicable Operating Agreements;
- (s) **"Assignment and Assumption of Operating Agreements"** means, in the case of any Property, the agreement to be entered into between the City and the applicable HUPEG Entity on the applicable Closing Date, in the form agreed to by the Parties prior to the Document Settlement Deadline in accordance with Section 4.5; pursuant to which, inter alia: (i) the City assigns all of its rights and benefits under the Assigned Operating Agreements for such Property to the applicable HUPEG Entity, (ii) the applicable HUPEG Entity assumes and agrees to satisfy and be bound by all of the obligations and covenants of the City under such Assigned Operating Agreements; (iii) the applicable HUPEG Entity agrees to be responsible, and indemnify the City, for all Claims and Losses incurred by the City in respect of such Assigned Operating Agreements for matters that relate to the period from and after the applicable Closing Date; (iv) the applicable HUPEG Entity agrees to be responsible, and indemnify the City, for all Claims and Losses incurred by the City for, in respect of and/or arising as a result of the termination or non-assumption of the City-Indemnified Unassigned Operating Agreements for such Property (which, for greater certainty, does not include the Undisclosed Operating Agreements), which indemnified Claims and Losses shall include, without limitation, all fees and costs relating to or resulting from the termination (or attempted termination) of the City-Indemnified Unassigned Operating Agreements and amounts paid or payable thereunder that relate to the period from and after the applicable Closing Date; and (v) the City agrees to indemnify the applicable HUPEG Entity for all Losses incurred by such HUPEG Entity under such Assigned Operating Agreements for matters that relate to the period prior to the applicable Closing Date (other than those relating to the maintenance, repair and/or condition of any Property);
- (t) **"Assignment and Assumption of Permitted Encumbrances"** means, in the case of any Development Property Transaction, an agreement to be entered into by the applicable HUPEG Entity in favour of the City on the applicable Closing Date, in the form agreed to by the Parties prior to the Document Settlement Deadline in accordance with Section 4.5, pursuant to which the City assigns all of its rights and benefits under all Permitted Encumbrances affecting the subject Property to the applicable HUPEG Entity and the applicable HUPEG Entity assumes and agrees to be bound by all obligations of the City under all Permitted Encumbrances affecting the subject Property and to fully indemnify and save harmless the City in respect of all Claims and Losses incurred by the City that relate to the period following the applicable Closing Date;
- (u) **"Business Day"** means any day which is not a Saturday, Sunday or a day observed as a statutory holiday in the Province of Ontario;
- (v) **"Carmen's"** means The Hospitality Centre Corporation;

- (w) **"Carmen's Release"** means the mutual release to be executed by Carmen's and the City on the Initial Closing Date, in the form agreed to by the Parties prior to the Document Settlement Deadline in accordance with Section 4.5, pursuant to which (i) Carmen's releases the City from all Claims and obligations arising under or pursuant to the facility operating management agreement dated as of March 1, 2013 between the City, Mercanti Banquet & Convention Centre Ltd. and Carmen's in respect of the Convention Centre (as amended, supplemented and/or otherwise modified) relating to the period from and after the Initial Closing Date; and (ii) the City releases Carmen's from all Claims and obligations arising under or pursuant to such agreement relating to the period from and after the Initial Closing Date;
- (x) **"CCMA Booking"** means the Event Booking for the Canadian Country Music Association, which is scheduled for September 13 to 17, 2023; it is confirmed that the CCMA Booking may not be cancelled, rescheduled, moved or otherwise modified other than in accordance with Section 5.14;
- (y) **"City"** means the City of Hamilton;
- (z) **"City Employees"** means Employees that are employed by or on behalf of the City, but does not include any Operations Employees;
- (aa) **"City-Indemnified Unassigned Operating Agreements"** has the meaning given to it in Section 5.2(b);
- (bb) **"City Council"** has the meaning given to it in the recitals;
- (cc) **"City Solicitor"** means the City Solicitor for the City of Hamilton;
- (dd) **"City's Solicitors"** means Davies Ward Phillips & Vineberg LLP or such other solicitors as are appointed by the City from time to time;
- (ee) **"Claims"** means all past, present and future claims, suits, proceedings, demands and actions of any nature or any kind whatsoever;
- (ff) **"Closing"** means the Initial Closing or the Development Property Closing, as the case may be;
- (gg) **"Closing Date"** means the Initial Closing Date or the Development Property Closing Date, as the case may be;
- (hh) **"Closing Documents"** means, in the case of any Transaction, the agreements, instruments and other documents to be delivered pursuant to Sections 8.1 and 8.2 in respect of such Transaction;
- (ii) **"Collateral Transaction Conditions"** has the meaning given to it in Section 7.2;
- (jj) **"Community Living Arrangements"** has the meaning given to it in item 6 of Schedule H;
- (kk) **"Community Living Lease"** has the meaning given to it in item 6 of Schedule H;

- (ll) “**Concert Hall**” means the premises forming part of the Concert Hall Property, as such premises may be expanded, redeveloped, modified and/or replaced from time to time;
- (mm) “**Concert Hall Lease**” means the lease to be entered into between the City and the HUPEG Concert Hall Tenant on the Initial Closing Date, in the form agreed to by the Parties prior to the Document Settlement Deadline in accordance with Section 4.5, pursuant to which, *inter alia*, the HUPEG Concert Hall Tenant is to lease the Concert Hall Property from the City, undertake the Concert Hall Work and assume responsibility for the Operating Agreements relating to the Concert Hall Property;
- (nn) “**Concert Hall Property**” means, collectively, the Concert Hall and the lands on which the Concert Hall is located, as agreed upon by the Parties pursuant to Section 4.6(b), but does not include the airspace above the existing Concert Hall (other than to the extent required for the Concert Hall Work);
- (oo) “**Concert Hall Transaction**” means the granting of the leasehold interest in the Concert Hall Property pursuant to this Agreement by way of the Concert Hall Lease;
- (pp) “**Concert Hall Work**” has the meaning given to it in Schedule B;
- (qq) “**Concert Hall Work Performance Documentation**” means, collectively: (i) a Guarantee and Indemnity in respect of the Concert Hall Work, and (ii) either: (A) a construction bond in respect of, and in an amount equal to 100% of the budgeted cost of, the Concert Hall Work, or (B) a letter of credit in respect of, and in an amount equal to 100% of the budgeted cost of the Concert Hall Work, the choice between (A) and (B) to be made by HUPEG, and none of which will permit reductions for progress or the achievement of milestones;
- (rr) “**Confidentiality Agreement**” means the non-disclosure agreement dated as of August, 2020 between the City and HUPEG;
- (ss) “**Control**” or “**Controlled**” means the right to direct the management and policies of a Person, whether directly or indirectly, or to elect a majority of the board of directors or the trustees of a Person, whether through the ownership of voting securities or by contract or otherwise;
- (tt) “**Convention Centre**” means the premises forming part of the Convention Centre Property, as such premises may be expanded, redeveloped, modified and/or replaced from time to time;
- (uu) “**Convention Centre Lease**” means the lease to be entered into between the City and the HUPEG Convention Centre Tenant on the Initial Closing Date, in the form agreed to by the Parties prior to the Document Settlement Deadline in accordance with Section 4.5, pursuant to which, *inter alia*, the HUPEG Convention Centre Tenant is to lease the Convention Centre Property from the City, undertake the Convention Centre Work and assume responsibility for the Operating Agreements relating to the Convention Centre Property;

- (vv) **"Convention Centre Property"** means, collectively, the Convention Centre and the lands on which the Convention Centre is located, as agreed upon by the Parties pursuant to Section 4.6(b), but does not include the HCC Subterranean Parking Lot, the lands on which the HCC Subterranean Parking Lot is located and/or the airspace above the existing Convention Centre (other than to the extent required for the Convention Centre Work);
- (ww) **"Convention Centre Transaction"** means the granting of the leasehold interest in the Convention Centre Property pursuant to this Agreement by way of the Convention Centre Lease;
- (xx) **"Convention Centre Work"** has the meaning given to it in Schedule C;
- (yy) **"Convention Centre Work Performance Documentation"** means, collectively:
 - (i) a Guarantee and Indemnity in respect of the Convention Centre Work, and (ii) either: (A) a construction bond in respect of, and in an amount equal to 100% of the budgeted cost of, the Convention Centre Work, or (B) a letter of credit in respect of, and in an amount equal to 100% of the budgeted cost of the Convention Centre Work, the choice between (A) and (B) to be made by HUPEG, and none of which will permit reductions for progress or the achievement of milestones;
- (zz) **"Designee"** has the meaning given to it in Section 9.10(a);
- (aaa) **"Development Properties"** means the properties municipally known as 14 Vine Street, 12 & 28 York Boulevard and 191 York Boulevard, each in Hamilton, Ontario, and **"Development Property"** means any one of them;
- (bbb) **"Development Property Closing"** means the closing of a Development Property Transaction;
- (ccc) **"Development Property Closing Date"** means, in respect of any particular Development Property Transaction, subject to Sections 5.12(b) and 8.3, the date that is the earlier of: (i) December 31, 2023; and (ii) the 15th Business Day following the satisfaction or waiver by both Parties of the Collateral Transaction Conditions in respect of such Development Property Transaction;
- (ddd) **"Development Property Development"** has the meaning given to it in Section 3.2;
- (eee) **"Development Property Interests"** means Subject Interests in respect of the Development Properties;
- (fff) **"Development Property Transactions"** means the transactions of purchase and sale in respect of the Development Properties pursuant to this Agreement and **"Development Property Transaction"** or **"Subsequent Transaction"** means one of them;
- (ggg) **"Document Settlement Date"** means the 60th day following the Execution Date, provided that, if such 60th day is not a Business Day, the Document Settlement Date shall be the next Business Day after such 60th day;

- (hhh) **"Document Settlement Deadline"** means 5:00 p.m. on the Document Settlement Date;
- (iii) **"Early Access Agreement"** means the access agreement dated as of January 5, 2021 between the City and HUPEG with respect to the Properties;
- (jjj) **"Eligible HUPEG Person"** means a HUPEG Person whose sole purpose and business is the acquisition, ownership, development, management and/or operation of the subject Property and, if applicable, any other Property;
- (kkk) **"Eligible Portions"** means those portions of the Entertainment Venues that would be eligible for designation as a Municipal Capital Facility pursuant to O.Reg 603/06 of the *Municipal Act, 2001* and, for greater certainty, does not include any part or portion of any Entertainment Venue that is not itself a municipal capital facility notwithstanding that it may be contiguous with or part of land or works that is or are municipal capital facilities;
- (lll) **"Employee"** means all personnel employed, engaged or retained in connection with the ownership, operation and/or management of any Property, including any that are on medical or long-term disability leave, or other statutory or authorized leave of absence;
- (mmm) **"Encumbrances"** means, in respect of any Property, all mortgages, pledges, charges, liens, debentures, hypothecs, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest, in such Property or any part thereof, and any agreements, leases, options, easements, rights of way, restrictions, executions or other encumbrances (including notices or other registrations in respect of any of the foregoing) affecting title to such Property or any part thereof; provided, for greater certainty, that an instrument that does not relate to a Property does not constitute an Encumbrance in respect of such Property notwithstanding that it may be registered on title to such Property; for greater certainty, Inapplicable Encumbrances do not constitute Encumbrances;
- (nnn) **"Energy Agreements"** means, collectively, the (A) Power Purchase Agreement dated December 31, 2002 between Hamilton Hydro Services Inc., Hamilton Community Energy and the City, as amended by agreements dated June 6 2008 and October 1, 2019; (B) License Agreement dated January 1, 2015 between the City and HCE Energy Inc., (C) Thermal Energy Agreement dated December 31, 2002 between the City, Hamilton Community Energy and Hamilton Hydro Services Inc., and (D) Energy Services Agreement dated January 1, 2015 between the City and HCE Energy Inc.
- (ooo) **"Entertainment Venues"** has the meaning given to it in the recitals of this Agreement;
- (ppp) **"Environmental Laws"** means all Applicable Laws now in existence governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to Hazardous Substances or intended to protect the environment;

- (qqq) “**Environmental Release**” means, in respect of each Development Transaction, the release and indemnity executed by HUPEG and the applicable HUPEG Entity in favour of the City on the applicable Closing Date, in the form agreed to by the Parties prior to the Document Settlement Deadline in accordance with Section 4.5, pursuant to which, *inter alia*, each of HUPEG and such HUPEG Entity releases and discharges the City from all Claims arising from time to time relating to environmental matters relating to or resulting from the applicable Property and agrees to indemnify the City in respect of any Claims made against the City from time to time in connection with environmental matters relating to or resulting from such Property;
- (rrr) “**ETA**” means the *Excise Tax Act* (Canada), as amended from time to time, and includes the regulations thereunder;
- (sss) “**Execution Date**” means the date of this Agreement, as set out on the cover page hereof;
- (ttt) “**Existing Tax Incremental Grant Program**” means the “Hamilton Tax Increment Grant Program” established by the City of Hamilton, existing as of June 10, 2020, or such other tax program in the City’s discretion which provides for the same rebates and benefits as such first-mentioned program;
- (uuu) “**Expert Opinion**” has the meaning given to it in Section 5.12(a)(i);
- (vvv) “**Extended Tax Incremental Grant Program**” has the meaning given to it in Section 5.6(a);
- (www) “**Extended TIG Total Amount**” has the meaning given to it in Section 5.6(a);
- (xxx) “**Event Bookings**” means bookings for events of any nature whatsoever at the Entertainment Venues;
- (yyy) “**Governmental Authorities**” means any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.
- (zzz) “**Guarantee and Indemnity**” means, in respect of a particular agreement or agreements, a full and unconditional guarantee and indemnity in favour of the City of all obligations and liabilities of the parties (other than the City) to such agreement(s), which guarantee and indemnity will contain an ongoing covenant from the guarantor and indemnifier to continue to satisfy the Applicable Net Worth Criteria and will provide that all Persons comprising the guarantor and indemnifier thereunder are jointly and severally liable for all obligations of the guarantor and indemnifier thereunder; provided that such guarantee and indemnity will expressly provide that it will be in effect only during such time(s), if any, that the HUPEG

Entity that is a party to the underlying agreement(s) does not itself satisfy the Applicable Net Worth Criteria;

- (aaaa) **"Hazardous Substances"** means any substance, waste, liquid, gaseous or solid matter, fuel, micro-organism, sound, vibration, ray, heat, odour, radiation, energy vector, plasma, organic or inorganic matter which is or is deemed to be, alone or in any combination, hazardous, hazardous waste, solid or liquid waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination, regulated by any applicable Environmental Laws.
- (bbbb) **"HCC Subterranean Parking Lot"** means the lands and improvements comprising subterranean parking lot identified in Schedule G;
- (cccc) **"HST"** means all harmonized sales tax imposed under Part IX of the ETA or under any other similar statute in any jurisdiction of Canada;
- (dddd) **"HST Undertaking and Indemnity"** means an undertaking and indemnity in customary form for commercial transactions in the Province of Ontario;
- (eeee) **"HUPEG"** means Hamilton Urban Precinct Entertainment Group L.P. ;
- (ffff) **"HUPEG Development Properties Purchaser"** means: (i) until HUPEG designates an Eligible HUPEG Person as the HUPEG Development Properties Purchaser in accordance with Section 9.10(a), HUPEG; and (ii) upon HUPEG designating an Eligible HUPEG Person as the HUPEG Development Properties Purchaser in accordance with Section 9.10(a), such designated Eligible HUPEG Person;
- (gggg) **"HUPEG Arena Tenant"** means: (i) until HUPEG designates an Eligible HUPEG Person as the HUPEG Arena Tenant in accordance with Section 9.10(a), HUPEG; and (ii) upon HUPEG designating an Eligible HUPEG Person as the HUPEG Arena Tenant in accordance with Section 9.10(a), such designated Eligible HUPEG Person;
- (hhhh) **"HUPEG Concert Hall Tenant"** means: (i) until HUPEG designates an Eligible HUPEG Person as the HUPEG Concert Hall Tenant in accordance with Section 9.10(a), HUPEG; and (ii) upon HUPEG designating an Eligible HUPEG Person as the HUPEG Concert Hall Tenant in accordance with Section 9.10(a), such designated Eligible HUPEG Person;
- (iv) **"HUPEG Convention Centre Tenant"** means: (i) until HUPEG designates an Eligible HUPEG Person as the HUPEG Convention Centre Tenant in accordance with Section 9.10(a), HUPEG; and (ii) upon HUPEG designating an Eligible HUPEG Person as the HUPEG Convention Centre Tenant in accordance with Section 9.10(a), such designated Eligible HUPEG Person;
- (jjjj) **"HUPEG Entity"** means, in the case of any Property or Transaction, the HUPEG Person that is or will be the purchaser or tenant of or under such Property or Transaction, as the case may be. For greater certainty: (i) the HUPEG Arena Tenant is the HUPEG Entity with respect to the Arena Property and the Arena Transaction; (ii) the HUPEG Concert Hall Tenant is the HUPEG Entity with respect

to the Concert Hall Property and the Concert Hall Transaction; (iii) the HUPEG Convention Centre Tenant is the HUPEG Entity with respect to the Convention Centre Property and the Convention Centre Transaction; and (iv) the HUPEG Development Property Purchaser is the applicable HUPEG Entity with respect to the Development Properties and each of the Development Property Transactions; and "**HUPEG Entities**" means all of them;

- (kkkk) "**HUPEG Partner**" means a partner of HUPEG;
- (llll) "**HUPEG Person**" means a Person that satisfies all of the following criteria: (i) Carmen's Group Inc. (or an Affiliate thereof) at all times has and exercises, directly or indirectly, the full and exclusive power to control and direct in all circumstances the management and decisions of such Person; (ii) Laborers' International Union of North America (also known as "LiUNA"), Meridian Credit Union, Paletta International Corporation, Global Spectrum Facility Management Limited, Live Nation Worldwide, Inc. and Carmen's Group Inc., collectively (or a combination thereof and not necessarily including each of the foregoing entities), directly or indirectly beneficially own (other than by way of security only) at least 60% of each class of ownership interests (whether partnership interests, shares or other securities) of such Person; and (iii) no Restricted Person directly or indirectly owns any ownership interest in such Person;
- (mmmm) "**HUPEG Tenant**" means: (i) in respect of the Arena or Arena Lease, the HUPEG Arena Tenant; (ii) in respect of the Concert Hall or Concert Hall Lease, the HUPEG Concert Hall Tenant; and (iii) in respect of the Convention Centre or Convention Centre Lease, the HUPEG Convention Centre Tenant;
- (nnnn) "**HUPEG's AGH Collaboration and Support**" means collaboration and support to the AGH (and, where applicable, the City) which shall include: (i) a contribution by HUPEG of no less than \$2,000,000 to the AGH as set out in the letter of intent between HUPEG and the AGH attached to this Agreement as Schedule D; and (ii) such other collaboration and support set out in the letter of intent between HUPEG and the AGH attached to this Agreement as Schedule D;
- (oooo) "**HUPEG's Solicitors**" means Gowling WLG (Canada) LLP or such other solicitors as are appointed by HUPEG from time to time;
- (pppp) "**Inapplicable Encumbrances**" means those encumbrances that do not relate to, or encumber, any Property, whether or not registered on title to a Property;
- (qqqq) "**Inapplicable Operating Agreements**" means those agreements that the City has delivered as Property Information that the parties have agreed (or by their terms) do not apply to any Property and therefore were not supposed to have been delivered as Property Information;
- (rrrr) "**Indemnity re Unassigned Operating Agreements**" means, in the case of any Transaction, the agreement to be entered into between the City, HUPEG and the applicable HUPEG Entity on the applicable Closing Date, pursuant to which the City agrees to indemnify and save harmless HUPEG and the applicable HUPEG Entity from all Claims and Losses incurred by or brought against HUPEG and the applicable HUPEG Entity under or in respect of the Unassigned Operating

Agreements for the Property(ies) that is the subject of such Transaction for matters that relate to the period prior to the applicable Closing Date, excluding any Claims or Losses incurred for, in respect of and/or as a result of the termination or non-assumption of the City-Indemnified Unassigned Operating Agreements for such Property (including, without limitation, all fees and costs relating to or resulting from the termination (or attempted termination) of such City-Indemnified Unassigned Operating Agreements and amounts paid or payable thereunder that relate to the period from and after the applicable Closing Date);

- (ssss) **"Initial Closing"** means the closing of the Initial Transactions;
- (tttt) **"Initial Closing Date"** means April 1, 2022 or such other date as the Parties may agree, each acting in its sole and unfettered discretion; it is confirmed that the Initial Closing Date is the commencement date of each Lease;
- (uuuu) **"Initial Transactions"** means, collectively, the Arena Transaction, the Concert Hall Transaction and the Convention Centre Transaction; and **"Initial Transaction"** means one of them;
- (vvvv) **"Knowledge of the City"** means the actual knowledge of Ryan McHugh, Raymond Kessler, Al Dore and Anders Knudsen, after having made reasonable inquiries of such City departments that are reasonably likely to have knowledge of the relevant matter; provided, for greater certainty, such reasonable inquiries shall not require any such individual or department to conduct any investigation the results of which would be available by way of customary "off-title" inquiries by HUPEG's Solicitors;
- (wwww) **"Lease"** means the Arena Lease, the Concert Hall Lease or the Convention Centre Lease;
- (xl) **"Losses"** means all obligations, losses, damages, liabilities, debts, judgments, penalties, costs and expenses of any nature whatsoever (including all legal fees and disbursements on a full indemnity basis and expert witness fees and disbursements incurred in connection with any Claims);
- (yyyy) **"Management Agreement"** means: (i) the Management Agreement between Global Spectrum Facility Management, L.P. and the City of Hamilton with an effective date of March 1, 2013, as amended by an Amending Agreement with an effective date of October 1, 2019, and as may be further amended; and (ii) a Facility Operating Management Agreement between the City of Hamilton, the Hospitality Centre Corporation, and Mercanti Banquet Centre & Convention Centre Ltd. dated March 1, 2013, as amended by an Amending Agreement with an effective date of October 1, 2019, and as may be further amended; and **"Management Agreements"** means both of them;
- (zzzz) **"Manager"** means the manager, operator or similar role under a Management Agreement;
- (aaaaa) **"Municipal Capital Facility"** means a municipal capital facility within the meaning of the *Municipal Act, 2001* (Ontario), as amended from time to time;

- (bbbb) **"Municipal Capital Facility Agreement"** means, in respect of any Eligible Portion of any Property or subject premises, an agreement to designate such Eligible Portion of any Property or subject premises as a Municipal Capital Facility entered into by the applicable parties on the applicable Closing Date;
- (cccc) **"Net Worth"** means, with respect to any Person at any time, the value of the total assets of such Person (excluding (i) goodwill, (ii) copyright, (iii) intellectual property, (iv) brand recognition value, and (v) any positive value of the leasehold interest arising under any Lease) less the value of the total liabilities of such Person (including (1) short term and long term in the most recent financial statements (including the liabilities arising pursuant to the Lease), and (2) any liabilities included as a note in the most recent financial statements of such Person unless such note provides that management and its legal counsel have determined that the claim associated with such liabilities is without merit) at such time, as determined based on the most recent quarterly financial statements for such Person prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (but excluding "fair value" reporting), in each case applied on a consistent basis;
- (dddd) **"Operating Agreements"** has the meaning given to it in Section 5.2(b);
- (eeee) **"Operations Employees"** means Employees that are employed by or on behalf of a Manager, including any such Employees for which the City (or its assigns) would become responsible for in connection with the termination of a Management Agreement; providing same shall not include any Employees employed directly by the City (and not by a Manager as agent for the City);
- (ffff) **"Parties"** means, collectively, the City and HUPEG; and **"Party"** means one of the Parties;
- (gggg) **"Permitted Encumbrances"** means:
- (i) those Encumbrances which, or notice of which, are registered against the title to any Property as of the Execution Date; provided that the City shall have delivered or otherwise made available to HUPEG prior to the Execution Date a copy of each agreement for which a notice has been registered on title to any Property as of the Execution Date without a copy of the subject agreement being attached thereto;
 - (ii) all Encumbrances which have been approved by HUPEG, are caused by or on behalf of any HUPEG Entity or any HUPEG Person or are created pursuant to this Agreement; and
 - (iii) all Encumbrances described in Schedule H that are in existence as of the applicable Closing;
- (hhhh) **"Person"** means any individual, partnership, corporation, joint venture, association, joint stock company, trust, unincorporated organization or a government or an agency or potential subdivision thereof, and "corporation" shall include "company" and *vice versa*;

- (v) **"Properties"** means the Arena Property, the Concert Hall Property, the Convention Centre Property, and any Development Property; and **"Property"** means one of them;
- (jjjjj) **"Property Information"** has the meaning given to it in Section 4.2(a);
- (kkkkk) **"Property Leases"** has the meaning given to it in Section 4.2(a)(vi);
- (lllll) **"Property-Related Representations"** means the representations and warranties made in Sections 2.1(e), 2.1(f), 2.1(g) and 2.1(h) and the corresponding representations, warranties and certifications made in any Closing Documents;
- (mmmmm) **"Reciprocal Rights Agreement"** means, in the case of each Transaction, the agreement to be entered into between the City and the applicable HUPEG Entity on the applicable Closing Date, in the form agreed to by the Parties prior to the Document Settlement Deadline in accordance with Section 4.5, to address interdependencies between the subject Property and other neighbouring properties owned by the City;
- (nnnnn) **"Related Person"** means, with respect to any Person: (i) any affiliate (as defined in the *Business Corporations Act* (Ontario)) of such Person; (ii) any director or senior officer of such Person (or of its trustee or general partner); and (iii) any director or senior officer of any affiliate (as defined in the *Business Corporations Act* (Ontario)) of such Person (or of its trustee or general partner);
- (ooooo) **"Restricted Person"** means a Person that itself or any Related Person (as defined in this definition) of which: (i) is listed, designated or sanctioned Person pursuant to anti-money laundering laws, economic sanction laws, anti-terrorist financing laws or anti-corruption laws of Canada or the United States; or (ii) has been convicted or found guilty (in a decision of a court of competent jurisdiction that has not been reversed or overturned) of, or admitted to, or is the subject of ongoing material legal proceedings alleging, fraud, breach of trust, corruption or money laundering/terrorist financing;
- (ppppp) **"Revitalization Plan"** has the meaning given to it in the recitals of this Agreement;
- (qqqqq) **"Skate Canada Booking"** means the Event Booking for the Skate Canada International Championships, which is scheduled to take place at the Arena on April 9, 2022; it is confirmed that the Skate Canada Booking may not be cancelled, rescheduled, moved or otherwise modified other than in accordance with Section 5.14;
- (rrrrr) **"Subject Interests"** means, in the case of any Property, the freehold or leasehold, as the case may be, interest in such Property and the rights and obligations of the City in the Assigned Operating Agreements and Permitted Encumbrances relating to such Property;
- (sssss) **"Summer's Lane"** means the lands forming part of the Convention Centre Property that are identified as "Summer's Lane", as agreed upon by the Parties pursuant to Section 4.6(b);

(ttttt) **"Threshold Conditions"** has the meaning given to it in Section 7.1;

(uuuuu) **"Transactions"** means, collectively, the Arena Transaction, the Concert Hall Transaction, the Convention Centre Transaction and the Development Property Transactions; and **"Transaction"** means one of them;

(vvvvv) **"Unassigned Operating Agreements"** has the meaning given to it in Section 5.2(b); and

(wwwww) **"Work"** means collectively, the Arena Work, the Concert Hall Work and the Convention Centre Work.

1.2 Schedules

The Schedules attached to this Agreement and listed below shall have the same force and effect as if the information contained therein were contained in the body of this Agreement:

Schedule A	-	Arena Lease – Key Terms and Features
Schedule B	-	Concert Hall Lease – Key Terms and Features
Schedule C	-	Convention Centre Lease – Key Terms and Features
Schedule D	-	Letter of Intent with AGH
Schedule E	-	Development Properties – Key Terms
Schedule F	-	Reciprocal Rights Agreements – Key Terms
Schedule G	-	Properties Descriptions
Schedule H	-	Permitted Encumbrances

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties Regarding the City

The City hereby represents and warrants (acknowledging that HUPEG is relying on such representations and warranties in entering into this Agreement) that, as of the Execution Date:

- (a) subject to the satisfaction of the condition in Section 7.1(a), the City has all necessary capacity, power and authority to enter into and to carry out the provisions of this Agreement and all other documents which may be necessary to give effect to the transactions contemplated by this Agreement;
- (b) subject to the satisfaction of the condition in Section 7.1(a), this Agreement and all other agreements referred to in this Agreement which have been or will be entered into in accordance with this Agreement has been duly authorized by the City and will constitute valid, binding and enforceable obligations of the City;
- (c) except as has been or will be disclosed to HUPEG prior to the Execution Date, neither the execution and delivery of this Agreement or any other agreement contemplated by this Agreement nor the fulfilment of or compliance with the terms and conditions hereof or thereof conflicts with or will conflict with or results in a material breach of any of the terms, conditions or provisions of or constitute a

material default under any agreement or instrument to which the City is a party or by which it is bound;

- (d) except as has been or will be disclosed to HUPEG prior to the Execution Date, there are no actions, suits or proceedings pending or threatened against the City which could reasonably be anticipated to materially adversely affect the ability of the City to perform its obligations under this Agreement;
- (e) to the Knowledge of the City, the City has disclosed to HUPEG all Property Information in accordance with Section 4.2 and without limiting the generality of the foregoing, there are no Property Leases other than as disclosed in the Property Information;
- (f) to the Knowledge of the City, the City is not aware of any expropriation proceedings that the City is itself carrying out and the City has not received written notice of any other expropriation proceedings being carried out by any other authority (including any municipal agency) with powers of expropriation, in each case relating to all or any portion of any Property;
- (g) to the Knowledge of the City, the City has not received written notice from any Governmental Authority (other than communication within the City) with respect to any claim, citation, order, directive or notice of investigation concerning any alleged violation of, liability or potential liability with respect to any Property under any Environmental Laws other than any such notices that (or the subject matter of which): (i) are set out in the Property Information; (ii) have been disclosed (or are deemed pursuant to Section 4.2(c) of this Agreement to have been disclosed) to HUPEG prior to the Execution Date, (iii) are discoverable by customary off-title inquiries in respect of the Property, or (iv) have been complied with, cured or resolved, as the case may be;
- (h) to the Knowledge of the City, there are no material defects in the structural components of any building on any Property that could not reasonably have been discovered by any testing and/or inspections of such building permitted pursuant to the Early Access Agreement, other than any such defects that: (i) are set out in the Property Information (or reasonably inferred from the Property Information), (ii) have been disclosed (or are deemed pursuant to Section 4.2(c) of this Agreement to have been disclosed) to HUPEG prior to the Execution Date, or (iii) are discoverable by customary off-title inquiries in respect of the Property. For the purpose of this representation, any testing and/or inspection: (I) that is approved by the City; or (II) for which it would be unreasonable to withhold approval if such approval was requested by HUPEG, is deemed to be permitted pursuant to the Early Access Agreement whether or not a request was made for such approval; and
- (i) with respect to the lease of 191 York Boulevard, Hamilton, Ontario by Community Living Hamilton:
 - (i) the Community Living Arrangements are on the terms set out in the Community Living Lease and the subsequent arrangements that were approved by City Council on May 7, 2014 as set out in the General Issues Committee Minutes 14-010; and

- (ii) to the knowledge of the City, there is no default by the City, as landlord, under the Community Living Arrangements.

2.2 Representations and Warranties Regarding HUPEG Entities

HUPEG hereby represents and warrants (acknowledging that the City is relying on such representations and warranties in entering into this Agreement) that, as of the date hereof:

- (a) HUPEG is a limited partnership existing under the laws of the Province of Ontario;
- (b) the general partner of each HUPEG Entity that is a partnership is a corporation duly formed and validly existing and is in good standing under the laws of the Province of Ontario or the federal laws of Canada;
- (c) (i) each of HUPEG and each HUPEG Entity is, and will at each Closing be, a HUPEG Person; and (ii) the organizational structure set out in Schedule I hereto accurately and completely reflects the ownership of HUPEG as of the Execution Date and the organizational structure set out in Schedule I (as may be amended by HUPEG by notice to the City prior to the applicable Closing Date) will accurately and completely reflect the ownership of HUPEG and each HUPEG Entity as of the applicable Closing Date;
- (d) each HUPEG Entity has all necessary capacity, power and authority to enter into and to carry out the provisions of this Agreement and all other documents which may be necessary to give effect to the Transactions;
- (e) this Agreement and all other agreements referred to in this Agreement which have been or will be entered into in accordance with this Agreement have been duly authorized by each HUPEG Entity that is or will be a party thereto and will constitute valid, binding and enforceable obligations of each HUPEG Entity that is or will be a party thereto;
- (f) neither the execution and delivery of this Agreement or any other agreement contemplated by this Agreement nor the fulfilment of or compliance with the terms and conditions hereof or thereof:
 - (i) conflicts with or will conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default under any HUPEG Entity's constating documentation; or
 - (ii) conflicts with or will conflict with or result in a material breach of any of the terms, conditions or provisions of or constitute a material default under any agreement or instrument to which a HUPEG Entity is a party or by which it is bound;
- (g) there are no actions, suits or proceedings pending or threatened against any HUPEG Entity which could reasonably be expected to materially adversely affect the ability of such HUPEG Entity to perform its obligations under this Agreement or the Closing Documents to which it will be a party or which could reasonably be expected to materially adversely affect the development, operation or

management of any of the Properties in accordance with the terms of this Agreement and the Closing Documents;

- (h) each HUPEG Entity is purchasing or leasing, as the case may be, the applicable Property as principal, for such HUPEG Entity's own benefit and account, and no such Property is being purchased or leased, as the case may be, by the applicable HUPEG Entity as an agent or trustee or otherwise on behalf of another Person (which for clarity, does not include a general partner holding in its capacity as general partner on behalf of the limited partners of a limited partnership);
- (i) each HUPEG Entity that is not a partnership is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada) and each HUPEG Entity that is a partnership is a Canadian partnership within the meaning of the *Income Tax Act* (Canada); and
- (j) none of HUPEG, any HUPEG Partner or any Affiliate of HUPEG or of any HUPEG Partner nor, to the best of HUPEG's knowledge (after due inquiry), any director, officer, agent, shareholder (other than by way of publically traded shares) or Person acting on behalf of HUPEG, any HUPEG Partner or any Affiliate of HUPEG or of any HUPEG Partner, has (i) violated or is in violation of any provision of the *Corruption of Foreign Public Officials Act* (Canada), as amended (the "**CFPOA**"), or the Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**"); (ii) taken any unlawful action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "foreign public official" (as such term is defined in the CFPOA) or any "foreign official" (as such term is defined in the FCPA); (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; or (iv) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; and HUPEG, each HUPEG Partner and each Affiliate of HUPEG or of any HUPEG Partner has instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with applicable anti-corruption laws and with the representation and warranty contained herein.

2.3 Survival of Representations and Warranties, Claims, Etc.

(a) Except as set out in the other provisions of this Section 2.3, the representations and warranties set forth in Sections 2.1 and 2.2 and in the certificates to be provided pursuant to Sections 8.1(c)(iv) and 8.2(c)(iv) shall survive each Closing Date and shall not merge on any Closing.

(b) Notwithstanding anything to the contrary contained in this Agreement or the Closing Documents, no Claim may be made, brought, commenced, asserted or pursued against the City for or in respect of any breach of any Property-Related Representation, unless notice thereof is received by the City describing in detail the facts and circumstances with respect to the subject matter of such Claim prior to the 18-month anniversary of the applicable Closing Date, irrespective of whether the subject matter of such Claim shall have occurred before or after such 18-month anniversary; and on such 18-month anniversary all Property-Related Representations shall cease to have any effect except to the extent (and in respect of) a written Claim that was delivered to the City in respect thereof in accordance with this Section 2.3(b).

(c) The Party to whom any representation, warranty or certification is made in this Agreement, shall give notice to the other Party of each breach of the representation, warranty or certification, together with details thereof, forthwith upon becoming aware of such breach if prior to the applicable Closing.

(d) Notwithstanding anything to the contrary contained in this Agreement and/or the Closing Documents: (i) no Claim may be made, brought, commenced, asserted or pursued against the City for or in respect of any breach of any Property-Related Representation to the extent that the subject of such breach would be (or would have been) addressed, resolved, remedied or rendered inconsequential by the Arena Work, Concert Hall Work or Convention Centre Work; and (ii) neither HUPEG nor any HUPEG Entity shall be entitled to refuse to complete the Initial Transactions (or any of them), whether on the basis of a failure of the condition in Section 7.4(c) to have been satisfied or otherwise, on the basis of a breach described in clause (i) of this Section 2.3(d).

(e) Notwithstanding any other provision of this Agreement or any of the Closing Documents, if prior to the applicable Closing HUPEG or any HUPEG Entity shall become aware of any breach of any representation, warranty or certification given or to be given by the City in this Agreement or any Closing Document that would result in the condition set out in Section 7.4(c) not being satisfied (a "**Breach of Representation**"), it shall forthwith give notice to the City and the applicable HUPEG Entity's right and remedy in respect of such Breach of Representation shall be as set out in Section 7.5, provided that, except as specifically provided in Section 7.5(d) (and notwithstanding the other provisions of Section 7.5), neither HUPEG nor any HUPEG Entity shall be entitled to recover from the City any Losses of any nature whatsoever as a result of, or relating to, any failure of any Property-Related Representation to be true and accurate as of the applicable Closing Date if such Property-Related Representation was true and accurate as of the Execution Date. Furthermore, if the subject Closing is completed with HUPEG and/or any HUPEG Entity having actual knowledge of such Breach of Representation prior to the applicable Closing, HUPEG and each HUPEG Entity shall be deemed to have waived all rights to make, bring, commence, assert or pursue any Claim against the City for or in respect of, and to recover from the City any Losses incurred as a result of, such Breach of Representation.

(f) In the event of any conflict or inconsistency between the provisions of this Section 2.3 and any other provisions of this Agreement or the Closing Documents, the provisions of this Section 2.3 shall govern and prevail in respect of such conflict or inconsistency.

ARTICLE 3 TRANSACTIONS

3.1 Initial Transactions

The Parties agree that, subject to the terms and conditions set out in this Agreement, on the Initial Closing Date:

- (a) the City and the HUPEG Arena Tenant shall enter into the Arena Lease, pursuant to which the HUPEG Arena Tenant will lease the Arena Property from the City for nominal rent for a term of 49 years commencing on the Initial Closing Date, and pursuant to which the HUPEG Arena Tenant will: (i) assume and be responsible for the management and operation of the Arena Property (including the ongoing maintenance to maintain the facilities to an appropriate state of good repair) during the term of the Arena Lease; (ii) undertake the Arena Work, all on and subject to

the terms and conditions set out in the Arena Lease, all as referenced in Schedule A; and (iii) have a right to terminate on not less than five (5) years' prior notice effective no earlier than the 30th anniversary of the commencement date, provided that, except with the consent of the City (acting in its sole and unfettered discretion), such right of termination may only be exercised concurrently with the concurrent termination of the other Leases;

- (b) the City and the HUPEG Concert Hall Tenant shall enter into the Concert Hall Lease, pursuant to which the HUPEG Concert Hall Tenant will lease the Concert Hall Property from the City for nominal rent for a term of 49 years commencing on the Initial Closing Date, and pursuant to which the HUPEG Concert Hall Tenant will: (i) assume and be responsible for the management and operation of the Concert Hall Property (including the ongoing maintenance to maintain the facilities to an appropriate state of good repair) during the term of the Concert Hall Lease; (ii) undertake the Concert Hall Work, all on and subject to the terms and conditions set out in the Concert Hall Lease (which will include an obligation to complete the Concert Hall Work by December 31, 2024, subject to force majeure), all as referenced in Schedule B; and (iii) have a right to terminate on not less than five (5) years' prior notice effective no earlier than the 30th anniversary of the commencement date, provided that, except with the consent of the City (acting in its sole and unfettered discretion), such right of termination may only be exercised concurrently with the concurrent termination of the other Leases; and
- (c) the City and the HUPEG Convention Centre Tenant shall enter into the Convention Centre Lease, pursuant to which the HUPEG Convention Centre Tenant will lease the Convention Centre Property from the City for nominal rent for a term of 49 years commencing on the Initial Closing Date, and pursuant to which the HUPEG Convention Centre Tenant will: (i) assume and be responsible for the management and operation of the Convention Centre Property (including the ongoing maintenance to maintain the facilities to an appropriate state of good repair) during the term of the Convention Centre Lease; (ii) undertake the Convention Centre Work, all on and subject to the terms and conditions set out in the Convention Centre Lease (which will include an obligation to complete the Convention Centre Work by December 31, 2024, subject to force majeure), all as referenced in Schedule C; and (iii) have a right to terminate on not less than five (5) years' prior notice effective no earlier than the 30th anniversary of the commencement date, provided that, except with the consent of the City (acting in its sole and unfettered discretion), such right of termination may only be exercised concurrently with the concurrent termination of the other Leases.

3.2 Development Transaction

The Parties agree that, subject to the terms and conditions set out in this Agreement, on the Development Property Closing Date, the City shall sell, transfer, assign, set over and convey to the HUPEG Development Properties Purchaser, free and clear of all Encumbrances save and except for Permitted Encumbrances, and the HUPEG Development Properties Purchaser shall purchase, acquire and assume from the City, free and clear of all Encumbrances save and except for Permitted Encumbrances, the Development Property Interests for nominal consideration and on the other terms set out in this Agreement, and the HUPEG Development Properties Purchaser will undertake a development or renovation to construct a mixed use or residential development thereon, the timing of which shall be in the

HUPEG Development Properties Purchaser's sole discretion, in accordance with the principal terms referenced in Schedule E that are applicable to such Property (the "Development Property Development").

ARTICLE 4 PRE-CLOSING MATTERS

4.1 Authorizations

The City will execute and deliver to HUPEG, within three (3) Business Days after request from HUPEG, authorizations to Governmental Authorities necessary to permit HUPEG to obtain information from the files of such Governmental Authorities with respect to each Property, provided that no such authorization shall authorize or request any Governmental Authority to conduct any inspections or investigations with respect to the Properties. HUPEG shall not initiate or request any inspections of the Properties by Governmental Authorities and shall obtain the prior approval of the City for any communications to be sent to any Governmental Authorities with respect to the Properties (other than customary "off-title" inquiries by HUPEG's Solicitors), which approval shall not be unreasonably withheld.

4.2 Property Information

(a) Prior to the Execution Date, the City delivered or otherwise made available to HUPEG for HUPEG's review, either electronically or otherwise, the following information, documentation and materials in respect of the Properties, in each case to the extent in the possession or control of the City (acting as owner of such Properties, and not as a regulatory authority):

- (i) a copy of the most recent survey of each Property, if any, prepared by an accredited Ontario Land Surveyor;
- (ii) for each Entertainment Venue, a list of all material equipment and machinery owned by the City located at and used exclusively in connection with such Entertainment Venue(s) (which, for greater certainty, excludes the personal property of the applicable property managers and tenants located at any Entertainment Venue) and a list of or other manner of identifying (whether by reference to a specific location or otherwise) all material equipment and machinery located at such Entertainment Venue that is not used exclusively in connection with such Entertainment Venue(s);
- (iii) a list of all ongoing litigation against the City (in its capacity as owner of the Property) relating to each Property as of the Execution Date known to the City;
- (iv) any current realty tax assessments, notices and tax bills relating to each Property and copies of any notices of all outstanding realty tax appeals and correspondence relating thereto as well as copies of any working papers issued by the applicable assessment authorities used in calculating an allocation of the assessment, in each case relating to the calendar years 2018, 2019 and/or 2020;

- (v) copies of any current operating contracts, service contracts, maintenance contracts, management contracts, equipment leases and other agreements binding on the City (including any such agreements entered into by a property manager as agent of the City) relating to Property and the buildings and improvements thereon, other than any such agreements that cannot be disclosed due to confidentiality reasons and therefore constitute Undisclosed Operating Agreements; for greater certainty, the City shall not be required to provide copies of any employment (or similar) contracts with any City Employees;
- (vi) copies of any current leases, subleases, offers to lease or sublease or other similar rights of use of occupation affecting each Property granted by or on behalf of the City ("**Property Leases**");
- (vii) all current permits, licences and agreements relating to each Property issued by, or with, any Governmental Authority in favour of the City, as owner of such Property;
- (viii) copies of the most current plans and specifications prepared by third party consultants for and relating to the buildings and improvements forming part of a Property including, without limitation, any such architectural, engineering, structural, mechanical and electrical drawings and building specifications;
- (ix) copies of the most current (final) building condition reports, inspections and assessments relating to the condition and repair of the buildings and improvements forming part of a Property, environmental site assessments reports and soil condition reports with respect to each Property, if any, prepared by third party consultants, together with and copies of the final draft of any such report prepared in the five (5) year period ending on the Execution Date where the City made an ultimate and final decision for a final report to not be issued in respect of such draft or further evolved version thereof; and
- (x) copies or other evidence (with details) of all insurance policies maintained by or on behalf of the City regarding the Properties,

the foregoing information, documentation and materials in respect of each Property (to the extent in the possession or control of the City), together with any and all other information, documentation and materials provided by or on behalf of the City to any HUPEG Entity prior to the Execution Date (including all information, documentation and materials deemed to have been provided by the City to each HUPEG Entity pursuant to Section 4.2(c) prior to the Execution Date) is herein referred to as the "**Property Information**".

(b) During the Agreement Period, the City shall deliver or otherwise make available to HUPEG for HUPEG's review, either electronically or otherwise, and any and all additional information, documentation and materials that comes into the possession or control of the City during the Agreement Period and would have constituted Property Information had it existed and been in the possession or control of the City prior to the Execution Date (all such information, documentation and materials are collectively referred to herein as "**Additional Property Information**"); provided that the City shall for all purposes of this Agreement (including, without

limitation, Section 4.7(b)) and the Closing Documents be deemed to have delivered and made available to HUPEG for HUPEG's review, all information, documentation and materials described in (A), (B), (C), (E) and (F) of Section 4.2(c) (with references in those Sections to the Execution Date being read as referring to the applicable Closing Date). HUPEG agrees that the City shall not have any obligation to provide or make available any other information, documentation and/or materials to HUPEG or any HUPEG Entity, other than as required by this Agreement.

(c) Each of the following information, documentation and materials shall be deemed for all purposes of this Agreement (including, for greater certainty, Sections 2.1(e), 2.1(f), 2.1(g), 2.1(h), 2.3(e) and 4.2(a)) and the Closing Documents to have been disclosed and delivered to HUPEG and each HUPEG Entity prior to the Execution Date: (A) any agreements, leases, plans and similar documents that are (or notice of which are) registered on title to any Property as of the Execution Date provided that where only notice of which is registered on title, the City shall be required to provide copies of all agreements relating thereto prior to the Execution Date; (B) any information, documentation and materials of which Carmen's actually knew or ought to have known about prior to the Execution Date (other than the Property Information described in Section 4.2(a)(ix)); (C) any information that HUPEG has actual knowledge of as of the Execution Date; (D) any information that is publically available by customary off-title inquiries; (E) any and all Event Bookings; and (F) any information that is included in or apparent from any information, documentation and/or materials that have been delivered or made available to HUPEG or any HUPEG Entity (including, without limitation, pursuant to this Section 4.2(c)).

(d) The Property Information and Additional Property Information disclosed or otherwise made available by the City to HUPEG shall be held in confidence by HUPEG and each of its representatives, consultants, agents, advisors and counsel and it shall be subject to the terms and conditions of this Agreement.

4.3 Participation of City Representative

At least two (2) Business Days prior to any meeting or other discussion between HUPEG or any HUPEG Entity (or any representatives of HUPEG or a HUPEG Entity) and any tenant, any property manager, any operator or any employee of, at or in respect of any Property, HUPEG or such HUPEG Entity shall give notice of such meeting or other discussion to the City which notice shall include a list of the expected participants and a general description of the nature of the meeting, save for meetings or discussions solely involving sensitive information as discussed below. The City shall be entitled to attend any such meeting or other discussion at the time and location specified by HUPEG or such HUPEG Entity in writing, acting reasonably, on prior notice to HUPEG or the applicable HUPEG Entity provided that, if at such meeting, or a portion thereof, the terms of a potential contract with the other party are to be discussed or if any other sensitive information to which the City should not reasonably be privy is to be discussed, the City shall not be permitted to attend the portion (if any) of a meeting during which such sensitive information is to be discussed.

4.4 Confidentiality

(a) This Agreement and the Transactions, and all matters that are the subject of this Agreement and/or the Transactions, including all discussions, agreements and dealings and information and documentation exchanged between the Parties relating thereto (including any Property Information and Additional Property Information), shall be kept confidential by the Parties and shall only be made available to such of a Party's employees, consultants and professional advisors and, in the case of HUPEG, potential and/or actual lenders or limited partners and their

professional advisors, as are required to have access to the same in order for the recipient Party to adequately use such information for the purposes for which it was furnished and on a basis whereby such Persons agree to maintain the confidential nature of such information. Notwithstanding the foregoing, the Parties shall be entitled to disclose (and shall not be required to keep confidential): (i) information which may be required to be disclosed by Applicable Law; (ii) information which, at the time of delivery by a Party, was in the public domain; (iii) information which, after delivery by a Party, becomes generally known or available to the public, other than through a breach by such Party; and (iv) information which the Parties agree in writing is not confidential information. Notwithstanding the foregoing, the City shall not be required to keep the Property Information and/or Additional Property Information confidential.

(b) Notwithstanding Section 4.4(a), each of the Parties acknowledges and agrees that Applicable Laws may require disclosure of the existence of, or the terms of, this Agreement, the Transactions and/or information provided by either Party to the other Party pursuant to or in connection with this Agreement and/or the Transactions. In particular, the approval of the Revitalization Plan by City Council may need to be in open session of City Council and as a result, certain of the terms hereof may become public information. In the event that the City receives a request for any confidential information described herein pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario) or the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) or any similar legislation, it shall promptly notify HUPEG of such request and take all reasonable steps permitted by Applicable Law to maintain and protect the confidentiality of such information.

(c) Until the last Closing, neither Party shall issue any press release or make any public announcement or release information with respect to this Agreement or the Transaction to the press or the public unless the same has been pre-approved by the other Party, acting in its sole discretion.

(d) The provisions of this Section shall supersede the provisions of the Confidentiality Agreement and the Confidentiality Agreement is hereby terminated.

(e) The provisions of this Section shall survive the termination of this Agreement and all Closings.

4.5 Settlement of Documents

(a) The Parties shall proceed diligently and in good faith to attempt to settle the contents of all Closing Documents to be executed and delivered by the City and HUPEG, the HUPEG Entities and any Acceptable Guarantor, if applicable; provided that: (i) the Parties agree the foregoing does not derogate from the provisions of Section 7.1(b) and 7.2(b), as applicable, which entitle the Parties to act in their sole and absolute discretion in respect of the settlement of the principal Closing Documents for the Initial Transactions and the principal Closing Documents for the Subsequent Transaction, provided that the Parties shall act reasonably and in good faith to implement the provisions of Section 4.5(b); and (ii) in the case of any Closing Documents to be executed and delivered in the form set out in a Schedule to this Agreement, such form shall not be subject to further negotiations and the City and the HUPEG Entities shall provide all details and/or information necessary to complete such documents, subject to the other's approval of the accuracy of such details and information, such approval not to be unreasonably withheld. As soon as practicable following the satisfaction or waiver of the Threshold Condition in Section 7.1(b), the City shall present this Agreement and the Transactions to City Council for its consideration.

- (b) The Parties agree that:
- (i) the form and content of the Arena Lease shall be settled in accordance with the provisions of Section 7.1(b), provided that the principal terms of the Arena Lease shall be as referenced in Schedule A;
 - (ii) the form and content of the Concert Hall Lease shall be settled in accordance with the provisions of Section 7.1(b), provided that the principal terms of the Concert Hall Lease shall be as referenced in Schedule B;
 - (iii) the form and content of the Convention Centre Lease shall be settled in accordance with the provisions of Section 7.1(b), provided that the principal terms of the Convention Centre Lease shall be as referenced in Schedule C; and
 - (iv) the form and content of the Reciprocal Rights Agreement shall be settled in accordance with the provisions of Section 7.1(b), provided that the principal terms of the Reciprocal Rights Agreement shall be as referenced in Schedule F; and
 - (v) the form and content of the Development Agreement for each Development Property shall be settled in accordance with the provisions of Section 7.1(b), provided that the principal terms of each such Development Agreement shall be as referenced in Schedule E and shall include the covenants relating to publically available parking set out in Section 5.16.

4.6 Establishment of Legal Descriptions

(a) The City shall proceed in good faith and use commercially reasonable efforts to propose the precise boundaries (by way of a registrable legal description) for each Property (and, with respect to the Entertainment Venues, sufficient to create a separate leasehold parcel for each Entertainment Venue) as soon as practicable following the date of this Agreement, which boundaries (and legal description therefor) shall be based on the scope and location of such Property reflected in Schedule G.

(b) The Parties shall act reasonably and in good faith to agree in writing as soon as possible following the proposal by the City on the precise boundaries (by way of a legal description) for each Property.

(c) All third party costs incurred by the City in order to establish the legal descriptions for the Properties and such other matters as are required to identify the precise locations of and requirements for any easements and other interdependencies that will form the subject of the Reciprocal Rights Agreements, including the costs associated with any surveys and reference plans obtained for the purposes of the Transactions and/or the Revitalization Plan, shall be shared between the City and HUPEG as follows: the City shall be responsible for the third party costs of obtaining such reference plans as may be required to identify the legal descriptions for the Properties (except for the incremental costs hereinafter identified in (i)) and HUPEG shall be responsible for (and shall reimburse the City for): (i) the incremental cost incurred by the City in obtaining reference plans that are sufficient to create a separate registrable leasehold parcel for each Entertainment Venue (rather than to simply identify the precise boundaries of the Entertainment Venues); and (ii) the third party costs of obtaining any other matters described in

this Section 4.6(c) (including, without limitation, any reference plans required for legal descriptions of any new easement requirements). Any third party costs that are partly attributable to matters that are the responsibility of the City and partly attributable to matters that are the responsibility of HUPEG shall be allocated between the Parties on an equitable basis. This Section 4.6(c) shall survive each Closing and/or the termination of this Agreement.

4.7 Operation Before Closing

(a) In the case of each Property, during the Agreement Period, the City shall be entitled to continue to operate (or cause the operation of) such Property in the ordinary course of business as a prudent owner, subject to the rights of any other Person pursuant to the Operating Agreements for such Property and recognizing the seasonal and interim/periodic nature of the Properties as well as the limitations arising in connection with the COVID-19 pandemic.

(b) Notwithstanding Section 4.7(a), in the case of each Property, during the Agreement Period, the City shall not be entitled to enter into any new agreements or commitments of any kind or nature with respect to any Property (including without limitation, any new Event Bookings, Property Leases, Encumbrances that are agreements or other Operating Agreements) or amend, release, terminate or otherwise alter any existing Event Bookings, Property Leases, Encumbrances that are agreements or other Operating Agreements (any such new agreements or commitments or amendments, releases, terminations or other alterations, "**Property Arrangements**") (save as permitted or required herein) except as follows:

- (i) in the case of any Property Arrangements not relating to or for the operation of a Property in the ordinary course of business, with the consent of HUPEG or the applicable HUPEG Entity, which consent may be granted or withheld in HUPEG's, or the applicable HUPEG Entity's, sole and unfettered discretion; and
- (ii) in the case of any Property Arrangements relating to or for the operation of a Property in the ordinary course of business, with the consent of HUPEG or the applicable HUPEG Entity, which consent shall not be unreasonably withheld, conditioned or delayed;

provided that, notwithstanding the foregoing, no consent from HUPEG and/or the applicable HUPEG Entity will be required for or in respect of any Property Arrangements that: (A) are necessary for the purposes of safety; (B) are entered into by an agent on behalf of the City pursuant to an authority that was delegated or granted prior to the Execution Date (including pursuant to any Management Agreement) and which authority has been disclosed to HUPEG in the Property Information; (C) the City is bound to enter into pursuant to the terms of any existing Property Arrangements (provided the same are terminable on thirty (30) days' notice or less; (D) that are entered into by Carmen's on behalf of the City, whether or not within the scope of its authority; or (E) do not include any terms, provisions or consequences that will be binding upon the applicable HUPEG Entity upon the applicable Closing. If the City enters into any Property Arrangements during the Agreement Period, it shall notify HUPEG and deliver a complete copy thereof; provided that, without derogating from the foregoing, if the City intends to enter into any Property Arrangements (other than through a designated authority described in (B) above) that will constitute Operating Agreements that remain in effect on the applicable Closing Date and do not require consent from HUPEG and/or the applicable HUPEG Entity, the City shall use commercially reasonable efforts to notify HUPEG in advance of doing so. Any Property Arrangements that are entered into during the Agreement Period in compliance with this

Section 4.7(b) (other than those described in the foregoing clause (D) hereof) shall be assigned to and assumed by the applicable HUPEG Entity as Permitted Encumbrances or Operating Agreements, as the case may be. Any Property Arrangements entered into during the Agreement Period in contravention of this Section 4.7(b) shall be deemed to be (and treated for all purposes of this Agreement as) Undisclosed Operating Agreements.

4.8 Permits and Approvals

To the extent reasonably requested by HUPEG and consistent with the timelines agreed to by the Parties, the City will provide its consent to such applications or authorizations for permits and approvals that are required to be executed by the City as an owner of property prior to the applicable Closing Date in order to assist HUPEG in making its applications, provided that the foregoing shall be at no cost to the City and that arrangements satisfactory to the City, acting reasonably, are put in place to protect the City, in its capacity as an owner of property, from any risk in respect thereof. HUPEG acknowledges that, in providing its consent to any such applications or authorizations for permits or approvals, the City is acting in its capacity as owner of the applicable Property and is not acting in its capacity as a regulatory body and is not (and will not be) committing to influence any decisions or discretion as a regulatory body.

ARTICLE 5 OTHER MATERIAL TERMS

5.1 Upgrades/Developments

- (a) Following the completion of the Initial Closing:
- (i) the HUPEG Arena Tenant will, at its own cost, undertake the Arena Work in accordance with the applicable provisions of the Arena Lease, which Arena Work will include the transformation of the lower bowl of the Arena as described in Schedule A;
 - (ii) the HUPEG Concert Hall Tenant will, at its own cost, undertake the Concert Hall Work in accordance with the applicable provisions of the Concert Hall Lease, which Concert Hall Work will include the renovations, upgrades and enhancements to the Concert Hall described in Schedule B;
 - (iii) the HUPEG Convention Centre Tenant will, at its own cost, undertake the Convention Centre Work in accordance with the Convention Centre Lease, which Convention Centre Work will include the renovations, upgrades and enhancements to the Convention Centre described in Schedule C; and
 - (iv) HUPEG will provide HUPEG's AGH Collaboration and Support to the AGH.
- (b) Following the completion of each Development Properties Closing, the HUPEG Development Properties Purchaser will, at its own cost, undertake the Development Properties Development for the subject Development Property in accordance with the Development Agreement for such Development Property.

5.2 Operations

(a) In the case of any Property, on the Closing Date for such Property, the HUPEG Entity that acquires (by freehold or leasehold interest, as the case may be) such Property will be entitled to all benefits, and responsible for all obligations, relating to the operation of such Property (which, in the case of the acquisition of a leasehold interest, will be limited to those benefits and obligations relating to the term of the applicable lease therefor).

(b) All agreements (excluding the Energy Agreements and any collective bargaining agreement binding on the City, but including all Event Bookings and all Encumbrances that are Property Leases or agreements) relating to the ownership, management or operation (including both event management and facilities management) of a Property (in the case of any Property, its "**Operating Agreements**") will be assigned to, and assumed by, the applicable HUPEG Entity on the Closing Date for such Property, except in respect of:

- (i) [intentionally deleted];
- (ii) any Operating Agreements existing prior to the Execution Date which have not been disclosed (nor deemed pursuant to Section 4.2(c) to have been disclosed) to HUPEG prior to the Execution Date (the "**Undisclosed Operating Agreements**"); and
- (iii) those Operating Agreements (other than Undisclosed Operating Agreements, which are addressed in (ii) above) that either: (A) cannot be assigned or assumed without the consent of the other party thereto where such party has not provided such consent by the applicable Closing; or (B) have been terminated effective prior to the Closing Date pursuant to Section 5.2(d),

(in the case of any Property: the Operating Agreements described above, its "**Unassigned Operating Agreements**" and the Unassigned Operating Agreements described in clauses (i) and (iii) above, the "**City-Indemnified Unassigned Operating Agreements**"). For greater certainty, Property Arrangements entered into during the Agreement Period in contravention of Section 4.7(b) shall be deemed to be (and treated for all purposes of this Agreement as) Undisclosed Operating Agreements.

(c) HUPEG and the applicable HUPEG Entity shall, on a joint and several basis, be responsible for, and shall indemnify the City with respect to, all Claims and Losses incurred by the City in respect of the Assigned Operating Agreements for matters relating to the period from and after the applicable Closing Date. The City shall be responsible for, and shall indemnify HUPEG and the applicable HUPEG Entity with respect to all Claims and Losses incurred by HUPEG and such HUPEG Entity in respect of Operating Agreements for matters relating to the period prior to the applicable Closing Date, other than any Claims and Losses that are the subject of the indemnities provided for in Section 5.2(g), matters for which the City is to be indemnified pursuant to the Assignment and Assumption of Operating Agreements and matters that relate to the maintenance or repair of the subject Properties.

(d) The City will use commercially reasonable efforts (without the requirement to expend monies or jeopardize the continued operation of a Property until Closing), which efforts may include issuing notice of termination of Assigned Operating Agreements prior to Closing

(where permitted, or not specifically prohibited, by the underlying agreement), to cooperate with HUPEG, at HUPEG's cost, to minimize the Losses for which the applicable HUPEG Entity is responsible for and/or required to indemnify the City pursuant to Section 5.2(g) in respect of the applicable Property.

(e) The City shall use commercially reasonable efforts to obtain any consents necessary to the assignment of the Operating Agreements;

(f) It is acknowledged that, following the applicable Closing Date for a Property, the applicable HUPEG Entity will have the right to, at its sole cost, "hire and fire" any vendors, contractors and operators for such Property.

(g) HUPEG and the applicable HUPEG Entity shall indemnify the City with respect to all Claims and Losses incurred by the City in respect of and/or as a result of the termination or non-assumption of the City-Indemnified Unassigned Operating Agreements for such Property, which indemnified Losses shall include, without limitation, (i) all fees, payments, expenses and costs relating to or resulting from the termination (or attempted termination) of such City-Indemnified Unassigned Operating Agreements (which, for greater certainty, does not include Undisclosed Operating Agreements) and (ii) amounts paid or payable thereunder that relate to the period from and after the applicable Closing Date. This Section 5.2(g) shall survive each Closing and the termination of this Agreement (whether in its entirety or only with respect to a particular Transaction).

(h) It is acknowledged that the Energy Agreements will not constitute Operating Agreements for the purpose of this Agreement and the Closing Documents. Instead, during the term of each Lease, the HUPEG Tenant will be responsible for the costs under the Energy Agreements arising in respect of the applicable Entertainment Venue, which costs shall be payable as additional rent under the applicable Lease. To the extent reasonably practicable (without the requirement for capital expenditures by any Person or the requirement for any additional infrastructure), the Tenant shall have control over the regulation of temperature in each Entertainment Venue. The City shall not, for the purpose of requiring the HUPEG Tenant to satisfy its energy requirement under the Energy Agreement, prevent any HUPEG Tenant from constructing or implementing leasehold improvements at the Entertainment Venues capable of producing electricity (in the form of rooftop solar panels or otherwise) that may reduce or eliminate the HUPEG Tenant's energy requirements under the Energy Agreements; provided, for greater certainty: (i) the provisions of the applicable Lease shall apply to any such intended leasehold improvements and (ii) any such leasehold improvements would be in addition to (and not comprise part of) the Work.

5.3 Naming, Sponsorship and Advertising Rights

(a) Without limiting the provisions of Section 5.2: (i) during the term of the Concert Hall Lease the HUPEG Concert Hall Tenant will have all naming, sponsorship and advertising rights with respect to the Concert Hall, provided that such rights will be subject to the applicable provisions set out in the Concert Hall Lease; (ii) during the term of the Arena Lease the HUPEG Arena Tenant will have all naming, sponsorship and advertising rights with respect to the Arena, provided that such rights will be subject to the applicable provisions set out in the Arena Lease; and (iii) during the term of the Convention Centre Lease the HUPEG Convention Centre Tenant will have all naming, sponsorship and advertising rights with respect to the Convention Centre, provided that such rights will be subject to the applicable provisions set out in the Convention Centre Lease.

(b) As a major contributor to the development and revitalization of a downtown arts and entertainment district, HUPEG intends to discuss with the City the creation of a framework to discuss elements of such a district. For greater certainty, it is confirmed that the City is not committing to the creation of any such framework or district.

5.4 Public Realm and District Design

HUPEG seeks to work collaboratively with the City around the objective of creating an integrated commercial and entertainment district – having regard for the area generally framed by Main Street W to the south, York Boulevard to the north, James Street N to the east, and Bay Street N to the west – that connects and links the key streets and corridors in Downtown Hamilton. This would be achieved through urban design, streetscape, and wayfinding design elements. To fully execute this vision, HUPEG intends to request and pursue participation from and alignment with the City, to creating a process and framework that is mutually agreed upon by the parties. For greater certainty, nothing in this Section 5.4 creates any obligation whatsoever on the part of the City; it being confirmed that the City has not made any commitment, nor represented any intention, to pursue any such process or framework.

5.5 Surcharges for Capital Repairs/Enhancements

(a) In the case of each Entertainment Venue, during the term of the applicable Lease, the applicable HUPEG Tenant will charge a ticket surcharge on the sale of each ticket in the amount that is agreed to in the applicable Lease (subject to compliance with the existing Operating Agreements, if applicable) and the proceeds therefrom will be paid into a capital reserve to be held in trust by the City for each Entertainment Venue, all in accordance with the provisions of the applicable Lease. A separate capital reserve shall be established for each Entertainment Venue and each such capital reserve shall be funded exclusively by the surcharges relating to each applicable Entertainment Venue and no other Entertainment Venue. By way of example, the capital reserve for the Arena shall be funded exclusively by surcharges on the sale of tickets for events held at the Arena.

(b) In ten year intervals beginning on the tenth anniversary of the commencement date of the applicable Lease, funds would be released from such capital reserve to the applicable HUPEG Tenant as the City's sole contribution to the funding of any required or mutually agreed upon major base building structural, mechanical, electrical or other capital repairs and enhancements (the "**Capital Enhancements**") required to keep the applicable Entertainment Venue in the required state of good repair in accordance with the terms of the applicable Lease.

(c) Notwithstanding the foregoing provisions of this Section 5.4, the City will have a security interest in the funds in the capital reserves for each Entertainment Venue to act as collateral security for the obligations under the Leases and to be applied to any Losses incurred by the City in connection with any default(s) under the Leases.

5.6 Municipal Incentive Programs

(a) Existing Municipal Incentives: HUPEG intends to take advantage of all existing municipal incentive programs that would regularly apply to the Development Property Developments (specifically, the Existing Tax Incremental Grant Program) and the City covenants and agrees that the Existing Tax Incremental Grant Program shall exist at the time the Development Property Developments by HUPEG Entities take place.

(b) Extended Tax Incremental Grant Program: In addition to the incentives described in Section 5.6(a), using the incentive mechanisms that are appropriate, as determined by the City, the City covenants and agrees that the Extended Tax Incremental Grant Program (as defined herein) will apply to the Development Property Developments by HUPEG Entities, as follows. For each such Development Property Development by a HUPEG Entity, commencing in the sixth year following the completion of such Development Property Development and continuing for a period of 25 years thereafter (but in no event continuing beyond the termination of any of the Leases where such termination occurs in connection with the default by a HUPEG Tenant or its successors or assigns in accordance with the provisions of the applicable Lease (including the elapsing of any applicable notice and/or cure periods)), the City will reimburse or pay, as the case may be, an amount equal to 39% of the incremental municipal tax bills for each such Development Property Development (being the increase in municipal realty taxes attributable to the differential between the pre-development assessment and the post-development assessment, excluding any special charges (including BIA levies) from the calculation) for a period of 18 years (year 6 to year 24), decreasing to 35% for a period of 7 years (year 25 to year 31), with the aggregate total of all such reimbursements and payments for all such Development Property Developments being the "**Extended TIG Total Amount**" (the foregoing program being referred to as the "**Extended Tax Incremental Grant Program**"). For purposes of this section, "completion" shall mean when the development or phase of development on a Property has received a certificate of occupancy.

(c) Direction re Payments: The City acknowledges and agrees that any reductions, payments or reimbursements under the Existing Tax Incremental Grant Program and the Extended Tax Incremental Grant Program are to be issued directly to HUPEG or the applicable HUPEG Entity. Where HUPEG or another HUPEG Person is the owner of the subject Property, the payment to reimburse provided for in Section 5.6(b) shall be conditional on receipt by the City of all realty taxes due to the City in respect of such Property. Where neither HUPEG nor any other HUPEG Person is the owner of a subject Property, the City acknowledges that the issuance of any payment or reimbursement under the Existing Tax Incremental Grant Program and the Extended Tax Incremental Grant Program to HUPEG are not contingent on the City receiving payment of any realty taxes due to the City from the owner of the subject Property. Notwithstanding anything to the contrary in this Section 5.6, neither HUPEG nor any HUPEG Entity shall be entitled to receive, and the City shall not be required to pay, any reimbursement or payment under or in connection with the Existing Tax Incremental Grant Program and/or the Extended Tax Incremental Grant Program at any time that the tenant under any Lease is in default (other than an immaterial default) thereunder beyond any applicable cure period and no such entitlement shall accrue during any such default; provided that any payment or reimbursement with respect to the period of time prior to default not yet paid shall be paid when due.

(d) Municipal Capital Facilities: The City or City Council will enact (to the extent not already enacted) the requisite by-laws or pass (to the extent not already passed) the requisite resolutions, as the case may be, to declare or designate the Eligible Portions of the Arena, the Convention Centre and the Concert Hall as Municipal Capital Facilities. The City makes no (and will not be making any) representations or warranties respecting the veracity and/or reliability of the Municipal Capital Facility Agreements (or the loss of any Municipal Capital Facility designation(s)) should they be successfully challenged by MPAC and/or any resultant property tax assessment. If the Eligible Portion of the Arena Property, the Concert Hall Property and/or the Convention Centre Property ceases for any reason to be designated as a Municipal Capital Facility during the term of the applicable Lease or is not designated as a Municipal Capital Facility on the Initial Closing Date, then:

- (i) the Parties shall negotiate in good faith an adjustment to the Extended Tax Incremental Grant Program satisfactory to both Parties, or
- (ii) the City shall implement such other tax incentives or rebates relating to the Eligible Portion of the Arena Property, the Concert Hall Property and/or the Convention Centre Property, as the case may be, satisfactory to the Parties,

in each case to offset any taxes payable in respect of the Eligible Portion of the Arena Property, the Concert Hall Property and/or the Convention Centre Property, as the case may be, by the applicable HUPEG Tenant as a result of the loss of the Municipal Capital Facility designation for the Eligible Portion of the Arena Property, the Concert Hall Property and/or the Convention Centre Property, as the case may be. For greater certainty, neither the City nor City Council shall have any obligation to take any steps to declare or designate as Municipal Capital Facilities any portions of the Arena, the Convention Centre and/or the Concert Hall that are not Eligible Portions and shall not have any obligation to take the steps described in paragraphs (i) and (ii) in respect of any portions thereof that are not Eligible Portions.

5.7 Art Gallery of Hamilton

HUPEG shall provide to the City such assurances as may be reasonably requested by the City confirming HUPEG's AGH Collaboration and Support. This Section shall survive each Closing.

5.8 Not Conditional on Government Funding

(a) It is confirmed that the Transactions are not conditional on obtaining any funding from the City and are also not conditional on HUPEG obtaining any funding from the Federal, Provincial or other Governmental Authorities.

(b) In the event that any HUPEG Entity at any time obtains any funding or other financial support from any Governmental Authority(ies) in respect of any Entertainment Venue(s) in connection with the Commonwealth Games (or the City of Hamilton's bid therefor), such HUPEG Entity may, in its discretion, apply such funding or financial support to further or additional capital improvements in such Entertainment Venue(s) (beyond the capital improvements contemplated as part of the Revitalization Plan or its ongoing obligations under a Lease) and, if not all so applied to further or additional capital improvements beyond the Work (which may include reimbursement for further or additional capital improvements beyond the Work that were undertaken prior to receipt of such funding or other financial support), the Extended TIG Total Amount shall be reduced by the amount of the funding or other financial support that is not so applied less the costs incurred by the applicable bid corporation in obtaining such funding or other financial support relating to the Entertainment Venue(s). For greater certainty, in the event that any HUPEG Entity at any time obtains any funding or other financial support from a Governmental Authority in respect of any Entertainment Venue(s) not in connection with the Commonwealth Games (or the City of Hamilton's bid therefor), such funding or other financial support shall be for the sole benefit of the applicable HUPEG Entity and the City shall have no claim thereto nor shall the City be entitled to reduce or curtail the Extended TIG Total Amount (or any other consideration provided by the City hereunder) in connection therewith by the amount of such funding or other financial support or otherwise. HUPEG and each HUPEG Entity agrees that no application for funding or other financial support of any nature from any Governmental Authority(ies) in respect of any Entertainment Venue(s) in connection with the Commonwealth Games (or the City of

Hamilton's bid therefor) shall be applied for by or on behalf of any HUPEG Person without the prior written approval of the City and any request for such approval shall include the details of the intended use of any such funding or financial support and copies of the draft applications therefor. HUPEG and each HUPEG Entity shall forthwith disclose to the City all funding and other financial support that it obtains from any Governmental Authority(ies) and provide the details regarding the use of such funds and support.

5.9 Affordable Housing

HUPEG shall include in at least one tower of one of the residential developments by HUPEG Entities that arise directly from the Transactions units that qualify as Affordable Housing for a number of units that is equivalent to five percent (5%) of the units that would be included in a tower of at least twenty (20) storeys.

5.10 Salvation Army

HUPEG will act in good faith and use commercially reasonable efforts to relocate the Salvation Army away from its 94 York Boulevard location to another site that is acceptable to the Salvation Army. To assist HUPEG, the City shall act in good faith (but at no cost to the City) to facilitate the relocation of the Salvation Army to a site that meets the Salvation Army's and the City's broader programming objectives.

5.11 HUPEG Person

HUPEG and each HUPEG Entity hereby covenants and agrees in favour of the City to be and remain a HUPEG Person at all times until the last Closing or earlier termination of this Agreement, except to the extent that the City consents in its sole, absolute and subjective discretion. HUPEG and each HUPEG Entity acknowledges that such covenant is a material term of this Agreement without which the City would not have agreed to enter into this Agreement or carry out the Transactions.

5.12 Damage and Destruction

(a) The interest of the City in and to each Entertainment Venue shall be at the risk of the City until Closing. If any damage or destruction to an Entertainment Venue occurs during the Agreement Period, the City shall forthwith give notice thereof to HUPEG and:

- (i) if the damage or destruction would not be substantially addressed, resolved, remedied or rendered inconsequential by the Arena Work, Concert Hall Work or Convention Centre Work, as the case may be, and the cost of repair or restoration, in the opinion of an independent architect or engineer (the "**Expert Opinion**") selected by the City, given within 30 days of the occurrence of such loss or damage, will exceed, \$10,000,000 ("**Substantial Damage**"), then HUPEG may, by notice given to the City within five Business Days after receipt of the Expert Opinion, elect to terminate this Agreement, and the parties shall be released from all obligations under this Agreement (except those which are expressly stated to survive termination of this Agreement); and
- (ii) if such damage or destruction is not Substantial Damage or is damage or destruction that would be substantially addressed, resolved, remedied or

rendered inconsequential by the Arena Work, Concert Hall Work or Convention Centre Work, or is Substantial Damage but HUPEG has not elected to exercise its termination right pursuant to (a) above, then neither Party shall have any right to terminate this Agreement by virtue thereof, the Parties shall complete the Initial Transactions and the City will assign to HUPEG on the Initial Closing Date, the City's claim to any and all insurance proceeds with respect to such damage or destruction (excluding insurance proceeds to cover lost rent and other income from the applicable Entertainment Venue in respect of the period prior to the Closing Date) and any claim the City may have against any Person in connection with such damage or destruction and the City will pay to HUPEG on the Initial Closing Date any deductible relating to the insurance claim with respect to such damage or destruction.

If the damage or destruction occurs at such time that there is insufficient time for HUPEG to make its election hereunder, the Initial Closing Date shall be postponed to a date which is five Business Days after the earlier of the date such election is made or the period for making such election has expired.

(b) If any damage or destruction to a Property other than an Entertainment Venue occurs during the Agreement Period, the City shall forthwith give notice thereof to HUPEG and:

- (i) if, solely as a result of such damage or destruction, redevelopment of the Property would not be commercially feasible, as determined by an Expert Opinion, given within 90 days of the occurrence of such damage or destruction (such damage or destruction, "**Irreparable Damage**"), then:
 - (A) if such Irreparable Damage occurs during the Agreement Period but prior to the Initial Closing, then HUPEG may, by notice given to the City within five Business Days after receipt of the Expert Opinion, elect to terminate this Agreement, and the parties shall be released from all obligations under this Agreement (except those which are expressly stated to survive termination of this Agreement); and
 - (B) if such Irreparable Damage occurs during the Agreement Period but after the Initial Closing, then HUPEG may, by notice given to the City within five Business Days after receipt of the Expert Opinion, elect to terminate this Agreement only as it relates to the applicable Development Property Transaction (and not as it relates to any other Transaction or Property), and in the event so terminated: (I) the parties shall be released from all obligations under this Agreement only as it relates to the applicable Property and applicable Development Property Transaction (except those which are expressly stated to survive termination of this Agreement); and (II) the Extended TIG Total Amount shall be increased by an amount equal to the Agreed Compensation Value of such applicable Property; and
- (ii) if such damage or destruction is not Irreparable Damage, or is Irreparable Damage but HUPEG has not elected to exercise its termination right pursuant to (i) above, then neither Party shall have any right to terminate

this Agreement (in its entirety or with respect to the subject Development Property Transaction) by virtue thereof, the Parties shall complete the Development Property Transaction and the City will assign to HUPEG on the applicable Closing Date, the City's claim to any and all insurance proceeds with respect to such damage or destruction (excluding insurance proceeds to cover lost rent and other income from the applicable Property in respect of the period to the Closing Date) and any claim the City may have against any Person in connection with such damage or destruction and the City will pay to HUPEG on the applicable Closing Date any deductible relating to the insurance claim with respect to such damage or destruction.

If the damage or destruction occurs at such time that there is insufficient time for the delivery of the Expert Opinion and/or for HUPEG to make its election hereunder, the applicable Development Property Closing Date shall be postponed to a date which is five Business Days after the earlier of the date such election is made or the period for making such election has expired.

(c) The City shall not reduce its insurance coverage in respect of any Property prior to the Closing of the Transaction relating thereto.

(d) This Section 5.12 shall survive the Closing.

5.13 Employees

(a) HUPEG shall not be obligated to offer employment to any City Employees. The City shall be responsible for and pay any compensation or other amounts owed to any City Employee, including wages, salary, bonus, vacation pay or other remuneration, for any period before each applicable Closing Date including all severance and termination payments, damages for wrongful dismissal and all related costs payable in respect of any City Employees who is terminated in connection with the transactions contemplated by this Agreement prior to the applicable Closing Date; provided that, the City shall not be required terminate any City Employees and may elect instead to redeploy any or all City Employees to other properties or jobs. The City shall indemnify and save all applicable HUPEG Entities harmless from any such costs in connection with any City Employees.

(b) For greater certainty, HUPEG and the applicable HUPEG Entity shall be responsible for and pay (whether to a Manager or otherwise) any compensation or other amounts owed to or in respect of any Operations Employees, including wages, salary, bonus, vacation pay or other remuneration, including all severance and termination payments, damages for wrongful dismissal and all related costs payable in respect of any Operations Employees in connection with or resulting from the termination of any Operating Agreements. HUPEG and the applicable HUPEG Entity shall indemnify and save harmless the City from any such Claims and Losses by or in connection with any Operations Employees.

5.14 Skate Canada and CCMA

The HUPEG Arena Tenant covenants in favour of the City that neither the Skate Canada Booking nor the CCMA Booking will be cancelled, rescheduled, moved and/or otherwise modified at any time after the Initial Closing without the prior written consent of the City, which consent may be withheld, conditioned and/or delayed in the City's sole, absolute and unfettered discretion. Without derogating from the foregoing, neither HUPEG nor the HUPEG Arena Tenant

shall in any way pursue or solicit at any time prior to or following the Initial Closing any cancellation, rescheduling, move or modification of the Skate Canada Booking and/or the CCMA Booking with or to any Person other than the City without the prior written consent of the City, which consent may be withheld, conditioned and/or delayed in the City's sole, absolute and unfettered discretion. In the event that the Skate Canada Booking and/or the CCMA Booking is cancelled, rescheduled, moved and/or otherwise modified (including with the consent of the City), HUPEG and the HUPEG Arena Tenant shall be responsible for, and pay or reimburse the City for, all Losses suffered or incurred by the City in connection with or as a result thereof (it being confirmed that, in the case of cancellation, such Losses shall include any fees, payments, compensation, concessions, accommodations and other amounts paid or costs incurred by the City in connection with such Event Booking(s)).

5.15 Community Living

Notwithstanding any other provisions of this Agreement or the Closing Documents, following the Closing Date for the Transaction relating to 191 York Boulevard, Hamilton, Ontario, HUPEG and the applicable HUPEG Entity will make best efforts to provide, or arrange for the provision, to Community Living Hamilton of sustainable long-term living accommodations on terms that are substantially similar to those under the Community Living Lease and the subsequent arrangements that were approved by City Council on May 7, 2014 as set out in the General Issues Committee Minutes 14-010, whether on the site of its current premises or in such other premises that satisfy Community Living Hamilton's space, location and programming requirements. The City covenants and agrees that Community Living Hamilton will vacate its current premises at 191 York Boulevard no later than the 7th anniversary of the Execution Date to move into the accommodations provided or arranged by HUPEG and the applicable HUPEG Entity as aforesaid.

Without derogating from the foregoing, the applicable HUPEG Entity covenants and agrees to recognize and perform the obligations of the landlord under the Community Living Arrangements.

5.16 Replacement Parking

With the understanding that the transacted Development Properties currently provide public parking in the urban core that would be reduced or removed by the developments on the Development Properties contemplated in this Master Agreement, the applicable HUPEG Entities will consider provision of public parking as part of the future developments related to the Development Properties, subject to matters regarding capacity, scale of development and density allowances. HUPEG and each applicable HUPEG Entity acknowledge that the removal of a substantial number of parking spaces in an area in proximity to the Entertainment Venues will impact the availability of parking for the Entertainment Venues.

5.17 Survival

The provisions of this Article 5 shall survive each Closing.

ARTICLE 6
PROVISIONS APPLICABLE TO TRANSACTIONS

6.1 Adjustments

(a) In the case of each Transaction, except as otherwise provided pursuant to Section 5.2, 5.4 or 5.14 or pursuant to this Section 6.1, the City shall be responsible for all expenses and be entitled to receive all revenues, if any, accrued in respect of the Property that is the subject of such Transaction up to but excluding the Closing Date therefor. The applicable HUPEG Entity shall be responsible for all expenses accruing in respect of such Property as and from the applicable Closing Date and shall also be entitled to all revenues, if any, accruing in respect thereof as and from such Closing Date. All adjustments for accrued revenue and operating expenses, fuel, water rates, sewage charges, charges for electricity, utilities, services, taxes (including local improvement charges and assessments and business taxes) established by the usual practice in the City of Hamilton (including, without limitation, for proration of any amounts paid under existing contracts) imposed and payable prior to the applicable Closing Date shall be made as of such Closing Date and shall be paid on such Closing Date pursuant to a statement of adjustments to be prepared by the City and approved by HUPEG, acting reasonably. The City shall be entitled to cancel the property insurance in respect of each Property as of the Closing Date therefor (it being confirmed that such insurance contracts are not being assigned to the applicable HUPEG Entity), in which event there will be no adjustment for property insurance premiums; the applicable HUPEG Entity will be responsible to obtain property insurance for each Property commencing on the applicable Closing Date as contemplated in the applicable Closing Documents therefor. Arrangements will be made in order for the expenses and revenues to be properly allocated and paid to or for the benefit of the Party entitled thereto and the details and approach for such arrangements (including whether achieved by way of adjustments or otherwise) will depend on whether the applicable Management Agreements are being assigned to and assumed by the applicable HUPEG Entity or terminated; the Parties shall act reasonably and in good faith in finalizing such details and approach prior to the Initial Closing.

(b) All events scheduled to be held at an Entertainment Venue after the Initial Closing Date shall be for the benefit of the applicable HUPEG Entities and all costs associated with the booking, scheduling, coordinating or reserving of such events shall be for the cost of the applicable HUPEG Entities. There shall be an adjustment in favour of the City at Closing for all costs and expenses incurred by the City in connection with the booking, scheduling, pursuing and reserving of events that are scheduled to be held at an Entertainment Venue after the Initial Closing Date. Notwithstanding the foregoing provisions of this Section 6.1(b), except to the extent provided in Section 5.14, the HUPEG Entities shall not be responsible for the costs and expenses incurred by the City in connection with the initial booking, scheduling, pursuing and reserving of the Skate Canada Booking and/or CCMA Booking (but, for greater certainty, the applicable HUPEG Entity shall be responsible for the costs and expenses incurred by the City in connection with any cancellation, rescheduling, moving and/or other modification to the Skate Canada Booking and/or CCMA Booking).

(c) In the case of each Transaction, if the final amount of any item which is included in adjustments (if any) cannot be determined prior to the applicable Closing Date the amount thereof shall be estimated by the City, acting reasonably, as of the applicable Closing Date on the basis of the best evidence available at such Closing Date as to what the final cost or amount of such item will be. All adjustments which have been estimated as at the applicable Closing Date because they have not been finally determined at that date or have been inadvertently omitted or overlooked shall be finally adjusted or re-adjusted, as the case may be, on a post-closing basis

(the "**Post-Closing Adjustments**") once they have been identified, determined and finalized. The City shall provide to HUPEG a complete statement of the applicable Post-Closing Adjustments for each Transaction, together with particulars relating thereto in reasonable detail, as soon as reasonably possible following the applicable Closing Date and the City and HUPEG shall make a final adjustment as of such Closing Date for such Post-Closing Adjustments within 45 days following delivery of such statement to HUPEG by the City. In the case of any dispute between the City and HUPEG with respect to any Post-Closing Adjustments for any Transaction, the final amount of such Post-Closing Adjustments shall be determined by KPMG (or if they cannot act or refuse to act, any other independent major accounting firm) and the cost of such determination shall be shared equally between the City and HUPEG. Either the City or HUPEG may refer any such dispute to KPMG (or if they cannot act or refuse to act, any other independent major accounting firm) for such determination and such determination shall be final and binding on the Parties. In the case of each Transaction, the City and HUPEG agree to execute and deliver on the applicable Closing Date an undertaking to pay the amount of any Post-Closing Adjustments in respect of such Transaction as may be owing pursuant to the provisions of this Agreement.

(d) All Post-Closing Adjustments (other than in respect of realty taxes) shall be finalized and completed on or before the 12-month anniversary of the applicable Closing Date and no claim for any Post-Closing Adjustments (other than in respect of realty taxes) may be brought pursuant to this Section 6.1 (or the undertaking delivered in connection herewith) after such deadline unless it was first brought prior to such deadline. For greater certainty, the deadline in this Section 6.1(d) shall not apply to Post-Closing Adjustments in respect of realty taxes and/or the obligations of the parties under any Lease.

(e) The provisions of this Section 6.1 shall not merge on, but shall survive, each Closing.

6.2 Registration and Transfer Costs

In the case of each conveyance of any interest in lands or property (whether by transfer, lease, easement or otherwise) provided for in this Agreement, the applicable HUPEG Entity (and not the City) shall be responsible for and pay all taxes or fees payable in connection with such conveyance in the nature of all provincial and municipal transfer taxes and registration taxes, fees and other costs payable in respect of the registration of any documents on or after the applicable Closing or any such conveyance, and all federal or provincial sales or similar taxes payable upon or in connection with the conveyance of any such interest, including HST, if any. Notwithstanding the foregoing, in the case of each Transaction, no HST shall be paid by HUPEG to the City with respect to the purchase price paid for the applicable Property sold to HUPEG if the applicable HUPEG Entity executes and delivers an HST Undertaking and Indemnity at the subject Closing. In addition, in the case of each Transaction, the applicable HUPEG Entity shall be responsible for, and shall pay, all HST payable in respect of any other amount it is required to pay pursuant to this Agreement. The provisions of this Section 6.2 shall survive the termination of this Agreement, and shall not merge on, but shall survive, each Closing.

6.3 "As Is, Where-Is"

Each of the HUPEG Entities acknowledges and agrees that, subject to the representations and warranties of the City set out in Section 2.1:

(a) in entering into this Agreement (whether directly or through HUPEG) and completing the Transaction, except for the representations and warranties of the

City expressly set out in Section 2.1, each HUPEG Entity has relied and will continue to rely solely upon its own inspections, investigations and other due diligence with respect to the Properties, the Subject Interests and the Transactions;

- (b) each Property and related Subject Interests are being purchased, leased, acquired, assumed and undertaken, as the case may be, by the applicable HUPEG Entity on an "as is, where is" basis, at such HUPEG Entity's sole risk, as of the applicable Closing Date and without any representation or warranty, whether expressed or implied by this Agreement or at law, by the City of any nature or kind whatsoever respecting any Property or Subject Interests or any matter relating thereto, except for the representations and warranties of the City expressly set out in Section 2.1;
- (c) except for the representations and warranties of the City expressly set out in Section 2.1, the City makes no representations or warranties concerning any statements made or information delivered or made available to any HUPEG Entities (whether by the City, the City's Solicitors or any other agents, representatives or advisors of the City or any of its affiliates, or any other Person) with respect to the Properties and/or the Subject Interests, whether contained in any financial model or included as part of the Property Information or Additional Property Information or any other information disclosed to any HUPEG Entities by any such Person or otherwise;
- (d) without limiting the generality of the foregoing, the City makes no warranty or representation whatsoever, express or implied, as to the physical condition, state, title, use, zoning or financial condition of any Property (including the soil and environmental conditions relating to any Property, or its conformity with federal or provincial laws and regulations or municipal by-laws) or the suitability or status of any proposed or contemplated development of any Property (including any development contemplated pursuant to this Agreement or the Closing Documents), the nature, timing or cost of any development proposal, the availability of any governmental approvals, the nature or cost of any obligations and liabilities which will be or may be incurred by any HUPEG Entity in connection with any proposed development, or the marketability of any proposed development;
- (e) there is no condition, representation, or warranty of any kind, express or implied, that the present use of any Property or any future intended use of any Property is or will be lawful or permitted or that any survey delivered by the City is complete or accurate;
- (f) except as otherwise expressly provided for in this Agreement or in the Closing Documents (including the Arena Lease, the Concert Hall Lease and the Convention Centre Lease), neither the City nor any of its affiliates shall have any obligations or responsibility to any HUPEG Entities after the applicable Closing with respect to the condition of any Property and to any matter or liability relating to the applicable Subject Interests;
- (g) it has completed, and is satisfied with the results of, its due diligence relating to the Properties, the Subject Interests, the Permitted Encumbrances and the Operating Agreements (including, without limitation, the physical and financial condition of

the Properties, compliance with Applicable Laws currently in effect, suitability of the Properties for development, fitness of the Properties for their intended use, merchantability, title, physical characteristics, profitability, use or zoning, environmental condition, state of the markets and potential impact and consequences of the 2019 novel coronavirus pandemic (COVID-19), the existence of latent defects, quality, or any other aspect or characteristic thereof) and the Transactions which it deemed necessary or desirable in its sole and absolute discretion;

- (h) notwithstanding any other provisions of this Agreement or the Closing Documents, each HUPEG Entity hereby irrevocably waives its right to raise any objection to, or to have or make any Claim regarding, any defect, matter or issue in respect of any of the Subject Interests, the Permitted Encumbrances and the Operating Agreements or any other aspect thereof of any nature whatsoever (including, without limitation, any objection or Claim relating to the condition of the Properties (including, without limitation, any latent defects), the title to the Properties or the Subject Assets, the existence of any Encumbrances or any other title matters or any non-compliance with Applicable Laws, or any Operating Agreement or Encumbrance) unless the foregoing is a Claim based on a breach by the City of a representation or warranty contained in Section 2.1 (or a Closing Document) and/or the Vendor's covenants and indemnities set out in this Agreement and/or the Closing Documents and then only to the extent otherwise permitted pursuant to this Agreement or the Closing Documents, as the case may be; and
- (i) unless otherwise expressly agreed by the City in writing, acting in its sole discretion, all representations, warranties and certifications of the City contained in Section 2.1 (and each certificate delivered pursuant to Section 8.1(c)(iv)) shall for all purposes of this Agreement (excluding however, the determination of the satisfaction of the condition in Section 7.4(c)) be deemed to have been qualified by reference to all untruths or inaccuracies (if any) which: (i) are apparent in the Property Information delivered or deemed pursuant to Section 4.2(c) to have been delivered to HUPEG; (ii) HUPEG had actual knowledge of prior to the Execution Date; and/or (iii) were disclosed to HUPEG prior to the Execution Date.

The provisions of this Section 6.3 shall survive each Closing and/or the termination of this Agreement. On each Closing, the applicable HUPEG Entity shall execute an acknowledgment and confirmation in favour of the City pursuant to which the applicable HUPEG Entity shall acknowledge, confirm and agree to be bound by the provisions of this Agreement applicable to such HUPEG Entity that survive Closing (explicitly including, without limitation, the foregoing provisions of this Section 6.3).

ARTICLE 7 CONDITIONS

7.1 Threshold Conditions

The City's and HUPEG's obligations to complete the Initial Transactions are subject to the fulfilment of each of the following conditions (the "**Threshold Conditions**") on or before the Initial Closing Date or such earlier date or time as may be herein specified, as the case may be, unless waived in writing by both of the Parties:

- (a) prior to the 60th day following the Document Settlement Deadline, City Council shall have approved the entering into of this Agreement and the Transactions;
- (b) prior to the Document Settlement Deadline, the Parties shall have agreed in writing that they have settled the form and content of each of the Closing Documents for the Initial Transactions on terms satisfactory to each of the Parties (and the City Solicitor), it being confirmed that: (i) each of the Parties (and the City Solicitor) shall act reasonably and in good faith to implement the provisions of Section 4.5(b); and (ii) each of the Parties (and the City Solicitor) shall act reasonably and in good faith in respect of the settlement of the other Closing Documents for the Initial Transactions;
- (c) the Parties obtaining all governmental and regulatory approvals (or similar entitlements) required for the completion of the Initial Transactions, if any;
- (d) prior to the Document Settlement Deadline, the Parties shall have agreed in writing on a legal description for each Property; and
- (e) on the Initial Closing Date, the Existing Tax Incremental Grant Program and the Extended Tax Incremental Grant Program shall be in existence.

The conditions in this Section 7.1 are for the benefit of both Parties and may be waived in whole or in part only by notice in writing from each Party to the other Party. In the event that any one or more of the conditions in this Section 7.1 has not been fulfilled by the time for such fulfillment and has not been waived by both Parties as aforesaid, either Party may, by notice in writing to the other Party, terminate this Agreement (in its entirety), without prejudice however to any rights either Party may have as a result of any breach by the other Party of any of its obligations hereunder. For greater certainty, neither Party shall be obligated to complete the Transactions (or any part thereof) if any of the conditions in this Section 7.1 has not been fulfilled unless all such unfulfilled conditions has been waived by both of the Parties.

7.2 Additional Threshold Conditions for the Subsequent Transaction

In the case of the Subsequent Transaction, each of the City's and HUPEG's respective obligations to complete such Subsequent Transaction are subject to the fulfilment of each of the following conditions (the "**Collateral Transaction Conditions**") on or before the Closing Date therefor or such earlier date or time as may be herein specified, as the case may be, unless waived in writing by both of the Parties:

- (a) the Closing Documents with respect to the Initial Transactions shall have been executed and delivered;
- (b) prior to the Document Settlement Deadline, the Parties shall have agreed in writing that they have settled the form and content of each of the Closing Documents for such Subsequent Transaction on terms satisfactory to each of the Parties (and the City Solicitor), it being confirmed that: (i) each of the Parties (and the City Solicitor) shall act reasonably and in good faith to implement the provisions of Section 4.5(b); and (ii) each of the Parties (and the City Solicitor) shall act reasonably and in good faith in respect of the settlement of the other Closing Documents for such Subsequent Transaction; and

- (c) the Parties obtaining all governmental and regulatory approvals (or similar entitlements) required for the completion of the Subsequent Transaction, if any.

The conditions in this Section 7.2 are for the benefit of both Parties and may be waived in whole or in part only by notice in writing from each Party to the other Party. In the event that any one or more of the conditions in this Section 7.2 in respect of a particular Subsequent Transaction has not been fulfilled by the time for such fulfillment and has not been waived by both Parties as aforesaid, either Party may, by notice in writing to the other Party, terminate this Agreement with respect to such Subsequent Transaction (but not, for greater certainty, in respect of the remainder of this Agreement, including the other Subsequent Transaction), without prejudice however to any rights either Party may have as a result of any breach by the other Party of any of its obligations hereunder with respect to such terminated Subsequent Transaction. For greater certainty, neither Party shall be obligated to complete a particular Subsequent Transaction if any of the conditions in this Section 7.2 has not been fulfilled in respect of such Subsequent Transaction unless all such unfulfilled conditions for such Subsequent Transaction have been waived by both of the Parties.

7.3 Closing Conditions Benefiting the City

Without derogating from Sections 7.1 and 7.2, the City's obligation to complete the Initial Transactions or a Subsequent Transaction, as the case may be, is subject to the fulfillment of each of the following conditions on or before the Closing Date therefor, unless waived by the City prior to such Closing Date:

- (a) all Closing Documents for the Initial Transactions or Subsequent Transaction, as the case may be, required to be delivered to the City pursuant to this Agreement shall have been delivered;
- (b) all of the terms, covenants and conditions of this Agreement to be materially complied with or performed by HUPEG on or prior to such Closing Date shall have been complied with or performed;
- (c) in the case of each Subsequent Transaction only, on the applicable Closing Date for such Subsequent Transaction, no HUPEG Entity shall be in default or breach of any material provision of any of the Closing Documents for the Initial Transactions or Subsequent Transaction (if any); it is confirmed that the condition in this Section 7.3(c) shall not be applicable to the Initial Transactions;
- (d) in the case of each Subsequent Transaction only, each of the following shall have been delivered to the City and be in full force and effect as of the applicable Development Property Closing Date:
 - (i) the Landlord's Security under (and as defined in) the Arena Lease, which shall include an assignment (as security) of principal construction documents (construction contract, consultants agreements, plans, bonds (with the City as a co-obligee) and any other construction documents provided for (all of which shall be in full force and effect), provided that the City's security interest in such documents shall be subsequent in priority to the interest of HUPEG's or the HUPEG Arena Tenant's construction lender to the extent provided in such Lease (if applicable);

- (ii) the Arena Work Performance Documentation;
 - (iii) if applicable, the Guarantee and Indemnity in respect of each of the Arena, the Concert Hall and the Convention Centre (in each case relating to the operations, each of which shall also be in good standing); and
 - (iv) all building permits required for the Arena Work;
- (e) in the case of the Subsequent Transaction relating to 14 Vine Street only (and, for greater certainty, without derogating from the condition set out in Section 7.3(d) above), each of the following shall have been delivered to the City and be in full force and effect as of the Development Property Closing Date for such Subsequent Transaction:
- (i) the Landlord's Security under (and as defined in) each of the Concert Hall Lease and the Convention Centre Lease, each of which shall include an assignment (as security) of principal construction documents (construction contract, consultants agreements, plans, bonds (with the City as a co-obligee) and any other construction documents provided for (all of which shall be in full force and effect), provided that the City's security interest in such documents shall be subsequent in priority to the interest of HUPEG's, the HUPEG Concert Hall Tenant's or the HUPEG Convention Centre Tenant's (as applicable) construction lender to the extent provided in such Lease (if applicable);
 - (ii) the Concert Hall Work Performance Documentation;
 - (iii) the Convention Centre Work Performance Documentation; and
 - (iv) all building permits required for the Concert Hall Work and the Convention Centre Work; and
- (f) the representations and warranties set forth in Section 2.2 shall be materially true and correct when made and shall continue to be materially true and correct as if made as of such Closing Date and HUPEG shall have delivered to the City a certificate from all applicable HUPEG Entities setting forth such statements as representations and warranties of such HUPEG Entities effective as of the Closing Date.

The conditions in this Section 7.3 are solely for the benefit of the City and may be waived in whole or in part by the City by notice in writing to HUPEG. In the event that any one or more of the conditions in this Section 7.3 in respect of the Initial Transactions has not been fulfilled on or prior to the Initial Closing Date and has not been waived by the City as aforesaid, the City may, by notice in writing to HUPEG, terminate this Agreement (in its entirety), without prejudice however to any rights it may have as a result of any breach by HUPEG or any HUPEG Entity of any of its obligations hereunder. In the event that any one or more of the conditions in this Section 7.3 in respect of the Subsequent Transaction has not been fulfilled on or prior to the applicable Closing Date and has not been waived by the City as aforesaid, the City may, by notice in writing to HUPEG, terminate this Agreement with respect to such Subsequent Transaction (but not, for greater certainty, in respect of the remainder of this Agreement, including the other Subsequent Transaction), without prejudice however to any rights either Party may have as a result of any

breach by the other Party of any of its obligations hereunder with respect to such terminated Subsequent Transaction.

7.4 Closing Conditions Benefiting HUPEG Entities

Without derogating from Sections 7.1 and 7.2, each HUPEG Entity's obligation to complete the Initial Transactions or the Subsequent Transaction, as the case may be, is subject to the fulfillment of each of the following conditions on or before the Closing Date therefor, unless waived by HUPEG prior to such Closing Date:

- (a) all Closing Documents for the Initial Transactions or Subsequent Transaction, as the case may be, required to be delivered to HUPEG pursuant to this Agreement shall have been delivered;
- (b) all of the terms, covenants and conditions of this Agreement to be materially complied with or performed by the City on or prior to such Closing Date shall have been complied with or performed; and
- (c) the representations and warranties set forth in Section 2.1 shall be materially true and correct when made and shall continue to be materially true and correct as if made as of such Closing Date, with such updates as are appropriate to reflect the delivery of the Additional Property Information and Property Arrangements entered into in compliance with Section 4.7.

The conditions in this Section 7.4 are solely for the benefit of the applicable HUPEG Entities and may be waived in whole or in part by HUPEG by notice in writing to the City. In the event that any one or more of the conditions in this Section 7.4 in respect of the Initial Transactions has not been fulfilled on or prior to the Initial Closing Date and has not been waived by HUPEG as aforesaid, HUPEG may, by notice in writing to the City, terminate this Agreement (in its entirety), without prejudice however to any rights it may have as a result of any breach by the City of any of its obligations hereunder. In the event that any one or more of the conditions in this Section 7.4 in respect of the Subsequent Transaction has not been fulfilled on or prior to the applicable Closing Date and has not been waived by HUPEG as aforesaid, HUPEG may, by notice in writing to the City, terminate this Agreement with respect to such Subsequent Transaction (but not, for greater certainty, in respect of the remainder of this Agreement, including the other Subsequent Transaction), without prejudice however to any rights it may have as a result of any breach by the City of any of its obligations hereunder with respect to such terminated Subsequent Transaction.

7.5 Effect of Termination

(a) This Agreement shall terminate in its entirety if the Initial Transactions are not completed on the Initial Closing Date.

(b) Upon a termination of this Agreement in its entirety, the Parties shall be released from all of their liabilities and obligations under this Agreement in respect of the period from and after such date of termination (except those that are expressly stated to survive the termination of this Agreement) provided that: (i) such termination shall not release either Party from its liabilities as a result of any breach by such Party of this Agreement or as a result of any breach by such Party of its representations and warranties in this Agreement; and (ii) the non-breaching Party shall be entitled to all remedies at law and in equity in respect of any such breaches.

(c) Upon a termination of this Agreement with respect to a Subsequent Transaction (but not a termination of this Agreement in its entirety), the Parties shall be released from all of their liabilities and obligations under this Agreement with respect to such Subsequent Transaction and such Development Property (except those liabilities and obligations that are expressly stated to survive the termination of this Agreement) provided that: (i) except as provided in Section 7.5(d) below, such termination shall not release either Party from its liabilities as a result of any breach by such Party of this Agreement with respect to such Subsequent Transaction or such Development Property relating thereto or as a result of any breach by such Party of its representations and warranties in this Agreement with respect to such Subsequent Transaction or such Development Property relating thereto; and (ii) except as provided in Section 7.5(d) below, the non-breaching Party shall be entitled to all remedies at law and in equity in respect of any such breaches with respect to such Subsequent Transaction such Development Property relating thereto; and (iii) the Parties shall not be released from any of their liabilities and obligations under this Agreement to the extent not relating to such Subsequent Transaction or such Development Property relating thereto.

(d) In the event that this Agreement is terminated with respect to a Subsequent Transaction (but not a termination of this Agreement in its entirety) as a result of a Breach of Representation the subject matter of which reveals that, or results in, redevelopment of the subject Development Property not being reasonably possible (including with the expenditure of additional funds) and which Breach of Representation (or matter or condition that resulted in such breach) is discovered by (or disclosed to) HUPEG after the Initial Closing but prior to the subject Subsequent Closing (a "**Between Closing Specified Breach**"), the Extended TIG Total Amount shall be increased by an amount equal to the Agreed Compensation Value of such Development Property and neither Party shall have any further liabilities or obligations to the other Party with respect to such Development Property nor shall HUPEG or any HUPEG Entity be entitled to any remedies at law or in equity in respect of such breach (or any other breach) or otherwise with respect to such Development Property. For greater certainty, the provisions of this Section 7.5(d) shall not apply to any Breach of Representation other than a Between Closing Specified Breach.

(e) Notwithstanding the foregoing provision of this Section 7.5, or any other provision of this Agreement, no Party shall have any liability for any indirect or consequential losses or damages or for any punitive damages incurred or related to any breach by such Party or any other Party of this Agreement or any breach of representations and warranties in this Agreement.

7.6 Waiver of Termination Right

If Closing of a particular Transaction occurs, each Party shall be deemed to have waived its right to terminate this Agreement (in its entirety or with respect to such Transaction, as the case may be) as a result of any condition with respect to such Transaction not having been satisfied; it being confirmed that such deemed waiver shall apply only to such Transaction and not to any other Transaction. Furthermore, if the Closing of a particular Transaction occurs with HUPEG and/or any HUPEG Entity having actual knowledge of a Breach of Representation prior to the applicable Closing, HUPEG and each HUPEG Entity shall be deemed to have waived all rights to make, bring, commence, assert or pursue any Claim against the City for or in respect of, and to recover from the City any Losses incurred as a result of, such Breach of Representation.

**ARTICLE 8
CLOSING & POST-CLOSING**

8.1 City's Closing Documents

Subject to and in accordance with the terms and conditions hereof, in the case of each Transaction (as applicable), on or before the Closing Date therefor, the City shall deliver to HUPEG, each of the following:

- (a) in the case of the Initial Transactions (and not any Subsequent Transaction):
 - (i) the Arena Lease, executed by the City;
 - (ii) a registrable notice of lease (in electronic format) in respect of the Arena Lease, executed by the City;
 - (iii) the Arena Work Performance Documentation, executed by the City (if required);
 - (iv) Guarantee and Indemnity(ies) in respect of: (i) the Arena Work; (ii) the Arena Lease obligations other than the Arena Work; and (iii) the Indemnity re Unassigned Operating Agreements and Assignment and Assumption of Operating Agreements in respect of the Arena Transaction, from Acceptable Guarantor(s) therefor, executed by the City;
 - (v) an Assignment and Assumption of the Operating Agreements in accordance with the terms herein in respect of the Arena, executed by the City;
 - (vi) the Concert Hall Lease, executed by the City;
 - (vii) the Concert Hall Work Performance Documentation, executed by the City (if required);
 - (viii) a registrable notice of lease (in electronic format) in respect of the Concert Hall Lease, executed by the City;
 - (ix) Guarantee and Indemnity(ies) in respect of: (i) the Concert Hall Work; (ii) the Concert Hall Lease obligations other than the Concert Hall Work; and (iii) the Indemnity re Unassigned Operating Agreements and Assignment and Assumption of Operating Agreements in respect of the Concert Hall Transaction, from Acceptable Guarantor(s) therefor, executed by the City;
 - (x) an Assignment and Assumption of the Operating Agreements in accordance with the terms herein in respect of the Concert Hall, executed by the City;
 - (xi) the Convention Centre Lease, executed by the City;
 - (xii) a registrable notice of lease (in electronic format) in respect of the Convention Centre Lease, executed by the City;

- (xiii) the Convention Centre Work Performance Documentation, executed by the City (if required);
 - (xiv) Guarantee and Indemnity(ies) in respect of: (i) the Convention Centre Work; (ii) the Convention Centre Lease obligations other than the Convention Centre Work; and (iii) the Indemnity re Unassigned Operating Agreements and Assignment and Assumption of Operating Agreements in respect of the Convention Centre Transaction, from Acceptable Guarantor(s), executed by the City; and
 - (xv) an Assignment and Assumption of the Operating Agreements in accordance with the terms herein in respect of the Convention Centre, executed by the City;
- (b) in the case of each Subsequent Transaction (and not any Initial Transaction):
- (i) a registrable transfer/deed of land (in electronic format) in respect of the applicable Property in favour of the applicable HUPEG Entity, executed by the City, which transfer/deed of land shall expressly exclude the implied covenants set out in paragraphs (ii) and (iv) of Section 5(1)1 of the *Land Registration Reform Act* (Ontario);
 - (ii) the Assignment and Assumption of Operating Agreements in respect of the applicable Property, executed by the City;
 - (iii) a Guarantee and Indemnity in respect of the Indemnity re Unassigned Operating Agreements and Assignment and Assumption of Operating Agreements in respect of such Transaction, from an acceptable Guarantor, executed by the City; and
 - (iv) the Development Agreement in respect of the applicable Property, executed by the City;
- (c) in the case of each Initial Transaction and each Subsequent Transaction:
- (i) an Indemnity re Unassigned Operating Agreements in respect of such Transaction, executed by the City;
 - (ii) a Reciprocal Rights Agreement in respect of each Property that is the subject of such Transaction, each executed by the City as owner of applicable properties located nearby the subject Property;
 - (iii) a mutual undertaking by the City and the applicable HUPEG Entity to pay the amount of any Post-Closing Adjustments, if any, in respect of such Transaction in accordance with Section 6.1(c), executed by the City;
 - (iv) a certificate from the City certifying that the representations and warranties set forth in Section 2.1 are materially true and correct as if made as of such Closing Date, provided that the representations and warranties in such certificate may be revised to reflect any changes in circumstances and/or occurrences during the Agreement Period;

- (v) a statutory declaration of an officer of the City declaring that the City is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada);
- (vi) the Assignment and Assumption of Operating Agreements in respect of the subject Property, executed by the City;
- (vii) the Assignment and Assumption of Permitted Encumbrances in respect of the subject Property, executed by the City;
- (viii) to the extent obtained by the City, all such consents as may be required pursuant to the terms of any Permitted Encumbrances and/or Assigned Operating Agreements in respect of the subject Property in connection with the completion of the Transaction with respect to the applicable Property;
- (ix) all other documents in respect of the applicable Transaction which the City is required to deliver pursuant to this Agreement in respect of such Transaction or which HUPEG reasonably requests to give effect thereto, in each case executed by the City.
- (x) an agreement pursuant to which the City agrees to remove, discharge or release (or retain responsibility for), or cause to be removed, discharged or released, from title to the applicable Entertainment Venue all Inapplicable Encumbrances that remain on title to such Entertainment Venue after the applicable Closing; and
- (xi) good and valid releases or discharges of all Encumbrances, save for Permitted Encumbrances, registered on title to the applicable Property or undertakings with respect to same.

8.2 HUPEG Entities' Closing Documents

Subject to and in accordance with the terms and conditions hereof, in the case of each Transaction (as applicable), on or before the Closing Date therefor, HUPEG or the applicable HUPEG Entity, as the case may be, shall deliver to the City, each of the following:

- (a) in the case of the Initial Transactions (and not any Subsequent Transaction):
 - (i) the Arena Lease, executed by the HUPEG Arena Tenant;
 - (ii) a registrable notice of lease (in electronic format) in respect of the Arena Lease (with land transfer tax affidavit), executed by the HUPEG Arena Tenant;
 - (iii) the Arena Work Performance Documentation, executed by all applicable parties thereto other than the City;
 - (iv) Guarantee and Indemnity(ies) in respect of: (i) the Arena Work; (ii) the Arena Lease obligations other than the Arena Work; and (iii) the Indemnity re Unassigned Operating Agreements and Assignment and Assumption of Operating Agreements in respect of the Arena Transaction, from

- Acceptable Guarantor(s) therefor, executed by such Acceptable Guarantor(s);
- (v) an Assignment and Assumption of the Operating Agreements in accordance with the terms herein in respect of the Arena, executed by the HUPEG Arena Tenant;
 - (vi) the Concert Hall Lease, executed by the HUPEG Concert Hall Tenant;
 - (vii) a registrable notice of lease (in electronic format) in respect of the Concert Hall Lease (with land transfer tax affidavit), executed by the HUPEG Concert Hall Tenant;
 - (viii) the Concert Hall Performance Documentation, executed by all applicable parties thereto other than the City;
 - (ix) Guarantee and Indemnity(ies) in respect of: (i) the Concert Hall Work; (ii) the Concert Hall Lease obligations other than the Concert Hall Work; and (iii) the Indemnity re Unassigned Operating Agreements and Assignment and Assumption of Operating Agreements in respect of the Concert Hall Transaction, from Acceptable Guarantor(s) therefor, executed by such Acceptable Guarantor(s);
 - (x) an Assignment and Assumption of the Operating Agreements in accordance with the terms herein in respect of the Concert Hall, executed by HUPEG Concert Hall Tenant;
 - (xi) the Convention Centre Lease, executed by the HUPEG Convention Centre Tenant;
 - (xii) a registrable notice of lease (in electronic format) in respect of the Convention Centre Lease (with land transfer tax affidavit), executed by HUPEG Convention Centre Tenant;
 - (xiii) the Convention Centre Performance Documentation, executed by all applicable parties thereto other than the City;
 - (xiv) Guarantee and Indemnity(ies) in respect of: (i) the Convention Centre Work; (ii) the Convention Centre Lease obligations other than the Convention Centre Work; and (iii) the Indemnity re Unassigned Operating Agreements and Assignment and Assumption of Operating Agreements in respect of the Convention Centre Transaction, from Acceptable Guarantor(s) therefor, executed by such Acceptable Guarantor(s);
 - (xv) an Assignment and Assumption of the Operating Agreements in accordance with the terms herein in respect of the Convention Centre, executed by the HUPEG Convention Centre Tenant.
- (b) in the case of each Subsequent Transaction (and not any Initial Transaction):

- (i) the land transfer tax affidavit in respect of the registrable transfer/deed of land (in electronic format) in respect of the applicable Property, executed by the applicable HUPEG Entity;
 - (ii) an Environmental Release in respect of the subject Property, executed by the applicable HUPEG Entity;
 - (iii) the Assignment and Assumption of Operating Agreements in respect of the subject Property, executed by the applicable HUPEG Entity;
 - (iv) the Development Agreement in respect of the subject Property, executed by the applicable HUPEG Entity;
 - (v) a Guarantee and Indemnity in respect of the Indemnity re Unassigned Operating Agreements and the Assignment and Assumption of Operating Agreements in respect of the subject Property, executed by an Acceptable Guarantor; and
 - (vi) the Assignment and Assumption of Permitted Encumbrances in respect of the subject Property, executed by the applicable HUPEG Entity;
- (c) in the case of each Initial Transaction and each Subsequent Transaction:
- (i) an Indemnity re Unassigned Operating Agreements in respect of such Transaction, executed by HUPEG and the applicable HUPEG Entity;
 - (ii) a Reciprocal Rights Agreement in respect of the applicable Property, executed by the applicable HUPEG Entity;
 - (iii) a mutual undertaking by the City and the applicable HUPEG Entity to pay the amount of any Post-Closing Adjustments, if any, in respect of such Transaction in accordance with Section 6.1(c), executed by the applicable HUPEG Entity;
 - (iv) a certificate from HUPEG and the applicable HUPEG Entity certifying that the representations and warranties set forth in Section 2.2 are materially true and correct as if made as of such Closing Date;
 - (v) a statutory declaration of an officer of the applicable HUPEG Entity declaring that: (A) if the applicable HUPEG Entity is not a partnership, then the applicable HUPEG Entity is non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada); and (B) if the applicable HUPEG Entity is a partnership, then it is a Canadian partnership within the meaning of the *Income Tax Act* (Canada);
 - (vi) the acknowledgment and confirmation described in Section 6.3, executed by the applicable HUPEG Entity;
 - (vii) all such assumption or other agreements, undertakings and other instruments as may be required pursuant to the terms of any Permitted Encumbrances and/or Assigned Operating Agreements in respect of the

subject Property in order to comply with the provisions thereof with respect to the assignment and/or assumption thereof; and

- (viii) all other documents in respect of the applicable Transaction which HUPEG and/or the applicable HUPEG Entity is required to deliver pursuant to this Agreement in respect of such Transaction or which the City reasonably requests to give effect thereto, in each case executed by HUPEG and/or the applicable HUPEG Entity, as the case may be.

8.3 Extension of Closing Date

Without limiting any other right in favour of any Party(ies) under this Agreement, if the condition set out in Section 7.3(c) has not been satisfied on the scheduled Development Properties Closing Date, HUPEG shall have a one-time right, with respect to each Development Property, to postpone the applicable Development Properties Closing Date by delivering written notice to the City on or before such scheduled Development Properties Closing Date, in which event the Closing Date for the applicable Subsequent Transaction shall be postponed to the date that is 15 Business Days after the satisfaction of such condition, but in no event later than April 30, 2024. Notwithstanding the foregoing, HUPEG shall not be entitled to postpone the Closing Date for any Subsequent Transaction pursuant to this Section 8.3 unless all of the conditions in favour of the City contained in Section 7.3 in respect of such Subsequent Transaction (other than the condition in set out in Section 7.3(c)) have been satisfied or waived or would have been satisfied or waived on the applicable scheduled Development Properties Closing Date. For greater certainty, and without limiting any other right in favour of in favour of any Party(ies) under this Agreement, HUPEG shall not be entitled to postpone the Closing Date for any Subsequent Transaction more than one time pursuant to this Section.

8.4 Electronic Registration

Given that the Ontario land registry electronic registration system (hereinafter referred to as the "**Teraview Electronic Registration System**" or "**TERS**") is operative in the Land Titles Office in which each Property is registered, the following provisions shall apply:

- (a) the City's Solicitors and HUPEG's Solicitors shall each be obliged to be authorized TERS users and in good standing with the Law Society of Upper Canada, and are hereby authorized by the City and each HUPEG Entity, respectively, to enter into a document registration agreement substantially in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 as amended by deleting subparagraphs 4(a) and 4(b) therefrom or any replacement thereof, provided the same amendments are made (hereinafter referred to as the "**DRA**"), establishing the procedures and timing for completing this transaction, which DRA shall be exchanged between the City's Solicitors and HUPEG's Solicitors before each applicable Closing Date. The DRA shall outline or establish the procedures and timing for completing all registrations electronically and provide for all closing documents and closing funds to be held in escrow pending the submission of the applicable registration documents to the Land Registry Office and its acceptance by virtue of each registration document being assigned a registration number. The DRA shall also provide that if there is a problem with the Teraview Electronic Registration System which does not allow the parties to electronically register all registration documents on the applicable

Closing, the applicable Closing Date shall be deemed to be extended until the next day when the system is accessible and operating for such Land Registry Offices;

- (b) the delivery and exchange of documents, monies, and keys if any, to the applicable Property, and the release thereof to the City, HUPEG and the applicable HUPEG Entity, as the case may be, may not occur contemporaneously with the registration of the applicable registration documents, but shall be governed by the DRA, pursuant to which the solicitor receiving any documents, keys and/or certified or wired funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA; and
- (c) each of the Parties agrees that the delivery of any documents not intended for registration on title to a Property may be delivered to the other Party or its solicitor by email transmission, provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto.

ARTICLE 9 GENERAL

9.1 Notices

Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if served personally upon an executive officer of the party for whom it is intended, or mailed by registered mail, return receipt requested or sent by email and in the case of:

- (a) the City, addressed to it at:

71 Main Street West, 7th Floor
Hamilton, Ontario L8P 4Y5

Attention: Legal Services and Corporate Real Estate Office
Email: Raymond.Kessler@hamilton.ca and Anders.Knudsen@hamilton.ca

With a copy to:

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, Ontario M5V 3J7

Attention: David G. Reiner
Email: dreiner@dwpv.com

- (b) any HUPEG Entity, addressed to it at:

c/o Gowling WLG (Canada) LLP
1 Main Street West
Hamilton, Ontario L8P 4Z5

Attention: Pamela Green

Email: pamela.green@gowlingwlg.com

or to such other address or in care of such other officers as a Party may from time to time advise to the other Party by notice in writing. The date of receipt of any such notice, demand, request, consent, agreement or approval if served personally or by email shall be deemed to be the date of delivery thereof if delivered prior to 5:00 p.m. on a Business Day (and the next Business Day after such delivery if not delivered prior to 5:00 p.m. on a Business Day), or if mailed as aforesaid, the date of delivery by postal authority.

9.2 City as Regulatory Authority

The Parties acknowledge and agree that nothing in this Agreement or any Closing Document derogates from or interferes with or fetters (i) the exercise by the City of its rights as a municipality, or imposes any obligations on the City, in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including planning rights and responsibilities, or from raising any objections pursuant to the foregoing or requiring compliance therewith, which objections or requirements shall not constitute a default by the City under the provisions of this Agreement or any Closing Documents; or (ii) the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Agreement or such other Closing Documents and provided that nothing in this Section 9.2 shall be construed as relieving the City of its covenants and obligations under this Agreement. In the event of any conflict or inconsistency between this Section 9.2 and any other provision of this Agreement or any Closing Documents, this Section 9.2 shall govern and prevail. This Section 9.2 shall survive all Closings and the termination of this Agreement.

9.3 Obligations as Covenants

Each agreement and obligation of any of the Parties hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

9.4 Covenants of HUPEG

(a) Until the applicable Closing, HUPEG covenants and agrees to cause each HUPEG Entity (other than itself) to perform, satisfy and fulfill its covenants and obligations set forth or contemplated in this Agreement and be bound by all of the provisions of this Agreement applicable to such HUPEG Entity. Without derogating from the foregoing, upon the Closing of each Transaction, each applicable HUPEG Entity (unless it is HUPEG itself) shall deliver an acknowledgement and agreement to be bound by all provisions of this Agreement that are applicable to such Transaction and survive the Closing of such Transaction.

(b) Any default on the part of HUPEG, the HUPEG Arena Tenant, the HUPEG Concert Hall Tenant or the HUPEG Convention Centre Tenant under this Agreement or any Closing Document delivered as part of the Initial Transactions shall constitute a default of HUPEG and the HUPEG Arena Tenant, the HUPEG Concert Hall Tenant and the HUPEG Convention Centre Tenant under this Agreement and each Closing Document delivered as part of the Initial Transactions.

(c) This Section 9.4 shall survive the termination of this Agreement; provided, for greater certainty, the survival of this Section shall not have the effect of making any covenant or

obligation survive a Closing if such covenant or obligation would not, but for this Section 9.4, survive such Closing.

9.5 One Voice for HUPEG Entities

Notwithstanding any assignment of this Agreement in whole or in part (or any designation of a particular Eligible HUPEG Person as the applicable HUPEG Entity in connection with any particular Transaction(s) in accordance with Section 9.10), HUPEG shall have the unconditional and exclusive power and authority to take, give or make all approvals, actions, decisions, waivers, consents, information, requests and notices that are required or permitted to be taken, given or made by or to HUPEG and/or any other HUPEG Entities under or in connection with this Agreement prior to the applicable Closing, and any such approvals, actions, decisions, waivers, consents, information, requests and notices when taken, given or made by or to HUPEG, and shall be final and binding upon all HUPEG Entities with the same force and effect as if taken, given or made by all HUPEG Entities, and the City shall be entitled to rely thereon. This Section shall cease to apply to approvals, actions, decisions, waivers, consents, information, requests and notices that are required or permitted to be taken, given or made by or to a HUPEG Entity in respect of a Transaction that has closed or the Property that is the subject of a Transaction that has closed. This Section 9.5 shall survive the termination of this Agreement and shall survive each Closing.

9.6 Fees and Costs

Each of the Parties shall be responsible for its own fees and costs (including legal fees) incurred in connection with the preparation and negotiation of this Agreement and the Closing Documents.

9.7 Index and Headings

The index hereto and the headings of any Articles, Section or part thereof are inserted for purposes of convenience only and do not form part hereof.

9.8 Invalidity of Provisions

The invalidity of any provision of this Agreement or any covenant herein contained shall not affect the validity of any other provision or covenant hereof or herein contained.

9.9 Successors and Assigns

This Agreement shall ensure to the benefit of and be binding upon the permitted successors and permitted assigns of each Party. Except as expressly provided in Section 9.10, this Agreement shall not be assigned by either Party without the prior written consent of the other Party, which consent may be withheld in the other Party's sole, absolute and unfettered discretion and may be subject to such conditions as the other Party may specify in its sole discretion.

9.10 Designating Applicable HUPEG Entities

(a) HUPEG shall be entitled to designate each HUPEG Entity (the applicable designated Eligible HUPEG Person being a "**Designee**") provided that: (a) such designation must be made by notice to the City no less than 15 Business Days prior to the Closing Date for the applicable Transaction; (b) notwithstanding any such designation, HUPEG shall remain liable

(jointly and severally with the applicable Designee) in respect of all of its (and such HUPEG Entity's) representations, warranties, covenants, obligations and liabilities under this Agreement in respect of the particular Transaction until the Closing of such Transaction; and (c) concurrently with the delivery of notice of such designation, HUPEG and the applicable Designee shall deliver to and in favour of the City an agreement (in a form reasonably acceptable to the City) pursuant to which: (A) the applicable Designee assumes and agrees to be bound by all of the covenants, liabilities and obligations of the applicable HUPEG Entity under this Agreement as of and after the applicable Closing Date; (B) HUPEG and the particular Eligible HUPEG Person represent and warrant, or covenant, as the case may be, to and with the City that such Designee is and shall at the time of the applicable Closing (and immediately after the Closing) be an Eligible HUPEG Person; and (C) that HUPEG and such Designee make representations and warranties in respect of the Designee that correspond with those made in this Agreement in respect of HUPEG. For greater certainty, no HUPEG Entity will be entitled to direct that legal title to any Property (or any interest therein) be transferred to any Person other than as aforesaid.

(b) It is confirmed that, notwithstanding that following the designation of a Designee in respect of a particular Transaction HUPEG remains jointly and severally liable in respect of all of its (and each HUPEG Entity's) representations, warranties, covenants, obligations and liabilities under this Agreement in respect of such Transaction until the Closing thereof, a Designee shall only be responsible for the covenants, liabilities and obligations under this Agreement of the HUPEG Entity that it has been designated as in accordance with Section 9.10(a).

9.11 Tender

Any tender of documents or money under this Agreement may be made upon the City or HUPEG or upon counsel acting for the City or HUPEG from time to time, and money may be tendered by negotiable cheque certified by a chartered bank or trust company.

9.12 Amendment of Agreement

No supplement, modification, waiver or termination (other than a termination pursuant to the terms of this Agreement) of this Agreement shall be binding unless executed in writing by the Parties hereto, or by their respective counsel who are hereby expressly appointed in that regard.

9.13 Further Assurances

Each of the Parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such reasonable and further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement. The provisions of this Section shall not merge on, but shall survive, each Closing.

9.14 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the Transactions and the Revitalization Plan and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto (including, without limitation, the MOU), and there are no other warranties or representations and no other agreements between the Parties hereto in connection with Revitalization Plan except as

specifically set forth in this Agreement (including the Schedules attached hereto) or to be set out in the Closing Documents.

9.15 Time of Essence

Time shall in all respects be of the essence hereof, provided, however that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the City and HUPEG, or by their respective counsel who are hereby expressly appointed in that regard.

9.16 Planning Act

The City's obligation to convey any interest in any Property pursuant to this Agreement is expressly subject to compliance with the provisions of Section 50 of the *Planning Act* (Ontario) and amendments thereto and the City shall diligently and at its own cost pursue any required consent under that Act to the conveyance of any such Property.

9.17 No-Merger

Subject to anything expressly to the contrary herein, all provisions of this Agreement shall survive and shall not merge upon the applicable Closing and shall continue in full force and effect thereafter.

9.18 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

9.19 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts, each of which may be delivered by facsimile, email or other functionally equivalent electronic means of transmission with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together as constituting one and the same agreement.

9.20 MOU Superseded


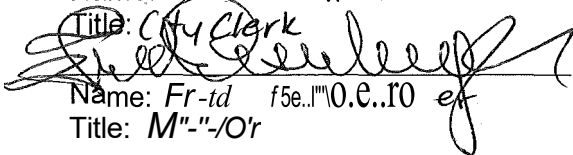
This Agreement supersedes the MOU.

9.21 Relationship of the Parties

Nothing herein shall be construed so as to make the City a partner of HUPEG or any HUPEG Entity for any purpose.

[The remainder of this page is intentionally left blank; signature page follows.]

CITY OF HAMILTON

by 
Name: Andrea Holland
Title: City Clerk

Name: Fred O'Neil
Title: Mayor

HAMILTON URBAN PRECINCT
ENTERTAINMENT GROUP LP., by its
general partner, HAMILTON URBAN
PRECINCT ENTERTAINMENT GROUP
GPINC.

by -----
Name: Peter J. Mercanti
Title: President

Name: S. Jasper Kujavsky
Title: Director

Of r=1cr OF THE CLERK
APPEWVED BY COUNCIL
DATE: June 1 12:6@1
PRIORITY ei, c:JI-D)::J /Krr. 4
NL Ct.AJ YEAR/FILE :IQ /r/f>5/p

CITY OF HAMILTON

by _____

Name:

Title:

Name:

Title:

**HAMILTON URBAN PRECINCT
ENTERTAINMENT GROUP LP., by its
general partner, HAMILTON URBAN
PRECINCT ENTERTAINMENT GROUP
GPINC.()**

by *r* _____

Name: Peter J. Mercanti

Title: President

Name: *Jasper Kujavsky*
Name: Jasper Kujavsky

Title: Director

Schedule A
ARENA LEASE
KEY TERMS AND FEATURES

A. Key Terms

Premises: Arena Property

Tenant: the HUPEG Arena Tenant

Term: 49 years commencing on the Initial Closing Date, with a right for the Tenant to terminate on not less than five (5) years' prior notice effective no earlier than the 30th anniversary of the Commencement Date, provided that, except with the consent of the City (acting in its sole and unfettered discretion), such right of termination may only be exercised concurrently with the concurrent termination of the other Leases.

Commencement Date: On the Initial Closing Date

Basic Rent: \$1.00 per year, payable for the entire Term on the Commencement Date

Municipal Capital Facility: As set out in Section 5.6(d) of the Master Agreement

Fully Net Lease: Tenant responsible for all costs during the Term

Additional Rent: Tenant responsible for all operating costs (including, without limitation, costs under the Energy Agreements in accordance with Section 5.2(i) and all costs of Operations Employees), taxes, etc. (subject to exemptions, etc. under Municipal Capital Facility Agreements)

Arena Work:

The "**Arena Work**" is the Arena Transformation in material compliance with the preliminary design, specifications, development budget (which budget reflects a capital investment by the Tenant of approximately \$50,000,000) and schedule referenced in Part B below.

"**Arena Transformation**" means the transformation of the lower bowl of the Arena into a "modern facility" (having regard to similar facilities in similar markets) that provides seating for approximately 9,000 customers, including club suites, private boxes and state of the art amenities while also maintaining access to the upper balcony for large scale events.

Tenant's Construction obligations:

- Tenant to undertake the Arena Work at its own cost
- Arrange committed construction funding
- Negotiate and enter into construction and consulting contracts
- Materially comply with the preliminary project plans, budget and schedule based upon the applicable preliminary design, specifications, development budget and schedule

- Obtain permits
- Obtain bonding and insurance (including liability coverage in respect of damage to neighbouring City properties) on terms satisfactory to the City
- Fund construction costs, including overruns
- Liaise with the City's Project Monitor (retained by the Landlord, as a Tenant construction cost) and permit Project Monitor oversight
- Permit Landlord inspections
- Co-ordinate construction and ongoing arena activities
- Designated as "Constructor" and take on the Constructor responsibilities under *Occupational Health and Safety Act* (Ontario)
- Obtain a building condition report from an independent expert after Substantial Completion to establish a baseline building condition

Landlord's rights respecting construction:

- Approval of design, plans, etc.
- Approval of schedule
- Approval of material changes
- Oversight re construction activities directly and through the Project Monitor
- Oversight re commissioning
- Receive ongoing reports
- Receive the Landlord's Security (which will be defined in the Lease as including: (i) assignment (as security) of principal construction documents (construction contract, consultants agreements, plans, bonds (with the City as a co-obligee), etc.) and any other contemplated construction documents), but subject to postponement in favour of the Tenant's third party (arm's length) construction lender; and (ii) the Arena Work Performance Documentation

Operations and Maintenance:

- Subject to Section 5.2 of the Master Agreement, Tenant to assume all Operating Agreements on the Initial Closing Date, with full authority to renew, replace, modify, etc.
- Ongoing operating covenant commencing on the Initial Closing Date, subject to interruption to complete the Arena Work and where necessary, maintenance, repair,

- Ongoing maintenance, repair, alterations and replacements commencing on the Initial Closing Date, inclusive of base building, structural, mechanical, etc. to maintain a good state of repair and as a modern facility (having regard to similar facilities in similar markets)
- Address ongoing compliance with the building condition baseline at regular 5-year intervals
- Environmental compliance
- Hand back terms to ensure the facility is up to baseline standards

Capital Renewal Program:

- Commitment to an ongoing “modernization” (having regard to similar facilities in similar markets) renewal program and to keep the facility in a good state of repair and as a modern facility (to be defined in the Master Agreement and having regard to similar facilities in similar markets)
- Application of a ticket surcharge in accordance with Section 5.5 of the Master Agreement.
- Capital reserve for ticket surcharge funds in accordance with the provisions of Section 5.5 of the Master Agreement. Tenant shall have no liability for any claims, costs or damages arising out of a failure by the City to approve any life cycle replacement, capital, repairs, enhancements, etc. to the Arena proposed by Tenant.

Use:

- Covenant to carry on “Arena Uses” (to be defined in the lease agreement)
- Community Use Program and Special Events, as agreed upon by the Parties
- Continuous operation
- Prohibited or restricted activities

Risk Management:

- Insurance
- Guarantee and indemnity (at any time that the Tenant does not satisfy the Applicable Net Worth Criteria) with respect to Tenant’s obligations under the Arena Lease and, if from more than one guarantor, on a joint and several basis. It is confirmed that there may be a separate Guarantee and indemnity in respect of the Arena Work and in respect of the remainder of Tenant’s obligations under the Arena Lease.
- Arena Work Performance Documentation

Naming, Sponsorship, Signage and Advertising:

- Parameters consistent with the City's current standards

Reciprocal Rights Agreement:

- As per Schedule F

Transfers:

- City approval (sole and unfettered discretion) required for (i) any assignment of the Lease or (ii) the Tenant to cease to be a HUPEG Person
- Space Leases for permitted uses
- Leasehold mortgaging arrangements between Landlord and Lender (no subordination)

Defaults:

- Cross default with the other Leases and all Closing Documents delivered as part of the Initial Transactions.
- No entitlement shall accrue for any Extended Tax Incremental Grant Program related to any of the Properties at any time that the tenant under the Arena Lease, the Concert Hall Lease or the Convention Centre Lease is in default (other than immaterial default) thereunder beyond any applicable cure period and no such entitlement shall accrue during any such default.

B. Preliminary Design/Specifications/Budget/Development Schedule

The proposed renovation of the Arena is based on the contents of the 2016 Arena Renovation Study prepared by Brisbon Brook Beynon (BBB) Architects, and specifically, a portion of the Option 1 plan producing a state-of-the-art lower bowl. While modifications to that plan will be incorporated into the final design, including the proposed upgraded upper bowl curtaining system, the essence of the Option 1 Plan remains intact. HUPEG relies on the comprehensive Existing Building Assessment, structural, electrical, mechanical sections, architectural plans, renderings and other information for the purpose of this Master Agreement.

HUPEG has also submitted to the City the updated 2020 and 2021 BBB renderings of the lower bowl Arena Transformation including images of the proposed new building exterior, and upgraded interior bowl curtaining system. These renderings reflect a project premised on the 2016 Option 1 Renovation Plan which will be subject to modification as set out below.

Please see the following preliminary drawings, plans and specifications as set out in the 2016 Arena Renovation Study Option 1 with respect to the Arena:

- Architectural renderings: pages 6-8;
- Drawings pages: 9-24;

- Option 1 chair counts: page 25;
- Option 1 gross floor areas: pages 27 and 29;
- Outline specifications: pages 31-47;
- Option 1 finish schedules: pages 48-56;
- Existing drawings: pages 67-73.

The proposed budget in the 2016 BBB Study for the Option 1 lower bowl renovation was approximately \$68 million. Specifics regarding the budget are reflected in the confidential Project Budget section of the 2016 BBB Study at page 101:

Option 1 project cost:	\$59,996,726.00
HST:	\$7,799,574.00
TOTAL:	\$67,796,300.00

Pursuant to the PCL Updated 2020 Option 1 Budget estimate, HUPEG estimates the current 2016 Arena Renovation Study Option 1 budget at \$80,000,000 incorporating cost escalation in the range of 13-15%.

The project schedule with respect to Option 1 is reflected in the detailed information set out in the BBB Study at page 102 of the 2016 Arena Renovation Study. That schedule assumes a complete building shutdown for three consecutive months of continuous construction during the summers of each year. That could still be effected with the updated schedule beginning following completion of the Hamilton Bulldogs and Toronto Rock season in 2022 or 2023. It is possible, though, that in the event the Bulldogs and Toronto Rock were prepared to relocate for one season, the Arena Work could be effected in one continuous period of approximately 12-15 months. Updated schedules with PCL will be prepared anticipating the possibility of a continuous construction timetable or a staged construction timetable.

The specifications and budget with respect to the Arena Work are different depending on the scale of the renovation and ultimate project budget, whereas scheduling is not. Decisions on what modifications will have to be incorporated will be made in consultation with the building's anchor tenants, the Hamilton Bulldogs, Toronto Rock and Hamilton Honey Badgers.

The Arena Work would likely result in significant modifications from the 2016 Arena Renovation Study Option 1 including the extent of exterior building envelope work, FF&E, interior finishes, specialties and accessories. It is anticipated the construction of private suites would remain substantially as planned in a full Option 1 renovation, with the possibility of construction of a partial new upper level concourse on the south side, and street-level concourse on the north, east and south sides of the building.

The Arena Work at \$50,000,000 would also likely require consideration of reduction of interior construction and partitions. Significant cost reductions could be realized by foregoing much of the anticipated transformation of the north-end ice level space envisioned in the fully built-out Option 1 plan for new dressing rooms, amenity spaces and "Bunker Suites". Reconsideration of the extent of private boxes and suites, as well as the partial upper level concourse, would be required to bring the renovation in at an approximate cost of \$50,000,000. While this plan would still incorporate a significant renovation and expansion of the north side concourses at both the street

and existing main concourse levels, the degree of desired new exterior building skin would be modified.

Schedule B
CONCERT HALL LEASE
KEY TERMS

A. Key Terms

1. Premises: Concert Hall Property

Tenant: the HUPEG Concert Hall Tenant

Term: 49 years commencing on the Initial Closing Date, with a right for the Tenant to terminate on not less than five (5) years' prior notice effective no earlier than the 30th anniversary of the Commencement Date, provided that, except with the consent of the City (acting in its sole and unfettered discretion), such right of termination may only be exercised concurrently with the concurrent termination of the other Leases.

Commencement Date: On the Initial Closing Date

Basic Rent: \$1.00 per year, payable for the entire Term on the Commencement Date

Municipal Capital Facility: As set out in Section 5.6(d) of the Master Agreement

Fully Net Lease: Tenant responsible for all costs during the Term

Additional Rent: Tenant responsible for all operating costs (including, without limitation, costs under the Energy Agreements in accordance with Section 5.2(i) and all costs of Operations Employees), taxes, etc. (subject to exemptions, etc. under Municipal Capital Facility Agreements)

Concert Hall Work:

The "**Concert Hall Work**" is material compliance with the preliminary design, specifications, development budget (which budget reflects a capital investment by the Tenant of no less than \$2,500,000) and the preliminary schedule referenced in Part B below.

Tenant's Construction obligations:

- Tenant to undertake the Concert Hall Work at its own cost
- Arrange committed construction funding
- Negotiate and enter into construction and consulting contracts
- Materially comply with the preliminary project plans, budget and schedule based upon the applicable preliminary design, specifications, development budget and schedule referenced in Part B below
- Obtain permits

- Obtain bonding and insurance (including liability coverage in respect of damage to neighbouring City properties) on terms satisfactory to the City
- Fund construction costs, including overruns
- Liaise with the City's Project Monitor (retained by the Landlord, as a Tenant construction cost) and permit Project Monitor oversight
- Permit Landlord inspections
- Co-ordinate construction and ongoing concert hall activities
- Designated as "Constructor" and take on the Constructor responsibilities under *Occupational Health and Safety Act* (Ontario)
- Obtain a building condition report from an independent expert after Substantial Completion to establish a baseline building condition

Landlord's rights respecting construction:

- Approval of design, plans, etc.
- Approval of schedule
- Approval of material changes
- Oversight re construction activities directly and through the Project Monitor
- Oversight re commissioning
- Receive the Landlord's Security (which will be defined in the Lease as including: (i) assignment (as security) of principal construction documents (construction contract, consultants agreements, plans, bonds (with the City as a co-obligee), etc.) and any other contemplated construction documents), but subject to postponement in favour of the Tenant's third party (arm's length) construction lender; and (ii) the Concert Hall Work Performance Documentation

Operations and Maintenance:

- Subject to Section 5.2 of the Master Agreement, Tenant to assume all Operating Agreements on the Initial Closing Date, with full authority to renew, replace, modify, etc.
- Ongoing operating covenant commencing on the Initial Closing Date, subject to interruption to complete the Concert Hall Work and where necessary, maintenance, repair, alterations and replacements
- Ongoing maintenance, repair, alterations and replacements commencing on the Initial Closing Date, inclusive of base building, structural, mechanical, etc. to maintain a good state of repair and as a modern facility (having regard to similar facilities in similar markets)

- Address ongoing compliance with the building condition baseline at regular 5-year intervals
- Environmental compliance
- Handback terms to ensure the facility is up to baseline standards

Capital Renewal Program:

- Commitment to an ongoing “modernization” (having regard to similar facilities in similar markets) renewal program and to keep the facility in a good state of repair and as a modern facility (to be defined in the Master Agreement and having regard to similar facilities in similar markets)
- Application of a ticket surcharge in accordance with Section 5.5 of the Master Agreement.
- Capital reserve for ticket surcharge funds in accordance with the provisions of Section 5.5 of the Master Agreement. Tenant shall have no liability for any claims, costs or damages arising out of a failure by the City to approve any life cycle replacement, capital, repairs, enhancements, etc. to the Concert Hall proposed by Tenant.

Use:

- Covenant to carry on “Concert Hall Uses” (to be defined in the lease agreement)
- Community Use Program and Special Events, as agreed upon by the Parties
- Continuous operation
- Prohibited or restricted activities

Risk Management:

- Insurance
- Guarantee and indemnity (at any time that the Tenant does not satisfy the Applicable Net Worth Criteria) with respect to Tenant’s obligations under the Concert Hall Lease and, if from more than one guarantor, on a joint and several basis. It is confirmed that there may be a separate Guarantee and indemnity in respect of the Concert Hall Work and in respect of the remainder of Tenant’s obligations under the Concert Hall Lease.
- Concert Hall Work Performance Documentation

Naming, Sponsorship, Signage and Advertising:

- Parameters consistent with the City’s current standards

Reciprocal Rights Agreement:

- As per Schedule F

Transfers:

- City approval (sole and unfettered discretion) required for (i) any assignment of the Lease or (ii) the Tenant to cease to be a HUPEG Person
- Space Leases for permitted uses
- Leasehold mortgaging arrangements between Landlord and Lender (no subordination)

Defaults:

- Cross default with the other Leases and all Closing Documents delivered as part of the Initial Transactions.
- No entitlement shall accrue for any Extended Tax Incremental Grant Program related to any of the Properties at any time that the tenant under the Arena Lease, the Concert Hall Lease or the Convention Centre Lease is in default (other than immaterial default) thereunder beyond any applicable cure period and no such entitlement shall accrue during any such default.

B. Preliminary Design/Specifications/Budget/Development Schedule

The proposed Concert Hall renovations are relatively modest as the Concert Hall is structurally and acoustically sound. The Master Agreement anticipates monies that will be spent primarily on a building refresh, including new seating.

For the purpose of this Master Agreement, the specific design and specifications for the interior renovations referenced in this section will be confirmed to the City by HUPEG.

The budget with respect to the Concert Hall is estimated at a minimum of \$2,500,000. Budget particulars are currently being prepared and will be forwarded by HUPEG to the City.

The development schedule is anticipated to be effected over an approximately 9 month period. Specific updated information on the schedule as it relates to ongoing Concert Hall operations, potential start date, and the effort to avoid programming interruptions, will be provided by HUPEG to the City.

The Tenant will be required to complete the Concert Hall Work by no later than December 31, 2024, subject to force majeure.

Schedule C
CONVENTION CENTRE LEASE
KEY TERMS

A. Key Terms

1. Premises: Convention Centre Property

Tenant: the HUPEG Convention Centre Tenant

Term: 49 years commencing on the Initial Closing Date, with a right for the Tenant to terminate on not less than five (5) years' prior notice effective no earlier than the 30th anniversary of the Commencement Date, provided that, except with the consent of the City (acting in its sole and unfettered discretion), such right of termination may only be exercised concurrently with the concurrent termination of the other Leases.

Commencement Date: On the Initial Closing Date

Basic Rent: \$1.00 per year, payable for the entire Term on the Commencement Date

Municipal Capital Facility: As set out in Section 5.6(d) of the Master Agreement

Fully Net Lease: Tenant responsible for all costs during the Term

Additional Rent: Tenant responsible for all operating costs (including, without limitation, costs under the Energy Agreements in accordance with Section 5.2(i) and all costs of Operations Employees), taxes, etc. (subject to exemptions, etc. under Municipal Capital Facility Agreements)

Convention Centre Work:

The "**Convention Centre Work**" is the renovations, upgrades and enhancements in material compliance with the preliminary design, specifications, development budget (which budget reflects a capital investment by HUPEG of approximately \$10,000,000) and the preliminary schedule referenced in Part B below.

Tenant's Construction obligations:

- Tenant to undertake the Convention Centre Work at its own cost
- Arrange committed construction funding
- Negotiate and enter into construction and consulting contracts
- Materially comply with the preliminary project plans, budget and schedule based upon the applicable preliminary design, specifications, development budget and schedule referenced in Part B below
- Obtain permits

- Obtain bonding and insurance (including liability coverage in respect of damage to neighbouring City properties) on terms satisfactory to the City
- Fund construction costs, including overruns
- Liaise with the City's Project Monitor (retained by the Landlord, as a Tenant construction cost) and permit Project Monitor oversight
- Permit Landlord inspections
- Co-ordinate construction and ongoing convention centre activities
- Designated as "Constructor" and take on the Constructor responsibilities under *Occupational Health and Safety Act* (Ontario)
- Obtain a building condition report from an independent expert after Substantial Completion to establish a baseline building condition

Landlord's rights respecting construction:

- Approval of design, plans, etc.
- Approval of schedule
- Approval of material changes
- Oversight re construction activities directly and through the Project Monitor
- Oversight re commissioning
- Receive ongoing reports
- Receive the Landlord's Security (which will be defined in the Lease as including: (i) assignment (as security) of principal construction documents (construction contract, consultants agreements, plans, bonds (with the City as a co-obligee), etc.) and any other contemplated construction documents), but subject to postponement in favour of the Tenant's third party (arm's length) construction lender; and (ii) the Convention Centre Work Performance Documentation

Operations and Maintenance:

- Subject to Section 5.2 of the Master Agreement, Tenant to assume all Operating Agreements on the Initial Closing Date, with full authority to renew, replace, modify, etc.
- Ongoing operating covenant commencing on the Initial Closing Date, subject to interruption to complete the Convention Centre Work and where necessary, maintenance, repair, alterations and replacements
- Ongoing maintenance, repair, alterations and replacements commencing on the Initial Closing Date, inclusive of base building, structural, mechanical, etc. to maintain a good

state of repair and as a modern facility (having regard to similar facilities in similar markets)

- Address ongoing compliance with the building condition baseline at regular 5-year intervals
- Environmental compliance
- Handback terms to ensure the facility is up to baseline standards

Capital Renewal Program:

- Commitment to an ongoing “modernization” (having regard to similar facilities in similar markets) renewal program and to keep the facility in a good state of repair and as a modern facility (to be defined in the Master Agreement and having regard to similar facilities in similar markets)
- Application of a ticket surcharge in accordance with Section 5.5 of the Master Agreement.
- Capital reserve for ticket surcharge funds in accordance with the provisions of Section 5.5 of the Master Agreement. Tenant shall have no liability for any claims, costs or damages arising out of a failure by the City to approve any life cycle replacement, capital, repairs, enhancements, etc. to the Convention Centre proposed by Tenant.

Use:

- Covenant to carry on “Convention Centre Uses” (to be defined in the lease agreement)
- Community Use Program and Special Events, as agreed upon by the Parties
- Continuous operation
- Prohibited or restricted activities

Risk Management:

- Insurance
- Guarantee and indemnity (at any time that the Tenant does not satisfy the Applicable Net Worth Criteria) with respect to Tenant’s obligations under the Convention Centre Lease and, if from more than one guarantor, on a joint and several basis. It is confirmed that there may be a separate Guarantee and indemnity in respect of the Convention Centre Work and in respect of the remainder of Tenant’s obligations under the Convention Centre Lease.
- Convention Centre Work Performance Documentation

Naming, Sponsorship, Signage and Advertising:

- Parameters consistent with the City’s current standards

Reciprocal Rights Agreement:

- As per Schedule F

Transfers:

- City approval (sole and unfettered discretion) required for (i) any assignment of the Lease or (ii) the Tenant to cease to be a HUPEG Person
- Space Leases for permitted uses
- Leasehold mortgaging arrangements between Landlord and Lender (no subordination)

Defaults:

- Cross default with the other Leases and all Closing Documents delivered as part of the Initial Transactions.
- No entitlement shall accrue for any Extended Tax Incremental Grant Program related to any of the Properties at any time that the tenant under the Arena Lease, the Concert Hall Lease or the Convention Centre Lease is in default (other than immaterial default) thereunder beyond any applicable cure period and no such entitlement shall accrue during any such default.

B. Preliminary Design Features, Project Budget and Development Schedule

Below is a description of targeted areas of investment and associated timing.

Project Area	Budget	Timeframe
Exterior Lighting/Windows	\$150,000	Anticipated 2022-2024.
Lobby Area - Walls, Flooring, Furniture *	\$350,000	Anticipated 2022-2024.
Wentworth Room – Flooring, Ceiling	\$1,000,000	Anticipated 2022-2024.
Chedoke Lobby (Coat/Check)*	\$1,500,000	Anticipated 2022-2024.
Chedoke Ballroom - Flooring, Walls, Ceiling	\$2,500,000	Anticipated 2022-2024.
Kitchen Equipment	\$1,000,000	Anticipated 2022-2024.
Meeting Room Enhancements	\$1,000,000	Anticipated 2022-2024.
Event Accessories / Audio Visual	\$1,000,000	Anticipated 2022-2024.
Miscellaneous Structural/Mechanical	\$1,500,000	Anticipated 2022-2024.
SUBTOTAL	\$10,000,000	

****Please refer to Renderings 1, 8, 16, 17, 21 in the Laundry Design Works HCC design brief***

The Tenant will be required to complete the Convention Centre Work by no later than December 31, 2024, subject to force majeure.

Schedule D
LETTER OF INTENT WITH AGH

HUPEG will fully support the renovation/expansion of the AGH, and will provide essential forms of alignment that would be required **through the extensive network and influence of HUPEG's partners and affiliated organizations**, including but not limited to:

- Letters of Support addressed to relevant parties, specifically including each of the Municipal, Provincial and Federal Governments.
- Lobbying support to all key influencers who can positively impact a renovation/expansion project, be it elected government officials or ministry staff.
- Access to construction support and industry leading best practices, including an array of design and construction professionals directly and indirectly connected to HUPEG, who will assist with the AGH project's execution.

Financial Contribution

HUPEG will individually and collaboratively support the fundraising of the AGH renovation/expansion, by providing the following:

- Collective Partnership Contribution – The partners will provide a substantial minimum contribution of \$2,000,000.00 to the fundraising efforts of the AGH which will assist in their community fundraising drive.
[REDACTED]. We will also explore additional contributions as individual partners or a collective unit towards these fundraising efforts.
- Capital Campaign Membership – At a minimum, two (2) members of the HUPEG partnership and/or executive team will volunteer their time and extensive personal networks to assist with the AGH fundraising drive.

Enhanced Revenue Generation Support

As an aligned partner, and specifically through the management of the Hamilton Convention Centre by Carmen's, HUPEG is committed to an enhanced degree of strategic and operating collaboration that will effectively see increased revenue generation for the AGH through the following mechanisms:

- Aligned efforts on international, national and provincial convention bids (including major national events such as CCMA and Juno Music Awards, Grey Cup, etc.) to offer the AGH event space as an 'extension' of the Hamilton Convention Centre's space offering, with all rental revenue generated through said efforts to remain solely with the AGH.
- Redirection of wedding and other event leads that come in to the Carmen's Group venues on dates when Carmen's venues are occupied.

Schedule E
DEVELOPMENT PROPERTIES –
KEY TERMS

A. Purchase Terms (to form part of Master Agreement)

1. Property:

- each Development Property

Purchase Price:

- Nominal

Closing Date:

- applicable Development Property Closing Date

Purchaser:

- the applicable HUPEG Development Property Purchaser

Pre-Closing Terms:

- As per Master Agreement

Closing Terms:

- As per Master Agreement

Transfers

- Until after completion of the Arena Work, the Concert Hall Work and the Convention Centre Work, the applicable HUPEG Development Property Purchaser (i) cannot transfer other than as part of a transfer of all of the HUPEG Entities' interest in all of the Properties; and (ii) cannot cease to be a HUPEG Person, in each case without the prior written consent of the City, acting in its sole and absolute discretion.

B. Development (Development Agreement)

1. Construction Obligations:

- Construction on the Development Property of a mixed use and/or residential development, at the applicable HUPEG Development Property Purchaser's own cost.

2. City Rights re Construction:

- City approval re overall building design to ensure no adverse impact on proper functioning of the Entertainment Venues (or replacements thereof), art gallery and neighbouring City facilities

3. Other

- Covenants of HUPEG with respect to Affordable Housing set out in Section 5.9 of the Master Agreement
- Covenants of HUPEG relating to Community Living accommodations set out in Section 5.15 of the Master Agreement
- Covenants of HUPEG Development Property Purchaser relating to publically available parking set out in Section 5.16 of the Master Agreement
- Until after completion of the Arena Work, the Concert Hall Work and the Convention Centre Work, the applicable HUPEG Development Property Purchaser (i) cannot transfer other than as part of a transfer of all of the HUPEG Entities' interest in all of the Properties; and (ii) cannot cease to be a HUPEG Person, in each case without the prior written consent of the City, acting in its sole and absolute discretion.

Schedule F
RECIPROCAL RIGHTS AGREEMENT
KEY TERMS

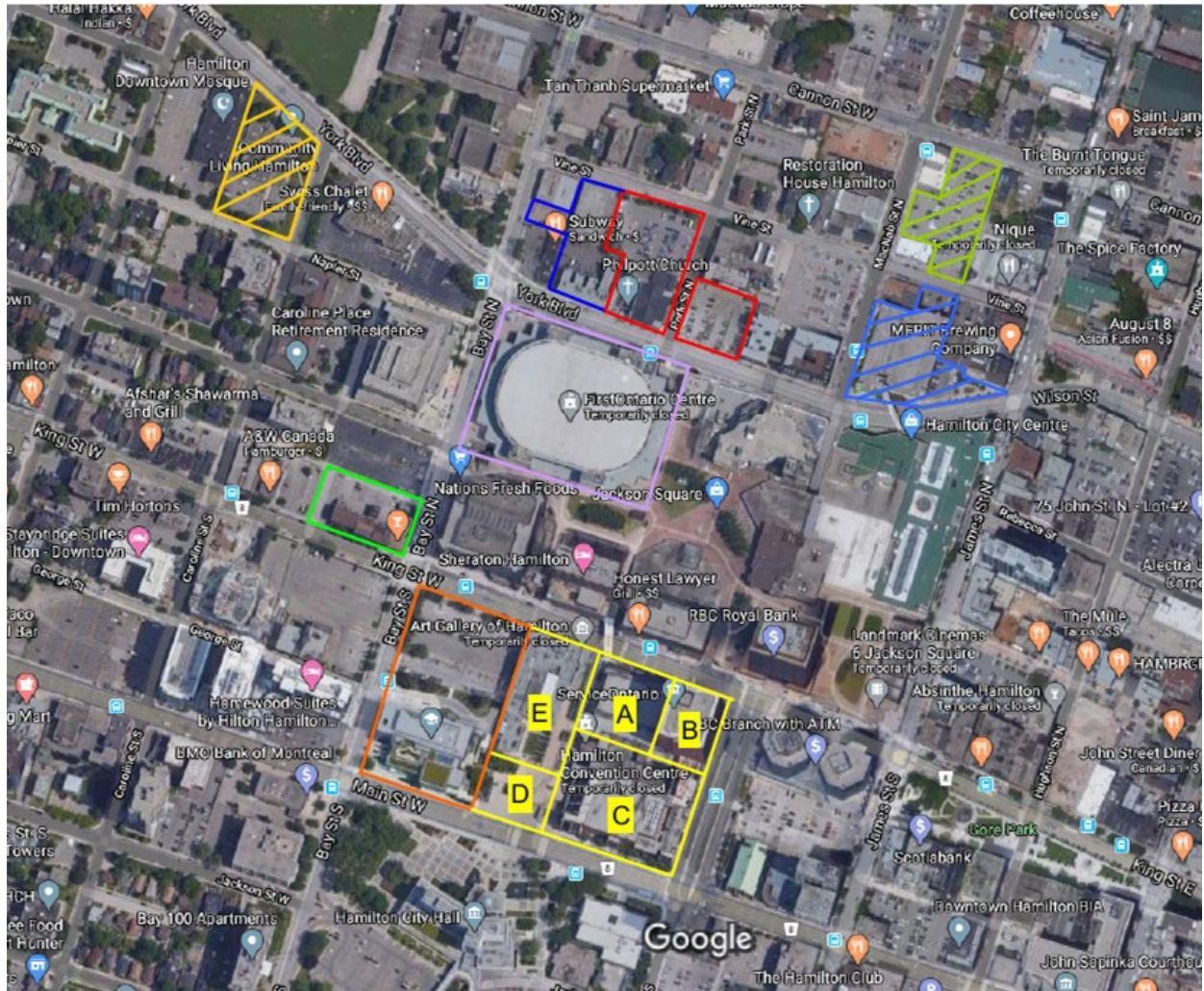
1. Easements and Licences: Parties to address what cross easements may be required between the respective facilities such as for vehicular access and egress, pedestrian access and egress, access for repair, easements of support, easements for any shared building systems and others.
2. Cost Sharing:
3. Parking: If applicable
4. Maintenance and Repair:
5. Transfers:
6. Default and Remedies:

**Schedule G
PROPERTIES**

The following is the general description of the scope and location for each applicable Property that is referred to in Section 4.6(a) of the Master Agreement. The precise boundaries for each Property are to be agreed upon in accordance with Section 4.6(b) of the Master Agreement.

Site Name	Address	Colour
Arena Property	101 York Boulevard excluding the airspace above the upper boundary of the existing Arena (other than to the extent required for the Arena Work)	Purple
Convention Centre Property	1 Summers Lane excluding the lands on/in which the HCC Subterranean Parking Lot is located and the airspace above the upper boundary of the existing Convention Centre (other than to the extent required for the Convention Centre Work)	Yellow, "A"
Concert Hall	1 Summers Lane excluding the lands on/in which the HCC Subterranean Parking Lot is located and the airspace above the upper boundary of the existing Concert Hall (other than to the extent required for the Concert Hall Work)	Yellow, "C"
HCC Subterranean Parking Lot	80 Main Street West / 123 King Street West	Yellow (Those subterranean parts comprising the parking lot and ramp and staircase access points therefrom to the surface)
Vine Street Parking Lot	14 Vine Street	Green (hatched)
York Street Parkade	12 & 28 York Boulevard	Blue (hatched)
Community Living Hamilton	191 York Boulevard	Orange (hatched)

APPENDIX TO SCHEDULE G



SCHEDULE H Permitted Encumbrances

Without limiting the generality of the definition of "Permitted Encumbrances" in Section 1.1 of this Agreement, for each Property, Permitted Encumbrances shall include the following (including those created or arising after the Execution Date):

1. Encumbrances for real property taxes (which term includes charges, rates and assessments, and other governmental charges or levies) and charges for electricity, power, gas, water and other services and utilities in connection with the Property that (i) have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to Section 6.1, or (ii) the validity of which is being contested in good faith.
2. Encumbrances of any nature in respect of the Property that have been disclosed (including any deemed disclosure pursuant to the Agreement) to HUPEG prior to the Execution Date.
3. Any subsisting reservations, limitations, provisos, conditions or exceptions contained in the original grants of the Property from the Crown.
4. All Encumbrances contained in any Operating Agreements that have been disclosed (including any deemed disclosure pursuant to the Agreement) to HUPEG prior to the Execution Date.
5. All Property Leases in respect of the Property existing as of the Execution Date that have been disclosed (including any deemed disclosure pursuant to this Agreement) to HUPEG prior to the Execution Date that are entered into or granted in compliance with the provisions of this Agreement, and all registered notices, memorials, caveats or other registrations with respect to such Property Leases; and leasehold mortgages or security interests relating to any tenant secured by such tenant's interest in any such Property Lease.
6. Without derogating from any other item listed in this Schedule, the lease registered (or notice of which has been registered) as Instrument No. AB199863, being a lease with The Hamilton & District Association for the Mentally Retarded (now Community Living Hamilton) and Instrument No. VM123613, being a renewal of the said lease with Hamilton Association for Community Living (now Community Living Hamilton) (collectively, the "**Community Living Lease**"), and the subsequent arrangements that were approved by City Council on May 7, 2014 as set out in the General Issues Committee Minutes 14-010 (collectively, the "**Community Living Arrangements**").
7. All Encumbrances in respect of the Property granted during the Agreement Period in compliance with the provisions of this Agreement.
8. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or Ontario. It is confirmed that, although the statutory right of the City to bring expropriation proceedings constitutes a Permitted Encumbrance, the exercise of such right by the City (but not by any other authority (including any municipal agency) with powers of expropriation) shall not constitute a Permitted Encumbrance.

9. The provisions of Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning.
10. Statutory exceptions, reservations, limitations, provisos, qualifications and conditions to title.
11. Any minor title defects, minor irregularities or other minor discrepancies in title or possession relating to the Property (including, without limitation, any minor encroachments onto or from such Property) that: (i) is or would be disclosed in an up-to-date survey of the Property; or (ii) do not materially interfere with the use or development of the Property for its intended purpose.
12. Encumbrances of labourers, workmen, builders, contractors, suppliers of material or architects or other similar Encumbrances incidental to construction, maintenance or operations which have not at the time been registered or filed pursuant to law against the Property, without derogating from the City's obligations pursuant to this Agreement with respect to the circumstances giving rise to such encumbrances.

For greater certainty, no Encumbrance identified above shall effect of narrowing or limiting the scope of any other Encumbrance identified above.

[REDACTED]

				[REDACTED]		[REDACTED]
				[REDACTED]		[REDACTED]
				↓		↓
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	↓			↓		
	[REDACTED]			[REDACTED]		
	[REDACTED]			[REDACTED]		
			↓			
			[REDACTED]			