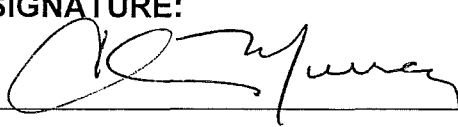


Hamilton

CITY OF HAMILTON

CITY MANAGER'S OFFICE City Manager

TO: Mayor and Members General Issues Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: February 12, 2013	
SUBJECT/REPORT NO: Independent External Review of HECFI Operations - Phase III Contract Negotiations (CM11013(e)) (City Wide)	
SUBMITTED BY: Chris Murray City Manager	PREPARED BY: Tony Tollis (905) 546-2424 ext. 4549
SIGNATURE: 	

RECOMMENDATION

- (a) That an agreement for the management of Copps Coliseum and Hamilton Place substantially in the form of the Management Agreement between the City of Hamilton and Global Spectrum Facilities Management L.P. (attached as Appendix "A" to Report CM11013(e)) be approved.
- (b) That an agreement for the management of the Hamilton Convention Centre substantially in the form of the Facility Operating Management Agreement between the City of Hamilton and the Carmen's Group Inc. (attached as Appendix "B" to Report CM11013(e)), be approved.
- (d) That the Mayor and City Clerk be authorized and directed to execute the Management Agreement between the City of Hamilton and Global Spectrum Facilities Management L.P., the Facility Operating Management Agreement between the City of Hamilton and Carmen's Group Inc. (attached as Appendices "A" and "B" respectively to Report CM11013(e)), and all necessary associated documents, all in a form satisfactory to the City Solicitor.
- (e) That the position, Director, Enterprise Management and Revenue Generation for the oversight of the contracts and other duties as outlined in Report CM11013(e) be approved and funded through the overall savings resulting from the implementation of the HECFI facilities Operating Contracts.

EXECUTIVE SUMMARY

The HECFI Staff Transition Team was successful in negotiating two management agreements for the operation of the HECFI facilities (Copps Coliseum, Hamilton Place and the Hamilton Convention Centre). These agreements will be for an initial term of five years plus a nine or ten month transition period, with the option for at least one five-year renewal at the City's discretion. The overall savings for these agreements is as outlined in Report CM11013d with the exception of the transition period, which effectively postpones the savings by one year.

The following is a summary of the material issues dealt with in the agreement.

DESCRIPTION	GLOBAL SPECTRUM	Hospitality Center Corporation Inc (Carmen's)
Facilities	Copps Coliseum and Hamilton Place	Hamilton Convention Centre
Term	Five years, plus a 10 month transition period, plus a five year extension at City's discretion.	Five years plus a 10 month transition period, plus two five year extensions at the City's discretion.
NHL Clause	Clause included that allows a potential NHL team from using Copps Coliseum with or without the use of the Manager.	N/A
Capital vs. Operating Costs	A schedule clearly outlining definitions of capital and operating expenses as well as Manager vs. City responsibilities has been included in the agreement.	A schedule clearly outlining definitions of Capital and operating expenses as well as Manager vs. City responsibilities has been included in the agreement.
Union Agreements	Language included that allows the City to consult with the Manager prior to making any proposals. As	Language included that allows the City to consult with the Manager prior to making any proposals. As well, the

**SUBJECT: Independent External Review of HECFI Operations - Phase III –
Contract Negotiations Report (CM11013e) (City Wide) - Page 3 of 9**

	well, the manager agrees to make its monetary proposals consistent with those of the City.	manager agrees to make its monetary proposals consistent with those of the City.
Utilities	Manager agrees to a cap based on the 2011 Actual utility cost (approx \$1.2M). Any costs above the \$1.2M will be paid by the Manager. Manager agrees to assist City in energy savings initiatives.	Manager will make contributions to utilities each year starting with \$115K in year one, increasing each year to \$165K in year five. Manager agrees to assist City in energy saving initiatives.
City Access to Facilities	All facilities will be available for City use for the lowest fee available to any third party. The City may hold special events at the facilities as required at little or no notice, for cost. The manager agrees to make best efforts to cancel or reschedule booked events at the City's cost.	All facilities will be available for City use for the lowest fee available to any third party. The City may hold special events at the facilities as required at little or no notice, for cost. The manager agrees to make best efforts to cancel or reschedule booked events at the City's cost.
Arts and Culture Groups	Manager agrees to work with community groups and make time available for them consistent with current booking.	Manager agrees to work with community groups and make time available for them consistent with current booking.
Capital Contribution from Managers to City (one time)	At least \$500,000.	At least \$250,000.
Net Contribution from City to Managers on full Operating Years	City will cover the first \$1.4M in losses, and Manager will cover the next \$500k in losses. Additional losses will be covered by the City. If losses are less than \$1.4M, the Manager will retain the first \$450k, and additional savings will be split between the City	City pays \$229,454 net in the first full year, \$125,000 in year two, and \$65,000 in year three. Manager pays \$20,000 in year four and \$165,000 in year five and all subsequent years. The net figures reflect the City's contribution and the Manager's contribution for utilities.

**SUBJECT: Independent External Review of HECFI Operations - Phase III –
Contract Negotiations Report (CM11013e) (City Wide) - Page 4 of 9**

	and the Manager, with 70% going to the City	
Net Contribution from City to Managers on initial Transition Year	The financial arrangement will be the same as any other Operating Year, prorated to approximately 10/12 th to reflect the shortened year, with the City covering the first \$110k in losses for the 10 months. Additional funds contingent upon submission of audited financial statements detailing losses.	The financial arrangement will be the same as year one prorated to approximately 10/12 th to reflect the shortened year, with the City covering an additional \$450k in losses prorated to 10/12 th . Additional funds are contingent upon submission of audited Financial Statements detailing losses. There is a provision for claw backs should actual losses be less than amount of additional funding.

It is also recommended that a position of Director, Enterprise Management and Revenue Generation reporting to the General Manager of Finance and Corporate Services be established. This position will ensure a proper transition of the facilities and will continue to administer and manage the contracts going forward. Once the transition is complete, other operating agreements will be managed by this position as well e.g. waterfront agreements. As well, this position will be responsible for business development and revenue generation initiatives e.g. corporate sponsorships and other public/private partnerships.

Alternatives for Consideration – N/A

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial:

The table below outlines the expected budget impact of these agreements over the next six year period.

ANNUALIZED BUDGET IMPACTS (\$000's)

Description	2012	2013	2014	2015	2016	2017	2018
	Budget	Budget	Budget	Budget	Budget	Budget	Budget
Initial Levy	5,921	5,921	4,736	4,632	4,572	4,487	4,342
Less Profit Sharing			(449)	(529)	(605)	(645)	(687)
Potential Levy	5,921	5,921	4,287	4,103	3,967	3,842	3,655
Est. Annual Savings			1,634	1,818	1,954	2,079	2,266

Staffing:

As in any re-organization, staffing levels are being affected. No major change to the number of staff affected that was outlined in the previous report is being contemplated. Details of staffing impacts will be outlined in the in camera portion of this report.

In order to maintain a smooth transition and to provide ongoing administration and management of the two agreements, it is recommended that the position of Director, Enterprise Management and Revenue Generation be established. This position will report to the General Manager of Finance and Corporate Services and be responsible for the oversight of these and other similar Public Private contracts that currently exist. Funds for this position have been provided for, as in the business case presented to Council in the previous report CM11013d. This position will also be responsible for business development and revenue generating initiatives.

Legal:

The Legal Services Division has been active during the entire negotiation process. The Operating Agreement negotiated has been vetted and approved by them.

HISTORICAL BACKGROUND (Chronology of events)

At its meeting of **June 29, 2011**, Council approved the following recommendations pertaining to the HECFI Review:

- (h) *That the City Manager be authorized and directed to proceed with Phase 2 of the HECFI Review Terms of Reference, utilizing the services of KPMG, as follows:*

**SUBJECT: Independent External Review of HECFI Operations - Phase III –
Contract Negotiations Report (CM11013e) (City Wide) - Page 6 of 9**

- (i) Prepare and issue a Request for interest (RFI) or Expression of interest for the purchase, lease, or management, of all or parts of HECFI facilities;*
- (ii) Summarize options in a report to GIC;*
- (i) That the City Manager be authorized and directed to negotiate the scope and cost of the Review with KPMG;*
- (j) That the City Manager report back to the General Issues Committee with the results of Phase 2 by December 31, 2011;*
- (k) That the cost of Phase 2 be funded from the HECFI Reserve.*

Further to the above, on **October 11, 2011**, the General Issues Committee received Report CM11013a which outlined the process and costs for Phase II of the review.

On December 14, 2011, Council made the following amendment to Item (j) above:

*That sub-section (j) of Item 7 of General Issues Committee Report 11-021, approved by City Council on **June 29, 2011**, respecting the Independent External Review of HECFI Operations, be amended by deleting the date of December 31, 2011, and replacing it with February 15, 2012, to read as follows:*

7(j) That the City Manager report back to the General Issues Committee with the results of Phase 2 by February 15, 2012.

On **February 15, 2012**, the General Issues Committee approved the following:

That the City Manager (through KPMG) be authorized to meet with all proponents as outlined in report CM11013b to further explore the proposals and report back to GIC on March 21st with recommendations to proceed to the negotiations stage with one or more of the proponents.

On **May 9, 2012**, Council approved the following:

- a) That the City Manager, together with KPMG, be authorized and directed to enter into negotiations with Global Spectrum/Live Nation, SMG/Forum Equity, AEG / Katz Group, Carmen's and Sonic Unyon, and negotiate and finalize one or more proposed Memorandum(s) of Understanding subject to further approval of the City, with one or more of the aforementioned groups that permits hybrid options and that achieves the objectives of Council with respect to the operations of the HECFI facilities;*
- b) That the proposed Memorandum(s) of Understanding achieved in Recommendation (a) above, together with the details of the HECFI business plan as presented to their Board, be presented to the General Issues Committee for*

their consideration to provide staff with directions or recommend Council approval necessary for entering into the preferred Memorandum(s) of Understanding and providing for an operating agreement(s) between the City and the preferred group(s).

On **July 18, 2012**, presentations were made to the General Issues Committee by Global Spectrum / Live Nation, SMG / Forum Equity, Carmen's Group and HECFI regarding their submissions. Following these presentations, staff was directed to prepare detailed analysis of the four options outlined in this report.

On **September 25, 2012** through report CM11013d, the following recommendations were approved:

- (a) That the City Manager be directed to negotiate an Operating Agreement with Global Spectrum / Live Nation for the operation of Copps Coliseum and Hamilton Place;*
- (b) That the City Manager be directed to negotiate an Operating Agreement with The Carmen's Group for the operation of the Hamilton Convention Centre;*
- (c) That the Operating agreements negotiated in Recommendation a) and b) of Report CM11013d be in a form acceptable to the City Solicitor and be subject to Council approval;*
- (d) That all transitional costs incurred for the transfer of management of the HECFI facilities be charged to the Corporate Contingency Account to be funded from future Operating Surpluses or Tax Stabilization Reserve;*
- (e) That the City Manager prepares a HECFI Facilities transition plan for Council approval;*
- (f) That the budget reductions outlined in Report CM11013d be forwarded to the 2013 Budget process for consideration.*

POLICY IMPLICATIONS

N/A.

RELEVANT CONSULTATION

The Staff Transition Team assigned to the review is as follows:

Bryan Boodhoo, Solicitor, Legal Services Division, City Manager' Office
Rom D'Angelo, Director, Facilities Management and Capital, Public Works Dept.
Don Fisher, Acting City Solicitor, Legal Services Division, City Manager's Office
Lora Fontana, Director of Employee & Labour Relations, Human Resources Dept.
Filipe Janicas, Manager Infrastructure and Operations, Corporate Services Dept. (IT)
John Hertel, CEO, HECFI
Mike Kirkopoulos, Corporate Communications Manager, City Manager's Office
Geoff Lupton, Director, Energy, Fleet, Facilities and Traffic, Public Works Dept.
Nancy Marcos, Executive Assistant, HECFI
Brian McMullen, Manager, Accounting Services, Corporate Services Dept.
Tony Tollis, City Treasurer, Corporate Services Dept.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

N/A

ALTERNATIVES FOR CONSIDERATION (include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

N/A

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative & Respectful Organization

- ♦ A culture of excellence

Financial Sustainability

- ♦ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Intergovernmental Relationships

- ♦ N/A

Growing Our Economy

- ◆ A skilled and creative labour pool that supports new employers
- ◆ A visitor and convention destination

Social Development

- ◆ N/A

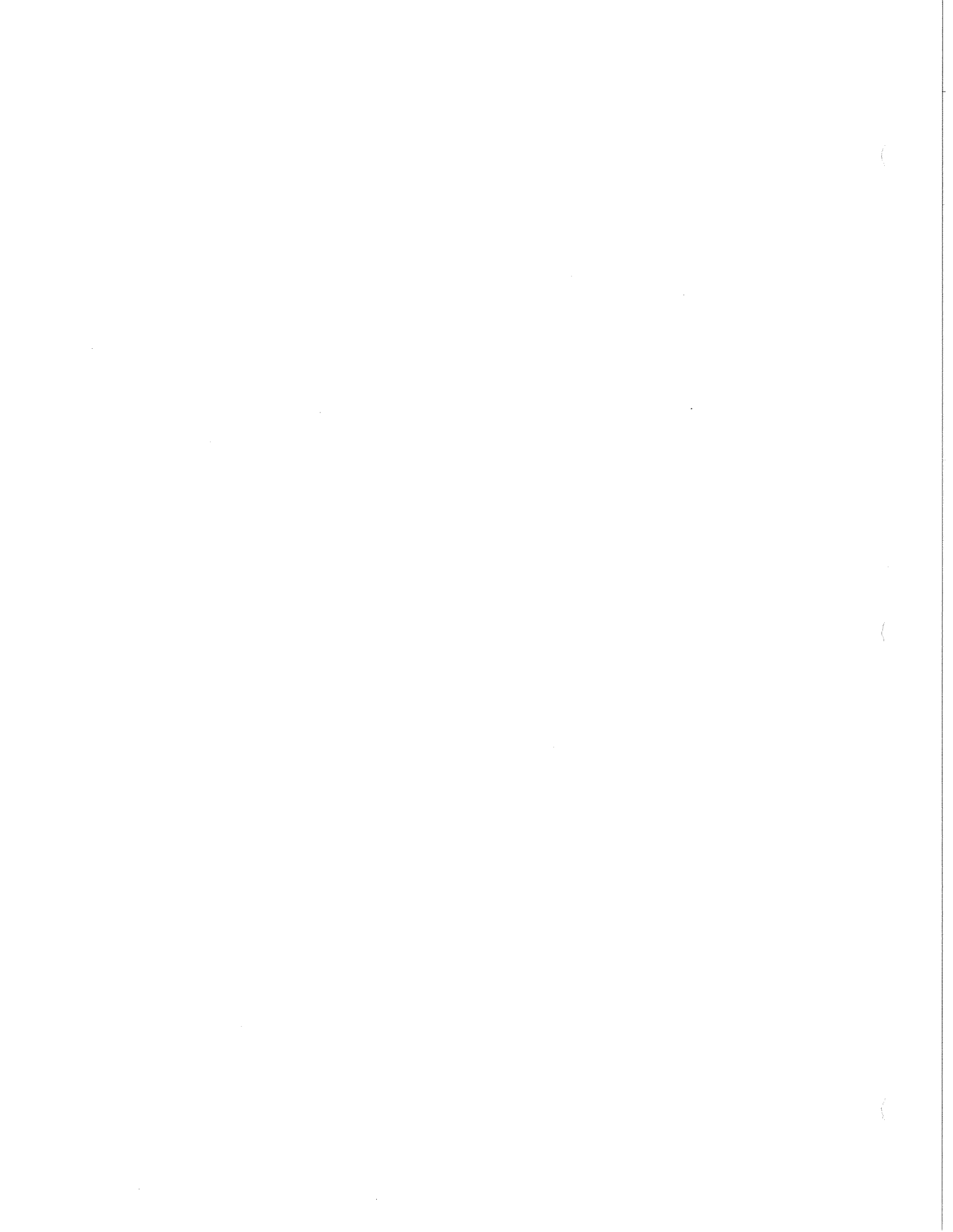
Environmental Stewardship

- ◆ N/A

Healthy Community

- ◆ N/A

APPENDICES / SCHEDULES



CM11013(e) Appendix A

MANAGEMENT AGREEMENT

between

CITY OF HAMILTON

and

GLOBAL SPECTRUM FACILITY MANAGEMENT, L.P.

Effective Date: March 1, 2013

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[update table of contents prior to finalizing agreement]

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MANAGEMENT AGREEMENT

This Management Agreement is made as of _____, 2013, with an effective date of March 1, 2013 (“**Effective Date**”), by and between the City of Hamilton, a corporation under the laws of Ontario, Canada (“**City**”), and Global Spectrum Facility Management, L.P., an Ontario limited partnership (“**Manager**”).

RECITALS

WHEREAS, City owns a sports and entertainment arena known as Copps Coliseum (“**Copps Coliseum**”), a theatre known as Hamilton Place (“**Hamilton Place**”), and a convention centre known as the Hamilton Convention Centre (“**Hamilton Convention Centre**”) each of which are located in Hamilton, Ontario (Copps Coliseum and Hamilton Place are collectively referred to herein as the “**Facilities**”); and

WHEREAS, Hamilton Entertainment and Convention Facilities Inc. (“**HECFI**”), a subsidiary corporation of the City, previously operated Copps Coliseum, Hamilton Place and the Hamilton Convention Centre; and

WHEREAS, HECFI historically has provided venue access, particularly to Hamilton Place, to various community-based arts and cultural organizations such as the Hamilton Philharmonic Orchestra, the Gerritol Follies and Opera Hamilton.

WHEREAS, the City desires that HECFI relinquish of all its management responsibilities of the Facilities and the Hamilton Convention Centre; and

WHEREAS, the City is negotiating with The Hospitality Centre Corporation and Mercanti Banquet & Convention Centre Ltd. (“**Carmen’s Group**”) to engage Carmen’s Group as the manager of the Hamilton Convention Centre; and

WHEREAS, the City desires to engage Manager to manage and operate the Facilities, and Manager desires to accept such engagement, pursuant to the terms and conditions contained herein; and

WHEREAS, Manager has secured the participation of Live Nation to book and promote concerts on a non-exclusive basis at the Facilities, and to provide certain other services to benefit the Facilities, as more fully described below.

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement, the following terms have the meanings referred to in this Section:

Affiliate: A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

After-hours Services: those services that must reasonably be provided after the City's normal hours of operation (8:30 a.m. to 4:30 p.m. on Business Days), which may be provided by the City's staff, independent contractors or other designee.

Agreement: this Management Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement).

Business Day: any day other than a Saturday, Sunday, statutory holiday in the Province of Ontario or other day where the administrative offices for the City of Hamilton are closed.

Capital Contribution: shall have the meaning given to such term in Section 3.4(a).

Capital Expenditures: All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, fixtures, machinery, or equipment where (i) the cost of such expenditure is greater than five thousand dollars (\$5,000); and (ii) the depreciable life of the applicable item is, according to Canadian Generally Accepted Accounting Principles, is in excess of five (5) years.

Capital Improvement Fund: shall have the meaning given to such a term in Section 12.3 of this Agreement.

City: shall have the meaning given to such term in the Recitals to this Agreement.

City Contribution: shall have the meaning given to such term in Section 3.2 hereof.

Commercial Rights: Naming rights, pouring rights, advertising, sponsorships, branding rights (including the branding of food and beverage products for resale), and premium seating (including suites, club seats and party suites) at or with respect to the Facilities and owned or controlled by the City.

commercially reasonable: shall refer to a standard of reasonableness in a commercial context, and in no case shall be a less burdensome standard than reasonableness. This definition shall apply to variations of this term.

Contract Management Team or CMT: the committee consisting of three (3) representatives of the City and three (3) representatives of the Manager, which shall review and facilitate compliance of the Facility's operation and maintenance in accordance with the terms of this Agreement, as further specified in Section 14.1;

Consumer Price Index or CPI: The "Core Consumer Price Index" (excluding fruit, vegetables, gasoline, fuel oil, natural gas, mortgage interest, inter-city transportation, tobacco products, and changes in indirect taxes) for Ontario as published by Statistics Canada. In the event that such index is not available when it is to be determined pursuant to this Agreement (but it is reasonably anticipated that it will be published within a reasonable period of time thereafter), the adjustment shall be determined when such index is available with effect retroactively. If such index is not published by Statistics Canada in any year, the adjustment shall be made by reference to the Bank of Canada or such alternative source of equivalent statistical information as shall be reasonably selected by the City and the Manager;

Effective Date: shall have the meaning given to such term in the opening paragraph of this Agreement.

Emergency Repairs: The repair of a condition which, if not performed immediately, creates an imminent danger to persons, property or the environment and/or an unsafe condition at the Facilities threatening persons or property.

Energy CPI: The "Energy" component for the "Consumer Price Index" for Ontario as published by Statistics Canada. In the event that such index is not available when it is to be determined pursuant to this Agreement (but it is reasonably anticipated that it will be published within a reasonable period of time thereafter), the adjustment shall be determined when such index is available with effect retroactively. If such index is not published by Statistics Canada in any year, the adjustment shall be made by reference to the Bank of Canada or such alternative source of equivalent statistical information as shall be reasonably selected by the City and the Manager;

Event Account: A separate interest-bearing account in the name of the City in a local qualified public depository, to be designated by the Manager, where advance ticket sale revenue is deposited by Manager.

Event of Force Majeure: An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the Facilities or services described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform which by the exercise of due diligence could not be reasonably prevented or overcome and which would frustrate such party from performing its obligations under this Agreement.

Existing Contracts: Service Contracts, Revenue Generating Contracts, and other agreements relating to the day-to-day operation of the Facilities existing as of the Effective Date, as set forth on Exhibit B attached hereto.

Existing Inventory And FF&E: Inventory and FF&E that exists at the Facilities as of the time of the joint inventory taken by the parties as set forth in Section 2.2 below, and as shall be specified in Schedule III.

Facilities: shall have the meaning given to such term in the Recitals to this Agreement, and shall be deemed to include the entire arena and theatre complex, including but not limited to the seating bowl, suites, locker rooms, meeting rooms, box office, common areas, lobby areas, executive and other offices, storage and utility facilities, as well as the outdoor areas specifically identified on the map attached hereto as Schedule I.

FF&E: Furniture, fixtures and equipment.

General Manager: The employee of Manager acting as the full-time on-site general manager of the Facilities.

Initial Term: shall have the meaning given to such term in Section 4.1.

IT Services: shall have the meaning given to such term in Section 3.8 and Exhibit "E".

Laws: applicable federal, provincial, local and municipal laws, by-laws, statutes, rules, regulations and ordinances.

Management-Level Employees: The General Manager, Assistant General Manager, Business Manager (or employees with different titles performing similar functions), and any department head employed by Manager to perform services at the Facilities (including employees performing the functions of the Director of Operations, Director of Sales and Marketing, Director of Security, Finance Director and Event Manager), and notwithstanding the foregoing, shall not include any unionized employees regardless of title.

Manager: shall have the meaning given to such term in the Recitals to this Agreement.

Manager's Share of Net Losses: shall have the meaning given to such term in Section 3.2 hereof.

Marketing Plan: A plan for the advertising and promotion of the Facilities and Facilities events, which may contain but not be limited to the following elements: (i) market research, (ii) market position, (iii) marketing objectives, (iv) marketing strategies, (v) booking priorities, (vi) targeted events - local, regional, national and international, (vii) targeted meetings, conventions and

trade shows, (viii) industry advertising campaign, (ix) internal and external support staff, (x) advertising opportunities at the local, regional and national level, (xi) attendance at various trade shows, conventions and seminars, (xii) incentive formulas for multiple event presenters, (xiii) suite and club seat sales, (xiv) merchandising and retail, (xv) food and beverage, (xvi) a plan for the sale of commercial rights, including without limitation naming rights, pouring rights, advertising signage, sponsorships (including event sponsorships), branding of food and beverage products for resale, and premium seating (including but not limited to suites and club seats), (xvii) a plan regarding national, regional and local public relations and media relations, (xviii) development of an in-house advertising agency, and (xix) policies regarding the use of trade/barter.

Net Loss: the amount, if any, by which Operating Expenses exceeds Revenue for the period in question. The Net Loss shall be calculated exclusive of income taxes.

Net Loss Guarantee: a Net Loss of One Million Four Hundred Two Thousand Dollars (\$1,402,000) (except as such figure is pro-rated for the Transition Year and any other Operating Year of less than 12 months, as set forth below).

Net Loss Savings: shall have the meaning given to such term in Section 3.3 hereof, and shall be calculated exclusive of income taxes.

Net Profit: the amount, if any, by which Revenue exceeds Operating Expenses for the period in question. The Net Profit shall be calculated exclusive of income taxes.

Operating Account: A separate interest-bearing account in the name of the City in a local qualified public depository, to be designated by the City, where Revenue is deposited and from which Operating Expenses are paid.

Operating Budget: A line item budget for the Facilities that includes a projection of Revenues and Operating Expenses, presented on a monthly and annual basis.

Operating Expenses: All direct expenses incurred by Manager in connection with its operation, promotion, maintenance and management of the Facilities, including but not limited to the following: (i) employee payroll, benefits (including retirement fund employer matching contributions), relocation costs, severance/termination costs, including damages payable in lieu of required notice for terminations (except to the extent such costs are to be borne by the City pursuant to the express terms of this Agreement), bonus and related costs, (ii) cost of operating supplies, including general office supplies; (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) transition costs, (viii) printing and stationary costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements or repairs, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Manager employees, (xv) cost of employee uniforms and identification, (xvi)

exterminator, snow and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking expenses, (xix) subject to Section 3.7, utility expenses, (xx) office expenses, (xxi) audit and accounting fees, (xxii) legal fees, except for legal fees associated with disputes between the parties to this Agreement, (xxiii) all bond and insurance costs, including but not limited to personal property, liability, and worker's compensation insurance, (xxiv) commissions and all other fees payable to third parties (e.g. commissions relating to food, beverage and merchandise concessions services and commercial rights sales), (xxv) cost of complying with any Laws, (xxvi) costs incurred by Manager to settle or defend any third-party claims asserted against Manager arising out of its operations at the Facilities; (xxvii) costs incurred under Service Contracts and other agreements relating to Facilities operations, and (xxviii) Taxes (including property taxes, if applicable, but, with respect to property taxes, only Payable Property Taxes).

Notwithstanding anything to the contrary contained herein, the term "Operating Expenses" does not include, and the City shall be solely responsible for payment of, debt service on the Facilities, Capital Expenditures, the City Contribution, amortization or depreciation (including amortization of the Capital Contribution), property taxes (if applicable) in excess of the Payable Property Taxes, the cost of structural/property insurance including coverage for terrorism or Acts of God (including without limitation earthquakes and flooding), the administrative expenses referenced in Section 3.6(e)(i) below, and any other expenses specifically deemed herein to be borne by the City or otherwise not constitute an Operating Expense.

Operating Year: Commencing on January 1, 2014, each twelve (12) month period during the Term, commencing on January 1 and ending on the following December 31. For further clarity, the term "Operating Year" shall not include the Transition Year, unless otherwise indicated herein.

Operations Manual: Document to be developed by Manager which shall contains terms regarding the management and operation of the Facilities, including detailed policies and procedures to be implemented in operating the Facilities, as agreed upon by both the City and the Manager.

Revenue: All revenues generated by Manager's operation of the Facilities, including but not limited to event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross income from any sale of Commercial Rights, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include event ticket proceeds held by Manager in trust for a third party and paid to such third party.

Revenue Generating Contracts: Vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements generating revenue for the Facilities and entered into in the ordinary course of operating the Facilities.

Payable Property Tax: Property taxes for all activities initiated by Manager at the Facilities during the Term and any additional property taxes totaling, in the aggregate, up to six thousand dollars (\$6,000) per Operating Year or, as prorated in the Transition Year. For further clarity,

Payable Property Tax shall not include property tax incurred as a result of the either or both of the Facilities failing to maintain their status as a “municipal capital facilities” under the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as may be amended or replaced, and any regulations promulgated thereunder, which taxes shall be borne solely by the City.

Prime: The Bank of Canada’s Prime Business Rate, as may change from time-to-time.

Service Contracts: Agreements for services to be provided in connection with the operation of the Facilities, including without limitation agreements for ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, fuel, general maintenance, telephone, staffing personnel including guards, ushers and ticket-takers, extermination, elevators, stage equipment, fire control panel and other safety equipment, snow removal and other services which are deemed by Manager to be either necessary or useful in operating the Facilities.

Special Events: shall have the meaning given to such term in Section 6.4 of this Agreement.

Taxes: Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted by or on behalf of Manager at the Facilities, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facilities, from any guests, or from any others using or occupying all or any part of the Facilities.

Term: shall have the meaning given to such term in Section 4.1 of this Agreement.

Transition Year: shall mean the period between Effective Date and December 31, 2013.

Transition Year Guarantee: shall mean the City’s financial guarantee of one hundred and ten thousand dollars (\$110,000), but not to exceed the amount by which the actual Net Loss in the Transition Year exceeds \$1,200,000.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Engagement. City hereby engages Manager during the Term to act as the sole and exclusive manager and operator of the Facilities, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described in Exhibits A & A-1

attached hereto. Manager hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement.

Section 2.2 Joint Inventory Review. Within five (5) Business Days following the Effective Date, the parties, working together, shall conduct a joint inventory review of the Facilities and shall develop a mutually agreed written list of the Existing Inventory And FF&E existing in the Facilities at that time. Such list shall be signed by an authorized representative of each of the parties hereto and shall thereafter be deemed to constitute Schedule III to this Agreement.

Section 2.3 Liquor License. Manager shall make its best efforts to have the liquor licenses for the Facilities amended to have Manager replace HECFI on such liquor licenses within two (2) months of the Effective Date.

Section 2.4 Live Nation. Manager represents and warrants that it has secured the participation of Live Nation to book and promote concerts at the Facilities on a non-exclusive basis, and to perform certain other services to benefit the Facilities, including the development, administration and execution of a concert club offering certain benefits to certain ticket purchasers at the Facilities.

ARTICLE 3 NET LOSS GUARANTEE; COMPENSATION; INVESTMENT

Section 3.1 Transition Year. In the Transition Year, the terms of Sections 3.2, 3.3, 3.4, 3.6 and 3.7 shall apply to this Agreement as if each reference to "Operating Year" in such sections is also deemed to be a reference to "Transition Year", subject to the modifications to such provisions as specifically described in this Section 3.1. In the Transition Year, the City shall be responsible for (a) a prorated amount of the Net Loss Guarantee, which shall be one million and two hundred thousand dollars (\$1,200,000) and (b) to the extent there is an actual Net Loss greater than \$1,200,000, the Transition Year Guarantee. The prorated Net Loss Guarantee shall be paid in accordance with Section 10.1. The Transition Year Guarantee shall be paid in accordance with Section 3.4. All other terms for the Transition Year shall be in accordance with the remainder of this Agreement, applied on a mutatis mutandis basis, with all financial terms in Sections 3.2, 3.3 and 3.7 prorated to tenths (10/12th) of their original value, where applicable. For clarity, the prorated Manager's Share of the Net Losses, as defined below, shall apply after the Transition Year Guarantee has been applied. For example, if the actual net losses for the Transition Year were two million dollars (\$2,000,000), the City would pay for the first one million, three hundred and ten thousand in losses (\$1,310,000), which would exhaust the prorated Net Loss Guarantee for the Transition Year, and the Transition Year Guarantee, the Manager would then pay four hundred and sixteen thousand, six hundred and sixty-six dollars and sixty-seven seven cents (\$416,666.67), which would exhaust the Manager's Share of the Net Losses, as prorated for the Transition Year, and the City would be responsible for the remaining two hundred and seventy-three thousand and three hundred and thirty-three dollars and thirty-three cents (\$273,333.33). Conversely, for example, if the actual net losses for the Transition Year were one hundred thousand dollars (\$100,000), the Manager would be

entitled to the first three hundred and seventy-five thousand dollars (\$375,000) of savings above the prorated Net Loss Guarantee for the Transition Year (which is one million and two hundred dollars (\$1,200,000)), while the remaining seven hundred and twenty-five thousand dollars (\$725,000) of savings above the Net Loss Guarantee prorated for the Transition year would be split with the City receiving seventy percent (70%), or five hundred and seven thousand and five hundred dollars (\$507,500), and the Manager receiving thirty percent (30%), or two hundred and seventeen thousand and five hundred dollars (\$217,500).

Section 3.2 Net Loss Guarantee. The City shall be responsible for any Net Loss in any Operating Year up to the Net Loss Guarantee. Subject to Section 3.6 below, Manager shall be responsible for any Net Loss in any Operating Year in excess of the Net Loss Guarantee, up to a maximum of Five Hundred Thousand Dollars (\$500,000) (“**Manager’s Share of Net Losses**”). Any Net Loss in any Operating Year in excess of Manager’s Share of Net Losses shall be borne by the City.

Section 3.3 Compensation to Manager. As consideration for its provision of the services described herein, Manager shall be paid a management fee as described in this Section 3.3. In the event of a Net Profit in any Operating Year, or a Net Loss in any Operating Year that is a smaller loss than the Net Loss Guarantee (the difference between the Net Profit or the Net Loss, as applicable, and the Net Loss Guarantee, is referred to herein as a “Net Loss Savings”), Manager shall be entitled to the first (1st) Four Hundred Fifty Thousand Dollars (\$450,000) of such Net Loss Savings. If in any Operating Year the Net Loss Savings exceeds Four Hundred Fifty Thousand Dollars (\$450,000), Manager shall be entitled to thirty percent (30%) of such additional savings (with the City retaining the remaining 70% of such additional savings). The compensation to which Manager is entitled under this Section 3.3 is referred to as the “City Contribution”.

Section 3.4 Payment of the Net Loss Guarantee or City Contribution. Within forty-five (45) days of the end of each Operating Year, Manager shall calculate the Net Loss from such Operating Year, and on that basis determine the amount owed by Manager to City under Section 3.2 above, or the amount of the Management Fee owed by the City to Manager under Section 3.3 above, as applicable. Once determined, Manager shall notify the City and either Manager shall promptly pay the City, or the City shall promptly pay the Manager, as applicable. If at such time the year-end audit is not complete, and the audit, once completed, subsequently determines that either party was over/underpaid, the parties shall promptly following completion of the audit make the necessary adjustments by paying or reimbursing each other to be consistent with the results of the audit.

Section 3.5 Capital Contribution by Manager toward Capital Improvements.

(a) Manager agrees to contribute Five Hundred Thousand Dollars (\$500,000) (the “**Capital Contribution**”) in the Transition Year towards capital improvements/equipment to be made or used at the Facility. The specific capital improvements/equipment to be undertaken or purchased with the Capital Contribution, as applicable, shall be determined by the City in its sole discretion. The City shall, within the Transition Year, notify Manager in writing when it desires the Capital Contribution to be made (such writing to include a description of the specific use of the

Capital Contribution), and Manager shall, within thirty (30) days of its receipt of such notice, pay to the Capital Contribution to the City.

(b) The Capital Contribution shall be amortized on a straight line basis, commencing on the date the Capital Contribution is made and ending on December 31, 2017. If for any reason whatsoever (including without limitation due to a breach or default by Manager) this Agreement terminates prior to December 31, 2017, the City shall upon such termination immediately pay to Manager the unamortized amount of the Capital Contribution (“the Buyout Amount”). In the event that City fails to pay Manager the Buyout Amount when due, the Buyout Amount shall accrue interest at the rate of Prime plus two percent (Prime +2%) per annum.

Section 3.6 Certain Conditions/Contingencies.

(a) The financial terms set forth in this Article 3 are subject to Manager’s successful completion of due diligence to confirm that there are no material difference between the Facilities’ financial information provided by or on behalf of the City prior to the Effective Date (and on which the Manager relied in proposing and agreeing to the financial terms in this Article 3) and the actual financial information for the Facilities. Such due diligence shall take place following the Effective Date, when Manager shall have full access to the books, records, contracts and other information regarding the Facilities. If such due diligence reflects less Revenues or greater Operating Expenses than assumed by Manager based on information provided by or on behalf of the City prior to the Effective Date, then Manager shall not be bound by the terms of this Article 3, and the parties shall negotiate in good faith reasonable changes such terms to compensate Manager for such differences.

(b) Manager’s agreement to the financial terms in this Article 3 is conditioned on an American League Hockey (“AHL”) club or an Ontario Hockey League (“OHL”) club using Copps Coliseum as its “home” venue for the playing of a full season of AHL or OHL, as applicable, games during each Operating Year of the Term, and Manager shall use its commercially reasonable efforts to obtain or retain such an AHL or OHL club at the Facility. However, if in any Operating Year there is no AHL or OHL club utilizing Copps Coliseum as its “home” venue for such purpose, then Manager shall not be bound by the terms of this Article 3, and the parties shall negotiate in good faith reasonable changes such terms to compensate Manager for the lost revenue. Notwithstanding the foregoing, in the event that a National Hockey League team investor has signed a definitive agreement to locate or re-locate a hockey club in or to the City of Hamilton, and the location or re-location of such club in or to the City of Hamilton has been approved by the National Hockey League’s Board of Governors, the Manager agrees that (i) at City’s request on thirty (30) days prior written notice, it shall immediately terminate any agreements with any AHL, OHL or any other hockey club (provided that any costs of such termination, including any termination payments due the club, are borne solely by the City); (ii) it shall support the National Hockey League location or re-location venture; and (iii) the City shall have the option to amend, on reasonable terms to be negotiated, or terminate this Agreement, as necessary. The parties acknowledge that the current draft of the hockey lease with the Hamilton Bulldogs contemplates payments to the Bulldogs in the event a National Hockey League club utilizes Copps Coliseum as its “home” venue (whether on a temporary or permanent basis) during the period the Bulldogs are doing the same. The parties agree

that notwithstanding anything to the contrary contained herein or in the Bulldogs' lease agreement, any such costs shall be borne solely by the City, and not as an Operating Expense.

(c) If either (i) for reasons outside the reasonable control of Manager, there is an increase in costs of twenty percent (20%) or more in any two-year period in utility expenses, taxes or insurance costs, or (ii) due to an Event of Force Majeure or other occurrence outside the reasonable control of Manager, the Facilities, or a material portion thereof, are rendered unusable in the manner for which they are intended, Manager shall not be bound by the terms of this Article 3, and the parties shall negotiate in good faith reasonable changes to such terms to protect Manager from a negative financial impact from such occurrences.

(d) At all times during the Term, the City agrees to the following requirements, recognizing that the financial terms described in this Article 3 are based in part on the adherence with such requirements and that they are material and reasonable:

- (i) With the exception of any new facilities for a National Hockey League team, and facilities built for the 2015 Pan/Parapan American Games, not directly sponsor, support or financially contribute to any facility with more than three thousand (3,000) seats directly competitive with Copps Coliseum, unless otherwise agreed to by the parties in writing, except that the City may continue to provide support of a similar level and nature to any existing facilities as it has in 2012 and in prior years;
- (ii) Not to levy any new facility fees, surcharges, taxes or any other add-on to tickets for events at the Facilities that have not been imposed during the 2011 calendar year, or provide Manager with a dollar-for-dollar credit for any new taxes within the City's direct control on the events that are held at the Facilities and/or the tickets sold for such events;
- (iii) Not to impose unreasonable restrictions on the sale of Commercial Rights.
- (iv) To actively assist/support Manager in the sale of Commercial Rights by providing leads, offering encouragement and support, occasionally participating in sales presentations and possibly making broader, City-wide opportunities available to prospective Commercial Rights customers, in which case the City would retain a fair and reasonable share of any such sales as income to the City rather than to the Facilities.

(e) The parties acknowledge that the City has in previous years, prior to the Effective Date, provided certain goods and services to the Facilities for which it charged the Operating Budget on a "cost recovery" basis. Schedule 2 to this Agreement outlines the budgeted amount of these City charges to the Operating Budget for Transition Year 2012, as well as the goods

and services the City shall continue to provide for the benefit of the Facilities during Term on such "cost recovery" basis (i.e., at cost, without mark-up or surcharge). Notwithstanding the foregoing (or the terms of Schedule 2), the parties specifically agree that:

- (i) Subject to the express terms of this Agreement, the City shall not charge the Facilities for any of the following administrative services:
 - a. HR chargeback;
 - b. Financial accounting services;
 - c. Financial application support;
 - d. Financial payroll;
 - e. Financial accounts payable;
 - f. Financial purchasing;
 - g. Financial accounts receivable;
 - h. Financial current budgets;
 - i. Info services chargeback, except during the Transition Year;or
 - j. Legal services chargeback.
- (ii) The City shall fund major structural, mechanical and electrical capital costs associated with the Facilities, consistent with its practice in prior years, the costs of which shall not be deemed to be an Operating Expense.

Section 3.7 Central Utilities Plant; Utilities

City exclusively shall operate and maintain the Central Utilities Plant ("CUP"), as further specified in Exhibit A-1, and shall annually bill Manager a share of CUP usage, including the costs for overhead, employees and interest on equipment in the same manner charged to the Facilities in 2011, on a pro-rata basis. Such costs shall be billed using the same pro-ration methodology as used in the 2011 operating year. City shall use best efforts to reduce utility costs for the Facilities and shall not charge the Facilities for increased labor or capacity at the CUP (over and above the 2011 levels) that do not directly benefit the Facilities. City shall grant an annual credit to Manager of one million and two hundred sixteen thousand dollars (\$1,216,000) on its bill for CUP usage, as adjusted for inflation each Operating Year in accordance with the Energy CPI. In the event the annual bill for CUP usage to Manager is less than the credit provided in any year, Manager shall owe nothing for utility expenses and receive no other compensation or credits for utility expenses. Additionally, the City shall bill the Manager for all water and waste water usage at the Facility on a cost basis (i.e., no surcharge or mark-up). The City shall be the exclusive source of all utilities to the Manager, unless City, in its sole discretion, gives thirty (30) days' notice that it will no longer be providing one or more utility to the Manager (in which case Manager may obtain such utilities from another source but shall still be entitled to the credit described above). Manager shall not procure any utility in any form, including without limitation as commodities or futures, from a third-party as long as the City is providing that utility to the Manager. The City shall arrange for the CUP to provide to Manager a monthly statement, within 15 days of the end of each month, showing the cost and usage of each of the utilities used at Copps Coliseum and, separately, at Hamilton Place.

Section 3.8 Information Technology Service during Transition Year

During the Transition Year, City shall provide information technology services as listed in Exhibit "E", at similar levels and standards to that which it provided to HECFI prior to the Effective Date, as are listed (the "**IT Services**"), for which City shall charge the Manager a fee. The fee (which includes all staffing expenses and hardware leases) for IT Services shall be no more than \$16,350 per month, unless the Manager and City agree to provide additional services as part of the IT Services or usage of IT Services (such as bandwidth usage for internet or voice or printing) exceed levels of usage by HECFI for the same or similar IT Services in 2011. For clarity, all hardware pertaining to the IT Services at the Facilities immediately prior to the Effective Date shall remain at the Facilities during the Transition Year and as otherwise agreed by the parties. Manager shall make its best efforts to procure the IT Services from another provider as soon as is reasonably possible. Manager shall give the City as much notice as possible that it has obtained another provider for one or more IT Services. Notwithstanding anything else in this Agreement, the City makes no, and specifically disclaims any, representations, warranties and/or guarantees of any kind whatsoever, and Manager hereby holds the City harmless in connection with all liability arising from the City's provision of IT Services to the Manager. In no event shall the City provide the Manager with IT Services beyond the Transition Year.

ARTICLE 4 TERM; TERMINATION

Section 4.1 Term. The initial term of this Agreement (the "**Initial Term**") shall begin on 12:01 a.m. on the Effective Date, and, unless sooner terminated pursuant to the provisions of Section 4.2 below, shall expire at 11:59 p.m. December 31, 2018. The City, in its discretion, may extend the Initial Term for an additional five (5) years, to end on 11:59 p.m. December 31, 2023 by providing to Manager written notice of its desire to extend no later than one hundred fifty (150) days prior to the expiration of the Initial Term. The Initial Term plus any such extension period shall be referred to herein as the "**Term**". All times are the times in Hamilton, Ontario.

Section 4.2 Termination.

- (a) This Agreement may be terminated:
 - (i) subject to Section 4.3(a) below, by City or Manager upon thirty (30) days written notice to Manager in the event of a permanent closure of both of the Facilities, the fact of which is certified by the City in writing to Manager;
 - (ii) by either party upon thirty (30) days written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during such thirty (30) day notification period, provided,

however, if such failure cannot reasonably be cured within such thirty (30) day period, then a longer period of time shall be afforded to cure such breach, up to a total of ninety (90) days, provided that the party in default is diligently seeking a cure and the non-defaulting party is not irreparably harmed by the extension of the cure period; or

(iii) by either party immediately by written notice upon the other party being judged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the other party shall be appointed and shall not be discharged within one hundred twenty (120) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency Laws now in force or hereinafter enacted, Federal, Provincial or otherwise, or if such petition shall be filed against either party and shall not be dismissed within one hundred twenty (120) days after such filing;

(iv) as provided in Section 3.6(b), notwithstanding anything else in this Agreement, including without limitation Section 4.2(b) below, but subject to the payments in Section 4.3(a).

(b) Any time period set out in this Section 4.2 related to notice for termination of this Agreement shall be tolled by a Notice of Dispute issued pursuant to Section 5.1 until such time as (i) the Dispute in question has been resolved and any notice of termination under this Section 4.2 has been retracted; or (ii) the decision and reasons of the Arbitrator pursuant to the Notice of Dispute have been issued.

Section 4.3 Effect of Termination

(a) In addition to the requirements in this Section 4.3, in the event this Agreement is terminated by the City pursuant to Section 4.2(a)(i) or 4.2(a)(iv), or by either party pursuant to 18.4(b), the City shall reimburse Manager for any actual ordinary and necessary expenses incurred by Manager in withdrawing from the provision of services hereunder following such termination. Such ordinary and necessary expenses shall include costs associated with (i) the termination of all unionized and non-unionized employees, (ii) reasonable household relocation expenses of up to four (4) individuals for Manager's Management-Level Employees to a maximum of fifteen thousand dollars (\$15,000) per individual, to the extent any of such individuals had previously relocated to the Facilities (or its surrounding areas) in connection with this Agreement and (iii) other reasonable costs actually incurred by Manager in withdrawing from the provision of services hereunder, such as those incurred in connection with the termination and/or assignment of Service Contracts, Revenue Generating Contracts, or other contracts or leases entered into by Manager pursuant to this Agreement. The City's payment of such expenses will occur only after Manager has provided reasonable evidence of the incurrence of such expenses. Except for the reimbursement of the above stated expenses, Manager shall have no other right or remedy, at law or in equity, against the City for a termination pursuant to Section 4.2(a)(i).

(b) Upon termination or expiration of this Agreement for any reason, (i) Manager shall promptly discontinue the performance of all services hereunder, (ii) the City shall promptly pay Manager all fees due Manager up to the date of termination or expiration (subject to proration of the Net Loss Guarantee, as set forth in Section 4.3(c) below if the Term ends other than at the end of the Operating Year or the Transition Year), (iii) Manager shall make available to the City all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facilities as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, (iv) without any further action on part of Manager or City, the City shall, or shall cause the successor Facilities manager to, assume all obligations arising after the date of such termination or expiration, under any Service Contracts, Revenue Generating Contracts, booking commitments, employment contracts (written or implied), collective agreements, and any other Facilities agreements entered into by Manager in furtherance of its duties hereunder, (v) the City shall pay or reimburse Manager for the costs to Manager (if any) related to the termination of all unionized and non-unionized employees, and (vi) return to the Facilities all Existing Inventory And FF&E in a similar condition as it was at the beginning of the Term, reasonable wear and tear excepted, or replace such items with items of similar kind and quality, provided that: (x) Manager shall not be required to replace any of such items if replacement requires a Capital Expenditure, and the need for replacement of such item was not caused by the negligence of Manager; and (y) Manager shall not be responsible for any lost or damaged items, unless in either case such replacement, loss or damage is due to Manager's negligence, or such items have been replaced or paid for from insurance proceeds or other means. Any of the Manager's property left at the Facilities after termination of this Agreement shall become the property of the City thirty (30) days after termination of this Agreement, unless otherwise agreed to by the parties in writing prior to thirty (30) days after the termination date. Manager shall be liable for removal, disposal and any damage caused by the Manager's property left at the Facilities after the Term, unless otherwise agreed to by the parties in writing. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

(c) In the event of any early termination of this Agreement resulting in a final Operating Year of less than 12 months, the Net Loss Guarantee for such final Operating Year and all other financial terms in Article 3 shall be pro-rated to one-twelfth ($1/12^{\text{th}}$) of their original value for each month or majority of a month from the period of time between the beginning of the final Operating Year and the end of the Term.

(d) At the end of the Term, the City shall offer employment to and, if accepted, employ, all employees at the Facility in the same positions and at the same compensation level, as they had with Manager immediately prior to the end of the Term. To the extent Manager has any costs related to the termination of such employees' employment with Manager at the end of the Term, such costs shall be borne by City, or if initially borne by Manager, shall be reimbursed to Manager by City, provided that the Manager takes no adverse action against such employees, including termination of employment, between: (i) receiving notice of termination and the end of Term, if this Agreement is terminated pursuant to Section 4.2(a); or (ii) one hundred and twenty

days (120) prior to the end of the Term and the end of the Term, if this Agreement expires by its terms, unless in either case the employee commits misconduct.

ARTICLE 5 DISPUTE RESOLUTION

Section 5.1 Internal Escalation and Arbitration. In the event one party (the “**Initiating Party**”) has a dispute in connection with any aspect of this Agreement (the “**Dispute**”) with the other party (the “**Responding Party**”) that cannot be resolved by the designated Contract Management Team, as set out in Section 14.1, the Initiating Party shall give written notice of the Dispute (“**Notice of Dispute**”) to the Responding Party. The Notice of Dispute shall include the name of one representative of the Initiating Party with sufficient authority to negotiate the Dispute. Within five (5) Business Days of receiving the Notice of Dispute, the Responding Party shall appoint one representative, with sufficient authority, to negotiate the Dispute and shall notify the Initiating Party in writing of the appointed representative. Within ten (10) Business Days of the Responding Party receiving the Notice of Dispute, the representatives of both Parties shall meet to discuss and, in good faith, to negotiate the Dispute. If the Dispute has not been resolved with ten (10) Business Days of the Responding Party receiving the Notice of Dispute, the Dispute shall be referred to the governing bodies of both Parties, namely the City Council for the City and the Board of Directors or similar body for the Manager. If the Dispute has not been resolved within thirty (30) Business Days of the Responding Party receiving the Notice of Dispute, the Dispute shall be referred to binding arbitration in accordance with the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended (“**Arbitration Act**”) and the following principles:

- (a) If within thirty (30) Business Days of the Responding Party receiving the Notice of Dispute, the Dispute has not been resolved, the Parties shall meet and attempt to agree upon an arbitrator. If the Parties are unable to agree on an arbitrator within five (5) Business Days, then an arbitrator shall be appointed by a Judge of the Superior Court of Justice for Ontario pursuant to section 10 of the Arbitration Act. The arbitrator so agreed upon or appointed, as the case may be, is herein referred to as an “**Arbitrator**”.
- (b) The Arbitrator shall be an experienced arbitrator and shall be qualified by education and training to decide the particular question in dispute and shall be a person generally recognized in the business community as having familiarity with and expertise with the matter which is the subject of the dispute. The parties shall endeavour, to the extent possible, to utilize an Arbitrator with experience in the facility management industry. No person who is then employed by any of the Parties or any person not dealing at arm's length with a Party shall be appointed as the Arbitrator.

- (c) The Arbitrator will be required to render a decision and reasons to the Parties in an expeditious and prompt manner, and to set a schedule for the arbitration process which achieves this objective, while permitting all Parties due process and an opportunity to present their case and respond to the case presented by the other Party.
- (d) The decision and reasons of the Arbitrator shall be in writing and signed by the Arbitrator.
- (e) Such written decision and reasons of the Arbitrator shall be final and binding and the Parties agree that there will be no right of appeal with respect thereto except as provided in the Arbitration Act.
- (f) The compensation and expenses of the Arbitrator shall be paid in equal portions by the Parties hereto, unless otherwise determined by the Arbitrator, it being agreed that the Arbitrator has the power to allocate responsibility for such costs as he or she deems fit;
- (g) Notwithstanding anything herein contained and notwithstanding any failure to so state in any provision or provisions hereof, any dispute in respect of any matter set out in this Agreement shall be resolved by Arbitration as described in this Section 5.1, after the party requesting Arbitration has complied with the terms of the first paragraph of this Section 5.1, provided, however, that either party may at any time (and outside of any Arbitration proceeding) file an action seeking equitable relief (including an injunction) with the Courts in Ontario; and
- (h) Where arbitration is required by this Agreement, commencement and completion of such arbitration in accordance with this Agreement shall be a condition precedent to the commencement of an action at law or in equity in respect of the matter required to be arbitrated.

ARTICLE 6 OWNERSHIP; USE OF THE FACILITIES

Section 6.1 Ownership of Facilities, Data, Equipment and Materials. The City will at all times retain ownership of the Facilities, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Facilities. Any data, equipment or materials furnished by the City to Manager or acquired by Manager as an Operating Expense shall remain the property of the City, and shall be returned to the City when no longer needed by Manager to perform under this Agreement. Notwithstanding the above, City shall not have the right to use any third party software licensed by Manager for general use by Manager at the Facilities and other facilities managed by Manager, the licensing fee for which is proportionately allocated and charged to the Facilities as an Operating Expense; such software may be retained by Manager upon expiration or termination hereof. Furthermore, the City recognizes that

the Operations Manual to be developed and used by Manager hereunder is proprietary to Manager, and shall belong to Manager at the end of the Term; City shall not use or maintain copies thereof upon the end of the Term.

Section 6.2 Right of Use by Manager and Access of City to Facilities. The City hereby gives Manager the right and license to use the Facilities, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance and management of the Facilities. The City shall provide Manager with a sufficient amount of suitable office space in the Facilities and desks, computers, and phones, at no cost to Manager, and with certain office equipment which the City leases from third parties (such as printers), for which City may charge the Facilities on a cost basis. The City's staff, Affiliates, staff of Affiliates, agents, designees and independent contractors shall have access to all facilities and systems within the facilities as required to perform inspections and maintenance on the HVAC systems and ice plant. The City and its staff, Affiliates, staff of Affiliates, agents, designees and independent contractors shall also have such other access to the Facilities as it may reasonably require (subject to Manager's approval, not to be unreasonably withheld), provided it does not interfere with Manager's operations or events within the Facilities, or without notice or approval in the case of Emergency Repairs.

Section 6.3 Observance of Agreements. The City agrees to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds, debentures, loans and other financing and security agreements to which the City is bound in connection with its ownership of the Facilities.

Section 6.4 Use by the City and Special Events. The Manager shall book events at the Facilities from the City on a priority basis. For all City events, City and Manager shall negotiate in good faith the terms of the booking, including a reasonable fee plus reimbursement of expenses to the Facilities. In no event shall the fee charged to the City be greater than any fee charged to a third party for a similar event in the same Operating Year or the Transition Year. If the Manager later books a similar event at a lower fee than the fee charged to the City, the Manager shall reimburse the City the difference in fees within thirty (30) days. The City may hold events of significant regional, national or international importance, including without limitation state funerals, royal visits or the Commonwealth Games ("Special Events") from time to time. Upon request from the City, the Manager shall make best efforts to make the Facilities available for Special Events, including cancelling or rescheduling prior bookings, at the City's expense, if the City has approved such expense in advance. Although the parties agree that Special Events may occur with little notice, the City shall give the Manager ninety (90) days' notice of any Special Event when possible, or as much notice as is reasonably possible. In the case of Special Events, City shall pay all expenses of the Facilities related to such Special Event and the parties agree to negotiate in good faith a reasonable fee and all such other terms of the booking, and the City acknowledges that a reasonable fee may include compensation for any cancelled events if such event cannot be rescheduled. During a Special Event, the parties agree to work together in good faith and agree that the Special Event shall take priority over all other events.

Section 6.5 Community Events. Manager agrees to negotiate business terms in good faith with all local arts and cultural groups, as required, and to provide local arts and cultural groups with access to the Facilities at the Facilities' standard rates for non-profit entity use of the Facilities. Manager recognizes that the City is in the process of negotiating an agreement with a Canadian Football League team to play its football games at a facility in Hamilton and that such agreement may include certain restrictions on the playing of indoor football or soccer games at the Facilities. The City shall notify Manager of any such restrictions promptly after they are agreed upon, and Manager agrees to comply with any such restrictions.

Section 6.6 Shared Services. Manager and Carmen's Group shall enter into a written agreement for shared services amongst the Facilities and the Hamilton Convention Centre, naming the City as a third party beneficiary, as the owner of the Facilities and the Hamilton Convention Centre (the "**Shared Services Agreement**"), an executed copy of which shall be provided to the City within five (5) days of the Effective Date. Prior to executing the Shared Services Agreement, the Manager shall in good faith consult with the City and give the City sufficient time and opportunity to give feedback on all drafts of the Shared Services Agreement.

ARTICLE 7 PERSONNEL

Section 7.1 Generally. All Facilities staff and other personnel shall be engaged or hired by Manager, and shall be employees, agents or independent contractors of Manager and not of the City. Manager shall select, in its sole discretion but subject to City's right to approve the Operating Budget, the number, function, qualifications, and compensation, including salary and benefits, of its employees (provided that the parties acknowledge Manager shall be governed by any collective bargaining agreement with respect to its union employees) and shall control the terms and conditions of employment (including, without limitation, termination thereof) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. The City specifically agrees that Manager shall be entitled to pay its employees, as an Operating Expense, bonuses and benefits in accordance with Manager's then current employee manual, which may be modified by Manager from time to time in its sole discretion. A copy of Manager's current employee manual shall be provided to the City upon request.

Section 7.2 General Manager. Personnel engaged by Manager will include an individual with managerial experience in similar facilities to serve as a full-time on-site General Manager of the Facilities. The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facilities, supervision of employees, and management and coordination of all activities associated with events taking place at the Facilities.

Section 7.3 Transition of Existing Facilities Employees. Except as otherwise mutually agreed by Manager, City and the applicable union bargaining agent, Manager agrees to offer employment to all unionized part-time and full-time employees working at the Facilities immediately prior to the Effective Date who are subject to collective bargaining agreements covering the services

required to be provided by Manager hereunder. Manager shall not be obligated to offer employment to, or to engage, any non-unionized employees working at the Facilities immediately prior to the Effective Date. The City will be responsible for any severance/termination payments due to any individuals previously employed at the Facility (including without limitation those employed by HECFI) which amounts become due as a result of the cessation of employment with their prior employer as a result of Manager's engagement hereunder (and such costs shall not be deemed to be an Operating Expense). Further, should the Manager employ a non-unionized employee of the City immediately upon taking over the operations of the Facilities and then terminate the employment of that employee within ninety (90) days due to unsatisfactory work performance or for just cause, the City will assume the responsibility for any costs associated with such termination owing to that employee (and such costs shall not be deemed to be an Operating Expense).

Section 7.4 IUOE Employees. Consistent with Section 7.3 above, Manager agrees to offer employment to all members of the International Union of Operating Engineers bargaining unit working in the Facilities and the Hamilton Convention Centre. The Manager will charge back to Carmen's Group the costs associated with these employees' employment as they relate to servicing the Hamilton Convention Centre in accordance with the Shared Services Agreement.

Section 7.5. Inactive Employees. Notwithstanding the above, any unionized facilities employees who are off work due to illness, injury or approved leave shall remain City employees until the end of such absence due to illness, injury or leave, at which time the Manager shall offer the employee employment, with or without modifications (but provided that the modification of such job position is not beyond undue hardship). The above applies to all leaves including but not limited to short-term sick leave, long-term sick leave, workplace safety and insurance leave and pregnancy and parental leave.

Section 7.6 Collective Bargaining. The Manager agrees to consult with the City prior to making any proposals at collective bargaining and, unless otherwise agreed by the City, agrees to make its monetary proposals consistent with (and, at the very least, not in excess of) the City's financial mandate for the relevant year(s) as communicated in writing by City to Manager. Manager shall not enter into any collective bargaining agreement for a term in excess of the Initial Term (or, if this Agreement is extended by the City, for a period in excess of such extension term), without the prior written approval of the City (which approval shall not be unreasonably withheld). In the event the Manager agrees to financial terms with any of the bargaining agents in excess of the City's financial mandate, the Manager shall be responsible for reimbursing the City for ongoing amounts equal to the difference between the agreed upon terms and the City's mandate in the event the City takes back the operation of the Facilities at the end of the Term and the terms agreed to by the Manager are found to be binding on the City.

ARTICLE 8 OPERATING BUDGET

Section 8.1 Establishment of Operating Budget. Manager agrees that within five (5) days from the Effective Date with respect to the Transition Year, and at least sixty (60) days prior to the

commencement of each Operating Year in respect of such year, it will prepare and submit to the City its proposed Operating Budget for such year. Each annual Operating Budget shall include Manager's good faith projection of Revenues and Operating Expenses, presented on a monthly and annual basis, for the upcoming Operating Year. The City agrees to provide Manager with all information in its possession necessary to enable Manager to prepare each Operating Budget.

Section 8.2 Approval of Operating Budget. Each annual Operating Budget shall be subject to the mutual agreement of the City and Manager (such approval by each party not to be unreasonably withheld). In order for the City to fully evaluate and analyze such budgets or any other request by Manager relating to income and expenses, Manager agrees to provide to the City such reasonable financial information relating to the Facilities as may be requested by the City from time to time. If extraordinary events occur during any Operating Year that could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, Manager may submit an amendment to such budget for review and approval by the City (which approval shall not be unreasonably withheld or delayed). If the City fails to approve any annual Operating Budget (or any proposed amendment thereto), the City shall promptly provide Manager the specific reasons therefor and its suggested modifications to Manager's proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties, including, if applicable, negotiation of a mutually acceptable modification to the economic terms of this Agreement to enable the Manager to achieve the compensation contemplated by its proposed Operating Budget.

Section 8.3 Adherence to Operating Budget. Manager shall use all reasonable efforts to manage and operate the Facilities in accordance with the Operating Budget. However, City acknowledges that notwithstanding the Manager's experience and expertise in relation to the operation of facilities similar to the Facilities, the projections contained in each Operating Budget are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond the Manager's control, and that, except as set out in Article 3, Manager shall have no liability if the numbers within the Operating Budget are not achieved. Manager agrees to notify the City within thirty (30) days of any significant change or variance in the bottom line number in the Operating Budget, and any material increase in total Facilities expenses from that provided for in the Operating Budget.

ARTICLE 9 PROCEDURE FOR HANDLING INCOME

Section 9.1 Event Account. Manager shall deposit as soon as practicable following receipt, in the Event Account, all revenue received from ticket sales and similar event-related revenues which Manager receives in contemplation of, or arising from, an event, pending completion of the event. Such monies will be held for the protection of ticket purchasers, the City and Manager, to provide a source of funds as required for payments to performers and for payments

of direct incidental expenses in connection with the presentation of events that must be paid prior to or contemporaneously with such events. Promptly following completion of such events, Manager shall transfer all funds remaining in the Event Account, including any interest accrued thereon, into the Operating Account. Bank service charges, if any, on such account(s) shall be deducted from interest earned.

Section 9.2 Operating Account. Except as set forth in Section 8.1 above, all Revenue derived from operation of the Facilities shall be deposited by Manager into the Operating Account as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the parties specifically agree that Manager shall have authority to sign checks and make withdrawals from such account, only for the purposes of fulfilling its obligations herein and subject to the limitation contained in this Agreement, without needing to obtain the co-signature of a City employee or representative.

ARTICLE 10 FUNDING

Section 10.1 Source of Funding. Manager shall pay all items of expense for the operation, maintenance, supervision and management of the Facilities from the funds in the Operating Account, which Manager may access periodically for this purpose. The Operating Account shall be funded with amounts generated by operation of the Facilities (as described in Article 9 above), or otherwise made available by the City. To ensure sufficient funds are available in the Operating Account, City will deposit in the Operating Account, on or before the Effective Date, one quarter (1/4) of the Net Loss Guarantee, as prorated for the Transition Year. The City shall thereafter, on or before April 1st, July 1st, October 1st and January 1st (the January 1st deposit starting in the first (1st) Operating Year) of each Operating Year or Transition Year, as applicable, deposit in the Operating Account one quarter (1/4) of the applicable Net Loss Guarantee. After any financial results, including without limitation payment for utilities, under Section 3.7, for any Operating Year or the Transition Year have been consolidated and reported, any amounts owing to the City by the Manager under Section 3.4 may be set off by the City against the City's next deposit into the Operating Account. Manager's obligations under this Agreement are contingent upon, and subject to, the City making available to Manager the funds described in this paragraph as and when due. Manager shall not be considered to be in breach or default of this Agreement, and shall have no liability to the City or any other party, in the event Manager does not or cannot perform any of its obligations hereunder due to failure by the City to timely provide such funds. If at any time during any Operating Year or the Transition Year the actual Net Loss is exceeding the funding provided by the City under this paragraph, Manager shall initially advance funds without interest to cover the difference, until such time as the parties hold their year-end settlement pursuant to Section 3.4 above (at which time any adjustments as required by the terms of Article 3 shall be made).

ARTICLE 11 FISCAL RESPONSIBILITY; REPORTING

Section 11.1 Records. Manager agrees to keep and maintain, at its office in the Facilities, separate and independent records, in accordance with Canadian Generally Accepted Accounting Principles, devoted exclusively to its operations in connection with its management of the Facilities (on a combined basis). Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations of Manager under this Agreement. The City or its authorized agent shall have the right to audit and inspect such records from time to time during the Term, upon reasonable notice to Manager and during Manager's ordinary business hours.

Section 11.2 Monthly Financial Reports. Manager agrees to provide to the City, within thirty (30) days after the end of each month during the Term, financial reports for the Facilities including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date in accordance with Canadian Generally Accepted Accounting Principles. In addition, Manager agrees to provide to the City a summary of bookings for each such month, and separate cash receipts and disbursements reports for each event held at the Facilities during such month. Additionally, Manager shall submit to the City, or shall cause the applicable public depository utilized by Manager to submit to the City, on a monthly basis, copies of all bank statements concerning the Event Account and the Operating Account. The parties agree that the monthly balance sheet provided by Manager hereunder shall be on a combined basis for both of the Facilities, but that Manager shall provide monthly profit and loss statements for each of the Facilities separately.

Section 11.3 Audit. Manager agrees to provide to the City after each Operating Year and the Transition Year a certified audit report on the accounts and records as kept by Manager for the Facilities. Manager shall use best efforts to provide such audit report within ninety (90) days following the end of each Operating Year or the Transition Year, as applicable, and in any event shall produce such audit report within one-hundred and twenty (120) days following the end of each Operating Year, or the Transition Year, as applicable. Costs associated with obtaining such certified audit report shall be an Operating Expense of the Facilities. Such audit shall be performed by an external auditor approved by the City, and shall be conducted in accordance with generally accepted auditing standards.

ARTICLE 12 CAPITAL IMPROVEMENTS

Section 12.1 Schedule of Capital Expenditures; Maintenance Schedule. Manager shall annually, at the time of submission of the annual Operating Budget to the City which shall be no later than August 30 of each Operating Year, provide to the City a schedule of proposed capital improvements (i.e., improvements necessitating a Capital Expenditure) to be made at the Facilities, for the purpose of allowing the City to consider such projects and to prepare and update a long-range Capital Expenditure budget. City and Manager shall cooperate and act in good faith to develop a maintenance schedule for capital items in both Facilities within three (3) months of the Effective Date, or as may be extended upon agreement acting in good faith. Manager shall implement such maintenance schedule, as it may be changed from time-to-time upon the agreement of the parties.

Section 12.2 Responsibility for Capital Expenditures. The City shall be solely responsible for all Capital Expenditures at the Facilities; provided, however, that: (i) the City shall be under no obligation to make any Capital Expenditures proposed by Manager (except for Capital Expenditures required for an Emergency Repair, which City agrees to undertake in a prompt manner); (ii) Manager shall have no liability for any claims, costs or damages arising out of a failure by the City to make any Capital Expenditures proposed by Manager, subject to Section 12.2(iii); and (iii) notwithstanding Section 12.2(ii), City shall not be liable for Capital Expenditure caused by the negligence of Manager, including without limitation failure of the Manager to fulfill its maintenance obligations hereunder.

Section 12.3 Facility Ticket Surcharges. Manager shall collect existing Facility Ticket Surcharges and Donations, which initially shall be charged at two dollars and twenty-five cents (\$2.25) per ticket, and pay these funds to the City for its fund specified for capital improvements and Capital Expenditures for the Facilities (the "**Capital Improvement Fund**"). Manager shall have the right to increase Facility Ticket Surcharges in its discretion. The Facility Surcharges and Donations collected each Operating Year or the Transition Year shall be aggregated, and to the extent the aggregate amount exceeds \$226,345 (such number to be pro-rated for the Transition Year and any Operating Years of less than 12 months based on the number of days elapsed in the Transition Year or such Operating Year out of 365), the excess amounts shall be deposited into the Operating Account and shall be deemed to be Revenue (the base amounts up to \$226,345 or the pro-rated threshold, as applicable, shall not be deemed to be Revenue). City shall use the funds in its Capital Improvement Fund for the Facilities for Capital Expenditures and to make capital improvements at the Facilities from time to time (such improvements to be mutually agreed by the City and Manager), and for no other purpose.

ARTICLE 13

FACILITIES CONTRACTS; TRANSACTIONS WITH AFFILIATES

Section 13.1 Existing Contracts. The City represents and warrants that all Existing Contracts are listed on Exhibit B hereto, and that the City has provided to Manager, prior to the Effective Date, full and complete copies of all Existing Contracts (including any amendments thereto). Manager shall administer and assure compliance with such Existing Contracts.

Section 13.2 Execution of Contracts. Subject to Section 3.7, Manager shall have the right to enter into Service Contracts, Revenue Generating Contracts and other contracts related to the operation of the Facilities in its capacity as manager of the Facilities. Any such material agreements shall contain standard indemnification and insurance obligations for the benefit of the City on the part of each vendor, licensee or service provider, as is customary for the type of services or obligations being provided or performed by such parties. Further, any naming rights, permanent advertising (which, for clarity, shall be advertising that would otherwise be displayed at an NHL Game, if such games were played at Copps Coliseum) and pouring rights agreement entered into by Manager shall contain a clause for the benefit of the City specifying that if a National Hockey League

franchise is awarded to a team permanently located or relocated in the City of Hamilton, the parties to such agreement shall agree to negotiate in good faith an increase to the revenue received for the naming rights, advertising or pouring rights, as applicable, and further that should the parties fail to agree to such increase in revenue, the agreement may be terminated upon reasonable notice by Manager and/or the City. Manager shall not agree to an increase in revenue to pouring rights, naming rights or advertising agreements, as provided above, without the prior written consent of the City, which shall not be unreasonably withheld or delayed, but, for clarity, may be withheld if, among other reasons, agreeing to an increased revenue would prevent or jeopardize in any way the location or relocation of any such NHL franchise. If the naming rights, advertising rights or pouring rights agreement contain a termination fee to be paid to the naming rights, advertising or pouring rights partner, such fee shall be paid by the City (and not as an Operating Expenses) so long as the City has pre-approved the amount of such fee in writing. Subject to Section 7.6, Manager shall obtain the prior approval of the City (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term that expires after the Term of this Agreement, unless such contract, by its express terms, can be terminated by Manager or City following expiration of the Term without any penalty.

Section 13.3 Transactions with Affiliates. In connection with its obligations hereunder relating to the purchase or procurement of services for the Facilities (including without limitation food and beverage services, ticketing services, Commercial Rights sales, web design services and graphic design services), and subject to the obligations set out herein, Manager may purchase or procure such services, or otherwise transact business with, an Affiliate of Manager, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties rendering comparable services and are at or below the Affiliate's standard costs. Manager shall, at the request of the City, provide reasonable evidence establishing the competitive nature of such prices and services, including, if appropriate, competitive bids from other persons seeking to render such services at the Facilities.

ARTICLE 14 AGREEMENT MONITORING

Section 14.1 Contract Management Team. Within ten (10) days of the Effective Date, the parties shall establish a Contract Management Team (the "CMT") consisting of three (3) members of City, namely the City Manager, the General Manager of Finance and the General Manager of Public Works or their designees and three (3) members of the Manager with management-level roles and responsibilities (one of whom shall be the General Manager of the Facilities) who shall monitor each party's compliance with the terms of this Agreement. The CMT shall confer quarterly during the Term (or less frequently if agreed by the simple majority of the CMT). The CMT shall meet at a mutually convenient location or confer by telephone conference call or other means of simultaneous electronic communication agreed between the parties. Additionally, each party shall appoint a contract administrator who shall be a member of the CMT and shall serve as the other party's primary point of contact for administration of this Agreement. Manager's contract administrator shall be its General Manager of the Facilities, unless Manager notifies City of a substitute contract administrator in writing. City's contract administrator shall be the City Manager or its designee.

Any and all references in this Agreement requiring Manager or City participation or approval shall mean the participation or approval of such party's contract administrator (although such persons shall not have the authority solely by virtue of this Section 14.1 to amend the terms of this Agreement).

ARTICLE 15 INDEMNIFICATION

15.1 Indemnification by Manager

- (1) The Manager shall indemnify and shall defend and save the City, its elected officials, officers, and employees harmless from and against any claims, proceedings, fines, penalties, expenses and costs (including legal costs on a solicitor and client basis) that are incurred by, or made or instituted against, any of them or to which any of them may be liable by reason of:
 - (a) any act or omission, or intentional misconduct, on the part of the Manager or any of its employees or agents in the performance or its obligations under this Agreement, or (b) breach by the Manager of any of its representations, covenants, or agreements made herein, or
 - (b) any patent, trademark, copyright infringement or other breach of any intellectual property right by Manager or its employees, or agents.
- (2) The City may enforce the rights of indemnity conferred on the elected officials, officers, and employees of the City under Subsection (1) on their behalf and to the same extent as if they were parties to the Agreement.
- (3) The rights to indemnity provided for in this Section 15.1 shall not be limited by any rights with respect to insurance in favour of the City, its elected officials, officers and employees provided under this Agreement.

15.2 Indemnification by City. City agrees to defend, indemnify and hold harmless the Manager and its affiliates, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, and damages suffered by such parties, arising out of or in connection with any (a) negligent act or omission, or intentional misconduct, on the part of City or any of its employees or agents in the performance of its obligations under this Agreement, (b) breach by City of any of its representations, covenants or agreements made herein, (c) the existence of asbestos in the Facilities and the exposure to any persons in the Facilities to such asbestos, provided such claim does not result from Manager failing to comply with any protocol or procedure for the handling of asbestos as specified under Law or (d) the failure of the structure of the Facilities to be in compliance with Laws (including without limitation the failure of the Facilities' smoke/fire alarms to connect to a central monitoring station).

Section 15.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Article 15, the Indemnitor shall be responsible, at its sole cost and expense,

for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 15.4 Survival. The obligations of the parties contained in this Article 15 shall survive the termination or expiration of this Agreement.

ARTICLE 16 INSURANCE; PERFORMANCE BOND

Section 16.1 Types and Amount of Coverage. Manager agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit C, attached hereto. The cost of the insurance described in Exhibit C shall be an Operating Expense. The City shall maintain at all times property insurance coverage on the Facilities, the cost of which shall be borne by the City and shall not be deemed to be an Operating Expense.

Section 16.2 Rating; Additional Insureds. All insurance policies shall be issued by insurance companies rated no less than A VIII in the most recent "Bests" insurance guide, and licensed in the Province of Ontario or as otherwise agreed by the parties. All such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved. The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy to be obtained by Manager hereunder shall name City as an additional insured. The workers compensation policy to be obtained by Manager hereunder shall contain a waiver of all rights of subrogation against the City. Manager shall require that all third-party users of the Facilities, including without limitation third-party licensees, ushers, security personnel and concessionaires, provide certificates of insurance evidencing insurance appropriate for the types of activities in which such user is engaged and showing at a minimum Commercial General Liability insurance with a minimum limit of \$2,000,000 per occurrence endorsed to name the Manager and the City as additional insureds. If Manager subcontracts any of its obligations under this Agreement, Manager shall require each such subcontractor to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, and name Manager and the City as additional insureds.

Section 16.3 Performance Bond. Manager shall supply to the City, in a form reasonably acceptable to the City, a performance bond in the amount of one million dollars (\$1,000,000) to protect against loss due to the material breach by Manager of this Agreement. Manager shall provide evidence to the City of its having obtained such bond prior to the Effective Date. The premiums for the performance bonds shall be an Operating Expense. For the Transition Year only, the amount of the performance bond required under this Section 16.3 shall be five hundred thousand dollars (\$500,000).

Section 16.4 Property Insurance. The City shall, at all times during the Term, at its own cost (and not as an Operating Expense), keep the Facility insured against "all risks" for the replacement cost of the Facility. Such insurance to be on a replacement cost basis.

ARTICLE 17

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 17.1 Manager Representations and Warranties. Manager hereby represents, warrants and covenants to City as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of Manager herein, and that no third party consent or approval is required to grant such rights or perform such obligations hereunder; and

(b) that this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar Laws affecting creditors' rights generally or by general equitable principles.

(c) that Manager will comply with all Laws and collective bargaining agreements applicable to its management of the Facilities.

Section 17.2 City Representations, Warranties and Covenants. City represents, warrants and covenants to Manager as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of City herein, and that no other third party consent or approval is required to grant such rights or perform such obligations hereunder.

(b) that this Agreement has been duly executed and delivered by City and constitutes a valid and binding obligation of City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(c) that the Facilities are, as of the Effective Date, in compliance in all respects with all applicable Laws relating to the construction, use and operation of the Facilities, and that there exist no structural defects or unsound operating conditions at the Facilities.

ARTICLE 18 MISCELLANEOUS

Section 18.1 No Discrimination. Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age. A complaint by an employee or user of the Facilities, including any application before the Human Rights Tribunal of Ontario or court action in a court of competent jurisdiction, in itself does not constitute evidence of discrimination.

Section 18.2 Use of Facilities Names and Logos. Manager shall have the right to use throughout the Term (and permit others to use in furtherance of Manager's obligations hereunder), for no charge, the name and all logos of the Facilities, on Manager's stationary, in its advertising of the Facilities, and whenever conducting business of the Facilities; provided, that Manager in consultation with the City shall take all prudent and appropriate measures to protect the intellectual property rights of the City relating to such logos. All intellectual property rights in any Facilities logos developed by the Manager or the City shall be and at all times remain the sole and exclusive property of the City. Manager agrees to execute any documentation requested by the City from time to time to establish, protect or convey any such intellectual property rights. If Copps Coliseum is renamed and no longer includes the name Copps in the name of the arena, Manager shall, at the City's cost, recognize Victor K. Copps' legacy through a public display in the arena that has the prior written approval of the City; such approval shall not be unreasonably withheld or delayed. All domain names for the Facility shall be registered in the name of the Owner, as instructed, with a non-transferrable, royalty-free license granted to the Manager during the Term to operate the Facilities' website located at such domain names. Such license shall automatically terminate at the end of the Term.

Section 18.3 Facilities Advertisements. The City agrees that in all advertisements placed by the City for the Facilities or events at the Facilities, whether such advertisements are in print, on radio, television, the internet or otherwise, it shall include a designation that the Facilities is a "Global Spectrum managed Facilities".

Section 18.4 Force Majeure; Casualty Loss.

(a) Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Agreement due to an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other

party within thirty (30) days of the date on which such party gains actual knowledge of such Event of Force Majeure. Notwithstanding the foregoing, in no event shall a party's failure to make payments due hereunder be excusable due to an Event of Force Majeure.

(b) In the event of damage or destruction to a material portion of one or both of the Facilities by reason of fire, storm or other casualty loss that renders one or both of the Facilities (or a material portion thereof) untenable, the City shall use reasonable efforts to remedy such situation. If notwithstanding such efforts, such damage or destruction is expected to render either or both Facilities (or a material portion thereof) untenable for a period estimated by an architect selected by the City at Manager's request, of at least one hundred eighty (180) days from the date of such fire, storm or other casualty loss, either party may upon written notice to the other terminate this Agreement with respect to such affected Facility (only), and this Agreement shall remain in effect with respect to the remaining (unaffected) Facility, provided that the parties shall in good faith negotiate reasonable changes to the financial terms of this Agreement and any other applicable terms of this Agreement in response to such affected Facility no longer being part of this Agreement. If the damage or destruction affects both Facilities and renders both of such Facilities untenable for such 180 day period, then either party may terminate this Agreement in whole, provided that (i) the City shall pay to Manager its costs of withdrawing from services hereunder, as described in Section 4.3(a) above, and (ii) in the event either or both of the Facilities once again becomes tenable at any time during the Term, this Agreement shall, on the written agreement of the parties, once again become effective and Manager shall manage and operate the Facilities under the terms hereof, except that the Term shall be extended for a period of time in which the affected Facility(ies) were closed.

Section 18.5 Assignment. Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be at any cost to the party providing the consent, and shall not be unreasonably withheld or delayed, except that either party may, without the prior written consent of the other party but upon at least 30 days' written notice to the other party, assign this Agreement in connection with a sale of all or substantially all its assets or equity interests; and, further, Manager may assign this Agreement to an Affiliate of Manager where such assignment is intended to accomplish an internal corporate purpose of Manager as opposed to materially and substantially altering the method of delivery of services to City and, in such case: (i) Manager will be jointly and severally liable for such Affiliate's performance under this Agreement; and (ii) any subsequent assignment must be approved by the City, which shall not be unreasonably withheld or delayed. Any purported assignment in contravention of this Section shall be void. For clarity, a party may condition consent on a commercially reasonable fee. If either party (or any assignee of a party for which consent to assignment is not required under this paragraph) assigns this Agreement other than in connection with an assignment as permitted by this paragraph without prior consent (i.e., if a party assigns this Agreement other than in connection with a sale of the assets or equity interests of such party or to an Affiliate), for any form of consideration whatsoever, the other party shall be entitled to fifty percent (50%) of such consideration or a monetary payment of fifty percent (50%) of the fair market value of such consideration if it is impractical to divide such consideration.

Section 18.6 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return

receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to the City:

City of Hamilton
City Hall, 71 Main Street West
Hamilton, Ontario, Canada L8P 4Y5
Attn: City Clerk

If to Manager:

Global Spectrum Facility Management, L.P.
c/o Global Spectrum, L.P.
3601 S. Broad Street
Philadelphia, PA 19148
Attn: Chief Operating Officer

With a copy to:

Comcast Spectacor, L.P.
3601 South Broad Street
Philadelphia, Pennsylvania 19148-5290
Attn: General Counsel

The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

Section 18.7 Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 18.8 Entire Agreement. This Agreement (including the exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

Section 18.9 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties agree that the Courts of Ontario shall have jurisdiction to entertain any action or other legal proceedings based on any provisions of this Agreement. Each Party does hereby attorn to the jurisdiction of the Courts of the Province of Ontario.

Section 18.10 Amendments. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 18.11 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 18.12 Relationship of Parties. Manager and City acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Facilities, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between City and Manager. In operating the Facilities, entering into contracts, accepting reservations for use of the Facilities, and conducting financial transactions for the Facilities, Manager acts on behalf of and as agent for City (but subject to the limitations on Manager's authority as set out in this Agreement), with the fiduciary duties required by Law of a party acting in such capacity.

Section 18.13 No Third Party Beneficiaries. Other than the indemnitees listed in Sections 14.1 and 14.2 hereof (who are third party beneficiaries solely with respect to the indemnification provisions in such sections), there are no intended third party beneficiaries under this Agreement, and no third party shall have any rights or make any claims hereunder, it being intended that solely the parties hereto (and the aforementioned indemnitees with respect to the indemnification provisions hereof) shall have rights and may make claims hereunder.

Section 18.14 Compliance with Laws and Policies. Manager shall not be bound by the policies of the City, including without limitation any policies on purchasing or procurement. Notwithstanding anything else in this Agreement, neither party shall be liable to the other for complying with any Law.

Section 18.14 Attorneys Fees. If any suit or action is instituted by either party hereunder, including all appeals, the prevailing party in such suit or action shall be entitled to recover reasonable attorney fees and expenses from the non-prevailing party, in addition to any other amounts to which it may be entitled.

Section 18.15 Limitation on Damages. In no event shall either party be liable or responsible for any consequential, indirect, incidental, punitive, or special damages (including, without limitation, lost profits) whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by the other party, unless and except to the extent a claim for consequential, indirect, incidental, punitive, or special damages (including, without

limitation, lost profits) is covered by insurance of the party required to pay such amount (in which case, to the extent of such insurance coverage, its damages shall not be limited as provided under this paragraph). Manager agrees to maintain at all times during the Term no less than thirty million dollars (\$30,000,000) of business interruption coverage, and, notwithstanding anything else in this Section 18.15; if Manager fails to maintain such coverage, Manager shall be liable for consequential, indirect, incidental, punitive or special damages (including, without limitation, lost profits) up to a maximum of thirty million dollars (\$30,000,000) as if Manager had obtained such coverage.

Section 18.16 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the parties and transmitted by facsimile or electronic transmission, and if so executed and transmitted, shall be effective as if the parties had delivered an executed original of this Agreement.

IN WITNESS WHEREOF, each party hereto has caused this Management Agreement to be executed on behalf of such party by an authorized representative as of the date first set forth above.

CITY OF HAMILTON

GLOBAL SPECTRUM FACILITY
MANAGEMENT, L.P.

By: Global Spectrum Facility Management Ltd.,
its general Partner

By: _____
Name:
Its:

By: _____
Name:
Its:

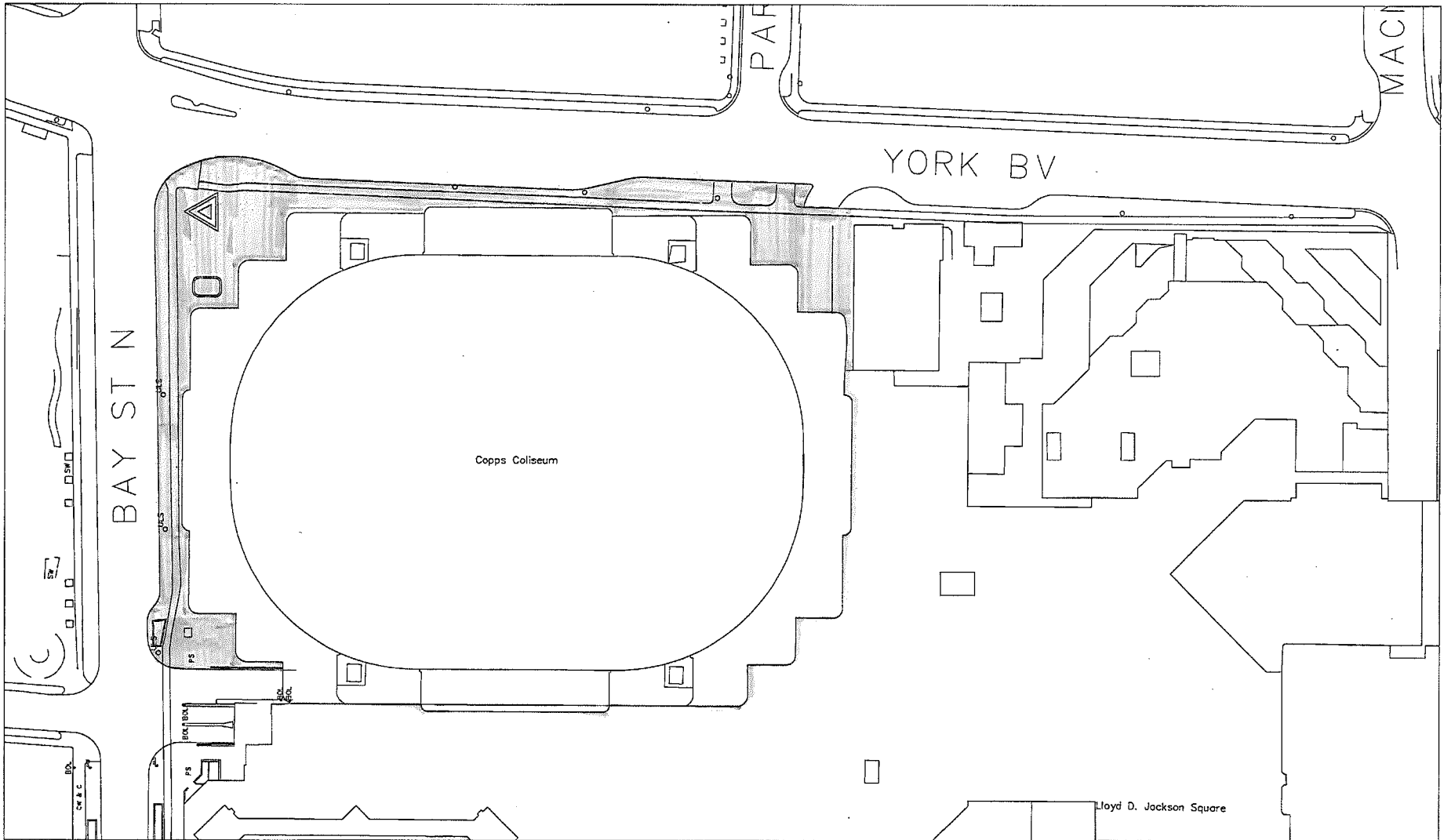
By: _____
Name:
Its:

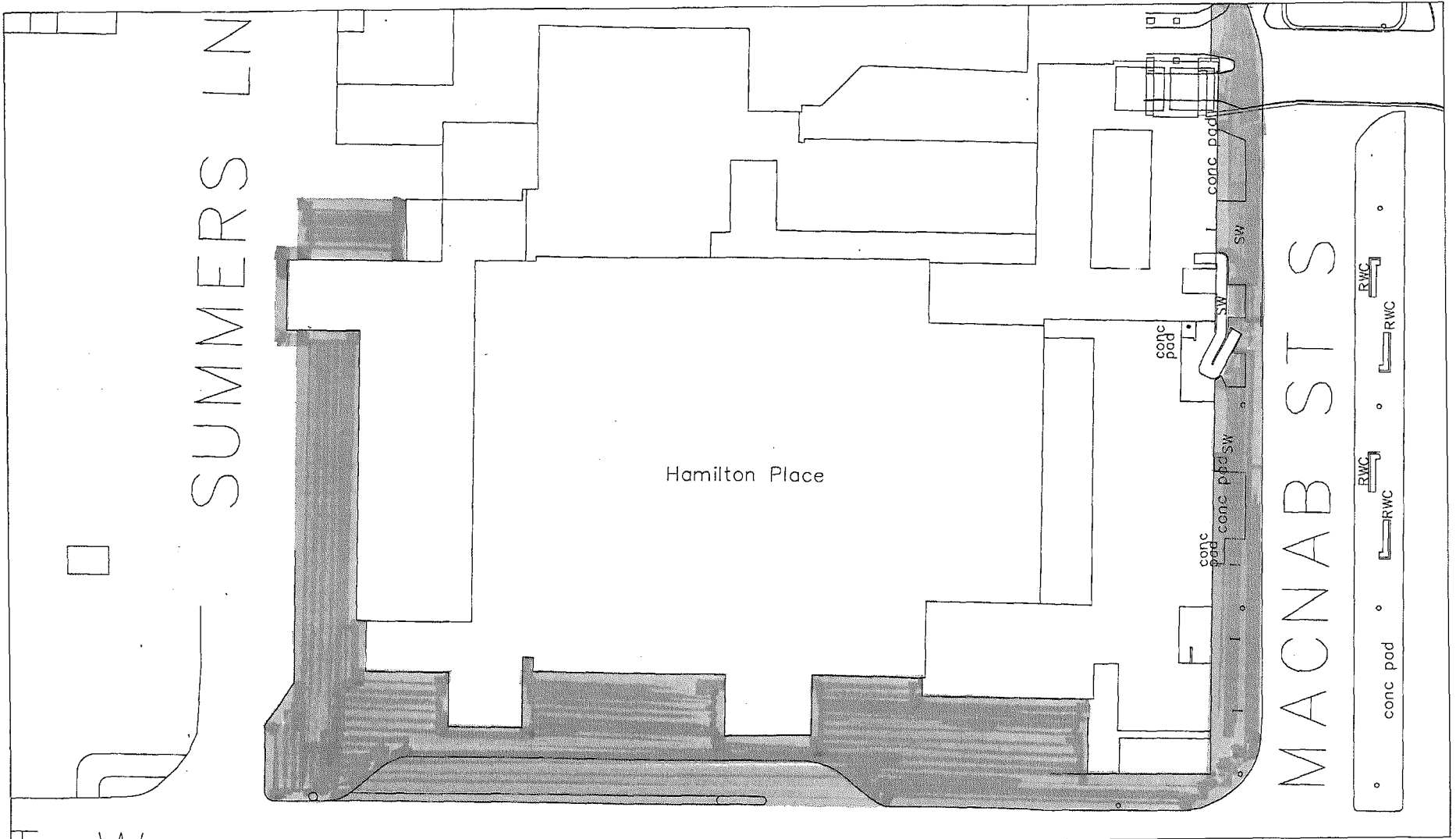
Name:

I/We Have Authority to Bind the Entity

I Have Authority to Bind the Entity

SCHEDULE I
SITE MAP IDENTIFYING OUTDOOR AREAS TO BE MANAGED BY MANAGER





MAIN STREET WEST

Hamilton Place
January 16, 2013

SCHEDULE II

[to attach schedule B-1, or portions thereof, from the MOU]

SCHEDULE III
EXISTING INVENTORY AND FF&E

[To be completed.]

EXHIBIT A MANAGER DUTIES

Manager's obligations under the Agreement shall consist of the following obligations, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual:

(a) Manage all aspects of the Facilities in accordance with the Operations Manual and the terms of this Agreement, including but not limited to managing purchasing, payroll, fire prevention, security, crowd control, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, parking (if applicable), and general user services.

(b) Establish and adjust prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments. Manager may deviate from the established rate schedule when entering into any such agreements if determined by Manager, using its reasonable business judgment, to be necessary or appropriate with respect to the specific situation.

(c) Procure, negotiate, execute, administer and assure compliance with Service Contracts, Revenue Generating Contracts, and other contracts related to the operation of the Facilities, subject to Section 3.7.

(d) Require that all material vendors and licensees of the Facilities execute vendor/license agreements containing standard indemnification and insurance obligations on the part of each such vendor/licensee.

(e) Provide standard form advertising and sponsorship contracts and user/rental agreements for use at or with respect to the Facilities. Manager shall submit such form agreements to the City for review and comment, and the parties shall work together to finalize such forms. Once finalized, Manager shall use such forms in furtherance of its duties hereunder, and shall not materially deviate from the terms contained in such forms without obtaining the prior approval of the City (which shall not be unreasonably withheld). Manager's sole responsibility with regard to providing legal advice or assistance hereunder shall be to provide such standard form contracts.

(f) Operate and maintain the Facilities, including the equipment utilized in connection with its operation and any improvements made during the term of this Agreement, in the condition received, normal wear and tear excepted.

(g) Arrange for and otherwise book events at the Facilities in accordance with a booking schedule to be developed by Manager. There shall be no restrictions in place on Manager with respect to programming content, other than any restrictions imposed by City by-laws and policies. Manager shall use its professional judgment in selecting appropriate programming for the Facilities, and shall liaise with City staff on a regular basis about upcoming programming at the Facilities. Manager agrees to negotiate in good faith with local arts and cultural groups who have a desire to hold events in the Facilities, and to provide such groups with access to the Facilities on reasonable terms (as determined by Manager in its reasonable discretion).

(h) Hire or otherwise engage, pay, supervise, and direct all personnel Manager deems necessary for the operation of the Facilities in accordance with Article 7 of the Agreement, and conduct staff planning, retention and training programs as determined to be necessary by Manager in its sole discretion.

(i) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with Canadian Generally Accepted Accounting Principles, which records shall be made available to the City upon request, in accordance with Section 11.1 of the Agreement.

(j) Submit to the City in a timely manner financial and other reports detailing Manager's activities in connection with the Facilities, as set forth in Section 10.2 of the Agreement.

(k) Prepare a proposed annual Operating Budget and submit such proposed budget to the City, both in accordance with Article 8 of the Agreement.

(l) Pay all Operating Expenses incurred in connection with the operation, maintenance, supervision and management of the Facilities from the Operating Account or with funds otherwise made available by the City.

(m) Secure, or assist the City (or any other third party, as applicable) to secure, all licenses and permits necessary for the operation and use of the Facilities for the specific events to be held therein, and for the general occupancy of the Facilities, including without limitation all necessary food and liquor licenses, and renewals thereof. The City shall cooperate in this process to the extent reasonably required. All costs associated with this process shall be Operating Expenses.

(n) Collect, deposit and hold in escrow in the Event Account any ticket sale revenues which it receives in the contemplation of or arising from an event pending the completion of the event, as more fully described in Section 8.1 of the Agreement.

(o) Collect in a timely manner and deposit in the Operating Account all Revenue, as more fully described in Section 8.2 of the Agreement.

(p) Pay all Taxes.

(q) Plan, prepare, implement, coordinate and supervise all public relations and other promotional programs for the Facilities.

(r) Prepare, maintain and implement on a regular basis, subject to the City's approval, a Marketing Plan for the Facilities.

(s) Manage and oversee the sale of Commercial Rights at or in connection with the Facilities. Manager may, either itself or through its Affiliate Front Row Marketing Services,

market, sell and exploit the Commercial Rights inventory associated with the Facilities, subject to the terms of this paragraph. Manager acknowledges that naming rights and advertising in respect of the Facilities will be subject to existing by-laws and the approval of the City; such approval shall not be unreasonably withheld. Naming rights and advertising referencing tobacco, firearms and gaming shall not be permitted. Manager shall use its professional judgment in selecting appropriate advertisements for the Facilities. Manager will liaise with City staff on a regular basis about potential advertisements and naming rights. The parties specifically acknowledge that Manager may engage a third party (who, subject to Section 13.3 of the Agreement, may be an Affiliate), to market, sell or otherwise exploit the Commercial Rights inventory associated with the Facility and that such party may be compensated on a fixed fee and/or a commission basis in connection therewith.

(t) On an annual basis, cause a written inventory to be taken of all furniture, fixtures, office equipment, supplies, tools and vehicles at the Facilities, and deliver a written report of the foregoing to City. Manager shall document all major damage to, or loss in, such inventory during the Term as soon as such damage or loss is discovered by Manager, and Manager shall promptly notify City of any such damage or loss.

(u) Purchase and maintain during the Term, all materials, tools, machinery, equipment and supplies necessary for the operation of the Facilities (not including those requiring a Capital Expenditure).

(v) In coordination with the City, manage risk management and Facilities insurance needs, as more fully described in Article 16 of the Agreement.

(w) With regard to repair and maintenance of the Facilities, the parties shall be responsible for their respective repair and maintenance obligations, and related costs, as set forth on Exhibit A-1 attached hereto.

(x) Cause such other acts and things to be done with respect to the Facilities, as determined by Manager in its reasonable discretion to be necessary for the management and operation of the Facilities following the Effective Date.

EXHIBIT A-1

The Parties obligations with respect to maintenance and repairs shall be as set forth below.

I. Manager's Maintenance/Repair Obligations:

Manager covenants with the City, throughout the Term, as follows (the costs of performance of the following duties shall be an Operating Expense of the Facilities, except for any Capital Expenditures, which shall be borne by the City and shall not be deemed an Operating Expense of the Facilities):

1. to (either itself or through a third party) repair and maintain the Facilities and improvements thereon, both on the interior as well as on the exterior, including any equipment in the Facilities (which equipment Manager shall also replace as needed, provided that in doing so a Capital Expenditure is not required). Without limiting the foregoing (but subject to the costs being an Operating Expense except for any Capital Expenditures as set forth above), Manager shall (either itself or through a third party):

a. repair, keep in repair and maintain at all times in good order and in the condition in which it exists at the commencement of this Agreement (reasonable wear and tear excepted), the fixtures, windows, doors, walls and equipment, entrances and fire exits, and perform (or have a third party perform) painting, exterior window cleaning and janitorial service, in the same manner and to the same extent as would a prudent owner of a like facility; and

b. for such purposes, to maintain, make all necessary repairs, replacements, alterations, additions, changes, substitutions, renovations and improvements, foreseen and unforeseen, and to keep the Facilities, improvements and other fixtures and chattels and equipment, on the Facilities fully useable and up-to-date for all purposes for which they have been installed, erected or purchased, not including any improvements or replacements, alterations, additions, etc. requiring a Capital Expenditure;

1A. Manager shall record all maintenance performed by the Manager at each of the Facilities, and provide such reports to the City on a monthly basis. Manager will cooperate with City to make such reports compatible with the City's system (known as ARCHIBUS – Facilities Management System) to the greatest extent that is commercially reasonable.

2. to ensure that all maintenance, repairs, replacements, alterations, changes, substitutions or improvements required to be effected by Manager:

- a. are in all respects to a standard at least substantially equal to the quality and workmanship of the original work and material affected;
- b. do not alter the appearance of the Facilities; and
- c. meet all requirements of municipal and other governmental authorities and fire insurance underwriters;

3. not to commit or allow waste or injury to the Facilities or improvements or equipment thereon and not to use or occupy or permit to be used or occupied the Facilities or improvements or equipment thereon for any unlawful purpose, or in any manner which results in the cancellation of insurance, or in refusal of an insurer to issue reasonable amounts of insurance, or in refusal of an insurer to issue reasonable amounts of fire (all-risk) and liability insurance on the Facilities, improvements and equipment;
4. to comply with all Laws which relate to use of the Facilities improvements and equipment thereon during the Term;
5. to comply with all present and future legislation under the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, or any successor or replacement legislation including any regulations to designated substances;
6. not to construct, build, erect or install any improvements, buildings, fixtures or other installations on the Facilities;
7. at the end of the Term, to leave the Facilities in the condition in which it was received at commencement of the Agreement, excluding reasonable wear and tear, damage or loss caused by any third party, damage or loss caused by an occurrence outside of the reasonable control of Manager, or damage or loss otherwise recovered by insurance proceeds excluded.
8. The cost of the following shall be an Operating Expense of the Facilities:
 - a. All site service contracts and their associated costs e.g. cleaning, event services, staging etc.
 - b. All site electrical maintenance and repairs (excluding main electricity panels up to and including Motor Control Centers)
 - c. All life safety equipment and regulatory approval e.g. fire safety and alarms (excluding emergency generators)
 - d. Maintaining all kitchen equipment (operations/maintenance/repairs or replacement, not including any replacement requiring a Capital Expenditure)

II. City Maintenance/Repair Obligations:

The City covenants with Manager throughout the Term, as follows:

1. to maintain the Central Utility Plant ("CUP") and ensure the provision of energy/utilities supply including billing, metering and contract management. Responsibility for payment of energy/utilities and CUP costs shall be as outlined in Section 3.7 of the Agreement.
2. to service, repair, monitor and ensure preventative maintenance routines on the following equipment:
 - a. the Mechanical and HVAC systems in the Facilities
 - b. the CUP/HECFI Building Automation System/Controls
 - c. the emergency generators and main electrical panels

d. the equipment associated with the Copps Coliseum Ice Plant
These services will be invoiced to the Facilities as outlined in Section 3.7 of the Agreement.

3. to provide Capital Planning Services and Project Management Services on Capital Expenditure projects as required to maintain the Facilities in accordance with the City's standards.

4. to provide additional resources as required to support special events on a fee for service basis. Fees for this service will be agreed upon through a fee schedule between the City and Manager and will be reviewed annually or from time to time as agreed upon by the Parties. Such fee shall be an Operating Expense of the Facilities.

5. at its discretion, to designate Manager to undertake, directly or indirectly, any repairs constituting a Capital Expenditure; in such instances, the City shall reimburse Manager for costs, provided such costs are communicated and accepted by City prior to any repairs being made.

The parties' respective maintenance obligations are as further specified in more detail in Exhibit D hereto.

EXHIBIT B
EXISTING CONTRACTS

Global Spectrum Contract Summary

Note: most agreements have historically covered all 3 venues; most agreements include venue specific revenue tracking or invoicing.

Revenue Generating Partnerships

1. Hamilton Bulldogs Hockey Club Lease
 - a. Plus Hamilton Bulldogs Hockey Club Office Rental Agreement
2. Molson
 - a. Pouring rights for beer (3 venues)
 - b. Naming rights for the Molson Canadian Studio Theatre
3. PMA - Pouring rights for wine and spirits (3 venues)
4. Pepsi – Pouring rights for non alcoholic beverages (3 venues)
5. Compass Group – Food and beverage operator (Copps and Hamilton Place)
6. Ticketmaster
7. First Ontario Credit Union - Naming rights for the Hamilton Place Tapas Lounge
8. Official HECFI Limo Co.
9. Military Tattoo Office Lease
10. IATSE 129 Office Lease

EXHIBIT C INSURANCE

1. Throughout the term of the Agreement (including any renewal thereof), the Manager shall obtain and maintain as an Operating Expense, including the cost of any applicable deductible, the following policies of insurance.
 - (a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily injury and personal injury liability, property damage, participants/spectator's liability, employers liability, and voluntary compensation, having an inclusive limit of not less than Twenty Million Dollars (\$20,000,000) per occurrence. Coverage shall be on a worldwide basis, shall not contain an exclusion for pyrotechnics or other special effects, shall include injury/loss/damage, due to pollution arising from "hostile fires" and shall be endorsed to include the City of Hamilton as an additional insured. Coverage shall be provided for Host Liquor Liability.
 - (b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Manager for the provision of services;
 - (c) Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$1,000,000 per occurrence in respect of vehicles not owned by the Manager, that are used or operated on its behalf for the provision of services under the Agreement;
 - (d) Umbrella and/or Excess Liability Insurance policies may be applied to increase liability limits for primary coverages. Certificate(s) of insurance must specify the underlying policies to which the umbrella/excess coverages apply and indicate any applicable aggregates.
 - (e) Business Interruption Profits Form to include contingent business interruption, rental, extra expense and ingress/egress coverage of thirty million dollars (\$30,000,000).
 - (f) Comprehensive Crime Insurance, broad form coverage to adequately protect the City against loss of monies, securities or other properties, including property of the City while such property is in the Manager's care, custody, and control, for dishonesty, disappearance and destruction, to protect against incidents arising out of but not limited to theft, robbery or burglary; having a limit of not less than \$50,000 for Employee Dishonesty (Commercial Blanket Form A), Loss inside the Premises, and Loss outside the Premises and including computer funds transfers and audit expense;

2. The Manager shall maintain Property Insurance, all risk to insure its own property only (and not the Facility or any City or third party-owned property).
3. All policies of insurance within the scope of subsection (1) shall, subject to the terms of the indemnity provisions,
 - (a) be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to the City, that is licensed to carry on business in Ontario;
 - (b) show all values in Canadian Funds;
 - (c) contain cross liability and severability of interest provisions, as may be applicable;
 - (d) preclude subrogation claims against the City and any other person insured under the policy; and
 - (e) provide that at least 30 days prior written notice (15 days, in the case of automobile liability insurance, and 10 days in the event of non-payment of premiums) shall be given to the City by the Insurer before the Insurer or Manager takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof
4. The City reserves the right to require the Manager to purchase such additional insurance coverage as the City's Risk Management Services Office may reasonably require. The City reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements due to material or significant change arising from such matters as the nature of the work, contract value, industry standards, and availability of insurance) as the City may reasonably require from time to time. The City shall pay the incremental additional cost of such amended insurance at City's cost, and not as an Operating Expense but only where the Manager can establish to the satisfaction of the City, acting reasonably, that such increase in applicable insurance premiums for the insurance required pursuant to this Agreement does not result from the actions or omissions, negligence, claims history or reassessment by the insurer of the insurable risk posed by the Manager.
- 5.
5. Any insurance coverage acquired under the Agreement shall in no manner discharge, restrict or limit the liabilities assumed by the Manager under the Agreement. The dollar limit of insurance coverage shall not be limited by the dollar amount of the Agreement.
6. The Manager shall pay all premiums on the policies as they become due provided that the City may pay premiums as they become due and deduct the amount thereof from moneys due from the City to the Manager should the Manager fail to do so.

Proof of Insurance

1. The Manager shall deposit with the City such evidence of its insurance as provided in or required under the provisions of these Instructions, an Addendum or the Special Provisions at the time of

execution of the Agreement and thereafter during the term of the Agreement, no later than 20 Business Days following the renewal date of each applicable policy, the Manager shall deposit with the City an original Certificate of Insurance originally signed by an authorized insurance representative, confirming thereon relevant coverage information including but not limited to name/description of City contract, name of Insurer, name of Broker, name of Insured, name of Additional Insureds as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable, cancellation/termination provisions; or (at the City's election) a certified copy of the insurance policy or policies required under section 22. Certificate Holder will be addressed as the City Of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 attn: Risk Management Services. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address.

2. The Manager shall not do or omit to do anything that would impair or invalidate the insurance policies.
3. Delivery to and examination or approval by the City of any certificates of insurance or policies of insurance or other evidence of insurance shall not relieve the Manager of any of its indemnification or insurance obligations under the Agreement. The City shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance or to advise the Manager in the event such insurance coverage is not in compliance with the requirements set out in the Agreement.

EXHIBIT D

FACILITY CAPITAL AND MAINTENANCE

HAMILTON PLACE

City Responsibility (at City cost):

CAPITAL

- HVAC system - district heating & cooling, mechanical, pumps; fans; motors and all ancillary equipment associated to the HVAC system.
Capital & Maintenance
- Building automation system related to the operations of the building
Capital & Maintenance
- Building envelope (foundation; structural roofing system; window systems; walls; doors)
 - (1) roofing system - all major and minor repairs
 - (2) windows - replacement program only (caulking, cracks, broken due to vandalism will be proponent)
 - (3) walls - repointing and other major deterioration (graffiti & vandalism will be proponent)
 - (4) doors - replacement program only due to life cycle renewal
- Electrical supply up to and including the electrical cabinets or panels
- Generator(s)
- Fire life safety - life cycle renewal only
- Elevators - life cycle renewal and/or refurbishment
- Kitchen - capital replacement of refrigerator; freezers; dishwashers; tubs; sinks; stoves; walk-in coolers; exhaust hoods
- Exterior - interlock stone replacement program of 50% or more of total sq footage (if less than 50%, Manager shall be responsible for performing the work, the cost of which shall either be an Operating Expense or Capital Expense as described in this Agreement).
- Flooring, Carpeting - zero

Global Spectrum's Responsibilities (as an Operating Expense, unless constituting a Capital Expenditure, subject to the terms of this Agreement)

MAINTENANCE

- Building envelope
 - (1) roofing system - "all city" capital & maintenance

- (2) windows - caulking, cracks, broken due to vandalism, etc
- (3) walls - graffiti & vandalism
- (4) doors - door closures, hardware, locks, general wear & tear
- Electrical work beyond the panels & main cabinets; relamping program
- Fire life safety - required legislative testing and proper certification (monthly & annually); includes kitchen hoods.
- Elevators - TSSA required testing & certifications
- Kitchen - repairs to refrigerators; freezers; dishwashers; tubs; sinks; stoves; walk-in coolers; exhaust hoods
- **Exterior** - interlocking stones tripping hazards; snow removal; removal of garbage & debris, leaves, cigarette butts; signage; lighting; general landscaping; all exterior doors must be clear and free of snow, ice, debris, garbage etc
- Flooring, Carpeting - replacement of high traffic areas; tripping hazards
- Audio/Visual - communication equipment; electronics; speakers; video equipment; security system
- Washrooms - all inclusive stalls, i.e. toilets, sinks, plumbing, mechanical, electrical; dispensers (paper & soap) etc
- Fountains - fixtures & plumbing repairs
- Dressing rooms - all inclusive
- Seating - general maintenance; repairs & replacements of sporadic seating where required
- Stage - lighting, equipment, curtain system, props,

COPPS COLISEUM

City Responsibility (at the City's cost):

CAPITAL

- HVAC system -district heating & cooling,mechanical, pumps; fans; motors and all ancillary equipment associated to the HVAC system. **Capital & Maintenance**
- Building automation system related to the operations of the building **Capital & Maintenance**
- Building envelope (foundation; structural roofing system; window systems; walls; doors)
 - (1) roofing system - all major and minor repairs
 - (2) windows - replacement program only (caulking, cracks, broken due to vandalism will be proponent)
 - (3) walls - repointing and other major deterioration (graffiti &

vandalism will be proponent)

(4) doors - replacement program only due to life cycle renewal

- Electrical supply up to and including the electrical cabinets or panels
- Generator(s)
- Fire life safety - life cycle renewal only
- Elevators - life cycle renewal and/or refurbishment
- Kitchen - capital replacement of refrigerator; freezers; dishwashers; tubs; sinks; stoves; walk-in coolers; exhaust hoods
- Exterior - interlock stone replacement program of 50% or more of total sq footage (if less than 50%, Manager shall be responsible for performing the work, the cost of which shall either be an Operating Expense of Capital Expense as described in this Agreement)
- Flooring, Carpeting - zero

Global Spectrum's Responsibilities (as an Operating Expense, unless constituting a Capital Expenditure, subject to the terms of this Agreement)

MAINTENANCE

- Building envelope
 - (1) roofing system - "all city" capital & maintenance
 - (2) windows - caulking, cracks, broken due to vandalism, etc
 - (3) walls - graffiti & vandalism
 - (4) doors - door closures, hardware, locks, general wear & tear, weather stripping
- Electrical work beyond the panels & main cabinets; relamping program
- Fire life safety - required legislative testing and proper certification (monthly & annually); includes kitchen hoods.
- Elevators - TSSA required testing & certifications
- Kitchen - repairs to refrigerators; freezers; dishwashers; tubs; sinks; stoves; walk-in coolers; exhaust hoods
- **Exterior** - interlocking stones tripping hazards; snow removal; removal of garbage & debris, leaves, cigarette butts; signage; lighting; general landscaping; all exterior doors must be clear and free of snow, ice, debris, garbage etc
- Flooring, Carpeting - replacement of high traffic areas; tripping hazards
- Audio/Visual - communication equipment; electronics; speakers; video equipment; security system
- Washrooms - all inclusive stalls, i.e. toilets, sinks, plumbing, mechanical, electrical; dispensers (paper & soap) etc

- Fountains - fixtures & plumbing repairs
- Dressing rooms - all inclusive
- Seating - general maintenance; repairs & replacements of sporadic seating where required

Attached are maintenance and capital tables setting forth the responsibilities of the parties.



COPPS Exhibit
A.pdf



HP Exhibit A.pdf

EXHIBIT E

IT SERVICES

List of Recommended IT Transition Services		
#	Service Name	Description
1	Network Infrastructure, Communications and Internet Services	<p>Network Connectivity including Routers, switches, cables</p> <p>Voice and IP Phone Services</p> <p>Wireless Access Points</p> <p>Analog Voice</p> <p>TicketMaster Network Infrastructure & support to be defined in SLA.</p> <p>Wireless Access Points</p> <p>Network file services</p> <p>Remote connectivity</p> <p>Internet Services for Global Spectrum staff</p> <p>Digital Signs and Digital Media Players</p>
2	Desktop Services	<p>Provision of:-</p> <p>Desktop, Laptop Computers</p> <p>Monitors</p> <p>Locks</p> <p>Computer Bags</p> <p>Docking stations</p> <p>Keyboards</p> <p>Desktop Software (MS Office Suite 2010, Outlook CAL's)</p>
3	Printer Services	<p>Provide network printers (Printer, Scanner, Copier) as defined by the current IS contract and manage Moves, Adds, Changes (MAC's). Includes consumables (toner, filters) except paper and staples. Capital costs +usage</p>
4	Technical Support, Mon – Fri, 8:00 a.m. – 5:00 p.m.	<p>Enable staff to contact the City's IS Service Desk via phone or email and receive response and resolution to 1st and 2nd level incidents as per the SLA.</p>

List of Recommended IT Transition Services		
#	Service Name	Description
5	Email Services	Provide email messaging service via Exchange Server Infrastructure/Outlook client (may require changes to domain name (e.g. @coppscoliseum.ca
6	Additional After Hours Support	Technical 1 st and 2 nd level support outside normal business hours

Assumptions for the above recommended services are that all computing equipment would be replaced to the most recent model type and Windows 7 OS and that the current support and operational levels will be required. Any additional usage above 2011 levels, e.g. Bandwidth increases (including internet and voice) and printing increases, will be negotiated as required.

Regular Service Meetings will be held between City of Hamilton Information Services and Global Spectrum staff.

EXECUTION VERSION

CM11013(e) Appendix B

FACILITY OPERATING MANAGEMENT AGREEMENT

between

CITY OF HAMILTON

and

THE HOSPITALITY CENTRE CORPORATION

and

MERCANTI BANQUET & CONVENTION CENTRE LTD.

Dated: March 1, 2013



SCARFONE HAWKINS LLP
Barristers, Solicitors and Trademark Agents

One James Street South, 14th Floor
Hamilton, Ontario L8N 3P9

www.scarfonehawkinsllp.com

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Exhibit "F" – Insurance

FACILITY OPERATING MANAGEMENT AGREEMENT

This Facility Operating Management Agreement is made as of the 1st day of March, 2013 (the “**Effective Date**”), by and between the City of Hamilton (“**Owner**”), and The Hospitality Centre Corporation (“**Manager**”) and Mercanti Banquet & Convention Centre Ltd. (“**Mercanti**”).

RECITALS

WHEREAS Owner owns the following convention facility known as the Hamilton Convention Centre located at 1 Summer’s Lane, Hamilton, Ontario (the “**Facility**”), a sports and entertainment arena known as Copps Coliseum (“**Copps Coliseum**”), and a theatre known as Hamilton Place (“**Hamilton Place**”), each of which are located in Hamilton, Ontario and are currently operated by The Hamilton Entertainment and Convention Facilities Inc. (“**HECFI**”);

AND WHEREAS Owner desires that HECFI relinquish of all its management responsibilities of the Facility, Copps Coliseum and Hamilton Place and Hamilton Convention Centre;

AND WHEREAS HECFI historically has provided venue access to various community-based arts and cultural organizations;

AND WHEREAS Owner is negotiating with Global Spectrum Facilities Management, L.P. (“**Global Spectrum**”) to engage Global Spectrum as the manager of Copps Coliseum and Hamilton Place;

AND WHEREAS Owner desires to engage Manager to manage and operate the Facility, and Manager desires to accept such engagement, pursuant to the terms and conditions contained herein;

AND WHEREAS the parties have each executed a Memorandum of Understanding with respect to the subject matter of this Agreement (the “**MOU**”);

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows.

ARTICLE 1 – INTERPRETATION

Section 1.1. Definitions.

For purposes of this Agreement, including the Recitals, the following terms have the following meanings:

- (a) “**Affiliate**” means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person.

- (b) “**Annual Capital Contribution**” shall be an annual contribution of One Hundred Thousand Dollars (\$100,000) to the Facility.
- (c) “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which the offices of the City of Hamilton are closed.
- (d) “**Capital Contribution**” shall be an improvement to the Facility made by Manager of Six Hundred Thousand Dollars (\$600,000.00), as approved by Owner; such approval not to be unreasonably withheld or delayed, subject to Section 3.5.
- (e) “**Capital Expenditures**” means all expenditures for building additions, alterations, repairs or improvements to the Facility and all requisite acquisitions, purchases and installations of additional or replacement furniture, machinery or equipment necessary for the operation of the Facility, as set out in Exhibit "A", where: (i) the cost of such expenditure is greater than Five Thousand Dollars (\$5,000.00); (ii) such expense has been approved in advance in writing by the City, except where Emergency Repairs are reasonable required; and (iii) the depreciable life of the applicable capital item is, according to GAAP, in excess of five (5) years, but in all cases shall exclude carpeting, window dressings, painting, and chattels or repairs due to Manager’s negligence.
- (f) “**Claim**” and “**Claims**” shall be read as referring to all claims, demands, actions, causes of action, grievance, proceedings, investigations, damages, losses, costs, liabilities or expenses, including all professional and legal costs incurred in relation thereto.
- (g) “**Collective Agreements**” means collectively, any collective bargaining agreements in respect of the Employees now or in the future applicable to the Facility or any of them, including but not limited to those collective agreements in place with The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local B-173, United Food and Commercial Workers Local 102, place with United Food and Commercial Workers Local 102, The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 129, and The International Union of Operating Engineers. Local 772, A.F.L. – C.I.O./C.L.C.
- (h) “**Commercial Rights**” means naming rights, pouring rights, advertising, sponsorships, the branding of food and beverage products for resale, and memorial gifts at or with respect to the Facility which are owned or controlled by Owner.
- (i) “**commercially reasonable**” shall refer to a standard of reasonableness in a commercial context, and in no case shall be a less burdensome standard than

reasonableness. This definition shall apply to variations of this term.

- (j) “**Contribution**” shall mean Capital Contribution, Manager Contribution and/or Owner Contribution, as applicable.
- (k) “**CUP**” has the meaning given to it in Section 7.4.
- (l) “**Effective Date**” has the meaning given to it above.
- (m) “**Emergency Repair**” means the repair of any condition which, if such repair is not performed immediately, creates an imminent danger to persons, the environment or property present at the Facility in excess of Five Thousand Dollars (\$5,000.00), and/or an otherwise unsafe condition at the Facility that threatens persons or property.
- (n) “**Employee Payments**” has the meaning given to it in Section 6.4.
- (o) “**Employees**” has the meaning given to it in Section 6.2, and “**Employee**” means any one of them.
- (p) “**Event of Force Majeure**” means any of the following acts, omissions, facts, events or occurrences which have the effect of precluding or otherwise preventing the performance by a party of any of its obligations under this Agreement:
 - (i) act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, any Law or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labour dispute which results in a strike or work stoppage affecting the Facility or the Services; and
 - (ii) any other cause or occurrence outside the reasonable control of such non-performing party which by the exercise of due diligence and best commercial efforts could not be reasonably prevented or overcome and which would frustrate the non-performing party from performing its obligations under this Agreement.
- (q) “**Events**” has the meaning given to it in Section 4.3.
- (r) “**Existing Contracts**” means those agreements existing as of the Effective Date between Owner or HECFI and other persons in connection with the operation and maintenance of the Facility, including but not limited to those service contracts, revenue generating contracts and such other agreements, arrangements and commitments listed on Exhibit "B".
- (s) “**Existing Inventory And FF&E**” means inventory and furniture, fixtures and

equipment that exists at the Facility as of the time of the joint inventory taken by the parties as set forth in Section 2.3, and as shall be specified in Exhibit "C".

- (t) “**Facility**” has the meaning ascribed to such term in the Recitals to this Agreement, and shall be deemed to include the entire convention center complex, including but not limited to the meeting rooms, banquet rooms, exhibition space, common areas, lobby areas, executive and other offices, storage and utilities equipment, and the entrances, ground, sidewalks and parking areas immediately surrounding the Facility and adjacent thereto, as further specified in Exhibit "D".
- (u) “**GAAP**” means the generally accepted accounting principles so described and promulgated by the Canadian Institute of Chartered Accountants which are applicable on the date on which any calculation is to be effective or at the date of any financial statements referred to herein, as the case may be.
- (v) “**General Manager**” has the meaning given to it in Section 6.3.
- (w) “**HECFI**” has the meaning given to it in the Recitals.
- (x) “**Initial Term**” has the meaning given to it in Section 4.1.
- (y) “**Intellectual Property**” means any and all (i) trade secrets, confidential information, know-how, methods, processes, customer lists, supplier lists and documentation relating to any of the foregoing; (ii) copyrights, copyright registrations and applications for copyright registration; (iii) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade-mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; and (iv) any other intellectual property and industrial property.
- (z) “**Laws**” means all applicable (i) constitutions, treaties, laws, statutes, codes, ordinances, principles of common law, orders, decrees, rules, regulations, municipal by-laws and enactments, whether municipal, provincial, federal, domestic, foreign or international, and (ii) judgments, orders, writs, injunctions, decisions, rulings, decrees, directions, instructions, penalties, sanctions and awards of any governmental entity.
- (aa) “**Management-Level Employees**” means, collectively, the General Manager and any assistant general manager, business manager, director of operations, director of sales and marketing, director of security, finance director, event manager and other department heads or Employees with different titles but duties typically associated with any of the foregoing positions, employed by Manager to perform or otherwise assist or participate in the performance of the Services.
- (bb) “**Manager Contribution**” shall mean payments made from Manager to Owner in

accordance with Article 3 and shall represent Manager's payment for utilities provided by the CUP.

- (cc) **"Manager's Property"** has the meaning given to it in Section 5.2.
- (dd) **"Manager"** has the meaning given to it in the Recitals, and its permitted successors and assigns.
- (ee) **"Marketing Plan"** means a plan for the advertising and promotion of the Facility and events at the Facility, which may contain, but not be limited to, the following elements: (i) market research, (ii) market position, (iii) marketing objectives, (iv) marketing strategies, (v) booking priorities, (vi) targeted events - local, regional, national and international, (vii) targeted meetings, conventions and trade shows, (viii) industry advertising campaign, (ix) internal and external support staff, (x) advertising opportunities at the local, regional and national level, (xi) attendance at various trade shows, conventions and seminars, (xii) incentive formulas for multiple event presenters, (xiii) merchandising and retail, (xiv) food and beverage, (xv) a plan for the sale of Commercial Rights, including without limitation naming rights, pouring rights, advertising signage, sponsorships (including event sponsorships), branding of food and beverage products for resale, and memorial gifts, (xvi) a plan regarding national, regional and local public relations and media relations, (xvii) development of an in-house advertising agency, and (xviii) policies regarding the use of trade/barter.
- (ff) **"MOU"** has the meaning given to it in the Recitals.
- (gg) **"Operating Account"** means the account used by Manager for the receipt of revenues and the payment of Operating Expenses in respect of the Facility.
- (hh) **"Operating Contracts"** means, collectively, the Existing Contracts and any other service contracts, revenue generating contracts, booking commitments and other agreements, arrangements and commitments entered into by or to which Manager is or becomes a party in connection with the performance of the Services or otherwise in relation to the management and operation of the Facility, including but not limited to those related to food and beverage services, ticketing services, staging, Commercial Rights, advertising and signage sales, web design services, graphic design services, maintenance, repair, cleaning, and janitorial services.
- (ii) **"Operating Expenses"** means all direct and capital costs, disbursements and other expenses or liabilities incurred by Manager in connection with its performance of the Services, including, but not limited to, the following: (i) Employee payroll, benefits, relocation and termination costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales costs, (iv) interior cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) INTENTIONALLY DELETED, (viii) printing and stationary costs, (ix) postage

and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing which do not amount to Capital Expenditures, (xii) security expenses, (xiii) telephone and communication charges, (xiv) Travel Expenses, (xv) cost of Employee uniforms and identification, (xvi) exterminator, snow and trash removal, (xvii) computer, software, hardware and training costs, (xviii) Manager parking for more than two (2) parking spots, (xix) utilities expenses, subject to Section 7.4, (xx) office expenses, (xxi) audit and accounting fees, (xxii) legal fees, except for legal fees associated with disputes between the parties to this Agreement, (xxiii) all bonds and worker's compensation insurance, (xxiv) commissions and all other fees payable to third parties, including but not limited to commissions relating to food, beverage and merchandise concessions services and Commercial Rights sales, (xxv) cost of complying with any Laws, (xxvi) costs incurred by Manager to settle or defend any third-party Claims asserted against Manager arising out of its provision of the Services, (xxvii) costs incurred under Operating Contracts, (xxviii) Operating Taxes, (xxix) amounts payable to Subcontractors for performance of any other Operating Expense, and (xxx) costs associated with shared common areas, security payroll, exterior maintenance of laneways, walkways, interlocking brick, and camera systems, but does not include (i) costs of repair or replacement of damaged windows or ineffective windows, paved entrances, exterior wood walls and railings, (ii) Capital Expenditures, (iii) or any liability whatsoever for any indebtedness of Owner in relation to the Facility..

- (jj) **“Operating Taxes”** means any and all governmental assessments, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, including but not limited to all sales, use, service, excise and harmonized sales taxes and all income taxes of Manager's Employee's and remittance obligations in respect thereof, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of activities conducted by Manager at the Facility, including without limitation the sale of concessions, the sale of tickets, employment and remuneration of the Employees, payment of Subcontractors, compliance with Operating Contracts, and the holding of events at the Facility.
- (kk) **“Operating Year”** means each twelve (12) month period during the Term, commencing from January 1, 2014 and ending on December 31st of each year.
- (ll) **“Operations Manual”** means the document to be developed by Manager which shall contain terms regarding the management and operation of the Facility, including detailed policies and procedures to be implemented in operating the Facility, as agreed upon by both Owner and Manager.
- (mm) **“Owner Contribution”** shall mean payments made from Owner to Manager in accordance with Article 3.
- (nn) **“Owner”** has the meaning given to it in the Recitals, and its permitted successors and

assigns.

- (oo) “**Renewal Term**” has the meaning given to it in Section 4.2.
- (pp) “**Required Insurance**” has the meaning given to it in Section 10.1.
- (qq) “**Second Renewal Term**” has the meaning given to it in Section 4.2.
- (rr) “**Services**” has the meaning given to it in Section 2.1.
- (ss) “**Subcontractors**” has the meaning given to it in Section 6.2, and “**Subcontractor**” means any one of them.
- (tt) “**Term**” has the meaning given to it in Section 4.2.
- (uu) “**Termination Date**” has the meaning given to it in Section 4.1.
- (vv) “**Transition Year Guarantee**” means Owner’s financial covenant to compensate Manager for actual losses suffered in excess of Owner Contribution during the Transition Year directly related to the management of the Facility under this Agreement, which such reimbursement shall be limited to a maximum of Four Hundred Fifty Thousand and Five Hundred and Forty-Six Dollars (\$450,456.00) on an annualized basis or Three Hundred Seventy-Five Thousand and Four Hundred and Fifty-Five Dollars (\$375,455.00) for a ten-month period. For greater certainty, the foregoing monetary limit is exclusive of Owner Contribution for the Transition Year.
- (ww) “**Transition Year**” means the period between Effective Date and December 31, 2013. For greater certainty, the Transition Year is not the first (1st) Operating Year under this Agreement
- (xx) “**Travel Expenses**” means all travel and/or lodging expenses incurred by Manager or any of its Employees where they are required to travel to any place or places outside of the City of Hamilton in order to perform the Services in accordance with this Agreement or in its reasonable business judgment.
- (yy) “**Trust Account**” has the meaning given to it in Section 4.3.
- (zz) “**Utilities**” means all sanitary (including sewer), electric current, water, gas and all other public or private utilities or services extraordinarily as well as ordinarily supplied or charged at any time to the Facility.

Section 1.2. Headings and References.

The division of this Agreement into Articles, Sections, subsections and further divisions, and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar

expressions refer to this Agreement and not to any particular Articles, Sections, subsection or other portion hereof, and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections, subsections, paragraphs, subparagraphs and further subdivisions are references to such subdivisions of this Agreement. Any reference to a "party" or the "parties" refers to a party or the parties to this Agreement, unless something in the subject matter or context is inconsistent therewith.

Section 1.3. Extended Meanings.

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing "persons" include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

Section 1.4. Calculation of Time Periods.

Where a time period is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time period includes that day. Where a time period is expressed to begin after or to be from a specified day, the time period does not include that day. Where anything is to be done within a time period expressed after, from or before a specified day, the time period does not include that day. If the last day of a time period is not a Business Day, the time period shall end on the next Business Day.

Section 1.5. Accounting Terms.

All accounting terms not specifically defined in this Agreement shall be construed in accordance with GAAP.

Section 1.6. Currency.

All references to dollars, money or currency herein are to lawful money of Canada.

Section 1.7. Governing Law.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of Hamilton, Ontario with respect to any matter arising under or related to this Agreement.

Section 1.8. Statutory Instruments.

Unless otherwise specifically provided in this Agreement, any reference in this Agreement to any Law shall be construed as a reference to such Law as amended or re-enacted from time to time or as a reference to any successor thereto.

Section 1.9. Severability.

If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under Law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by Law.

Section 1.10. Entire Agreement.

The following are the Exhibits annexed hereto and incorporated by reference and deemed to be part hereof:

Exhibit "A" – Owner' s Capital Expenditures

Exhibit "B" – Existing Contracts

Exhibit "C" – Existing Inventory And FF&E

Exhibit "D" – Surrounding Facility

Exhibit "E" – Manager' s Duties

Exhibit "F" – Insurance

This Agreement, including the aforesaid Exhibits, sets forth all the covenants, promises, agreements, conditions and understandings between Manager and Owner concerning the subject matter of the Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as set forth herein. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

ARTICLE 2 – ENGAGEMENT

Section 2.1. Engagement.

Owner hereby engages Manager for and during the Term to act as the sole and exclusive manager and operator of the Facility as a banquet, convention and entertainment venue, subject to and as more fully described in this Agreement, and, in connection therewith, to perform those services described in Exhibit "E", together with any tasks, duties and initiatives ancillary thereto (the "Services"). Manager hereby accepts such engagement, and shall perform the Services, subject to the limitations expressly set forth in this Agreement.

Section 2.2. Performance Security

Manager shall deliver to Owner as of the Effective Date a performance bond of Five Hundred Thousand Dollars (\$500,000.00) to secure the performance of Manager's obligations under this Agreement for the Transition Year only. As of January 1, 2014, Manager shall deliver to Owner a

performance bond of One Million Dollars (\$1,000,000.00) to secure the performance of Manager's obligations under this Agreement for the duration of the Term, upon delivery of which the first aforesaid performance bond shall be returned to Manager. Either of the performance bonds described in this Section 2.2 may be drawn upon as a result of a claim for indemnity by Owner pursuant to Section 9.1(b), provided Owner complies in all material respects with Article 9 in so doing.

Section 2.3. Joint Inventory Review.

Within five (5) Business Days following the Effective Date, the parties, working together, shall conduct a joint inventory of the Facility and shall develop a mutually agreed written list of the Existing Inventory And FF&E existing in the Facility as of the Effective Date. Such list shall be signed by an authorized representative of each of the parties hereto and shall thereafter be deemed to constitute Exhibit "C" to this Agreement.

Section 2.4. Liquor License.

Manager shall make its best efforts to obtain a liquor license for the Facility within two (2) months of the Effective Date.

ARTICLE 3 – COMPENSATION

Section 3.1. Transition Year.

For the Transition Year, the parties shall be responsible for the following payments:

- (a) each party shall pay to the other a prorated amount of its Contribution for the Transition Year, which shall be equal to ten-twelfths (10/12) of the value of the Contributions for the first (1st) Operating Year;
- (b) Owner shall pay to Manager the Transition Year Guarantee, provided that to the extent the audited financial statements for the Transition Year, as made available to Owner pursuant to Section 3.6, do not show an actual net loss in excess of the prorated Owner Contribution, Manager shall repay the unused portion of the Transition Year Guarantee on mutually agreed terms. For greater certainty, the unused portion of the Transition Year Guarantee shall be equal to the total prorated Transition Year Guarantee, less the net losses suffered by Manager during the Transition Year directly related to the management of the Facility under this Agreement, less the prorated Owner Contribution for the Transition Year. In the event Manager fails to provide audited financial statements within one hundred and twenty (120) days of the end of the Transition Year, Manager shall repay to Owner the entire amount of the Transition Year Guarantee within one hundred and fifty (150) days of the end of the Transition Year. Owner shall have the right to set-off any repayment of the Transition Year Guarantee against Owner Contribution;

- (c) Manager shall make the Capital Contribution to the Facility at the time during the Transition Year, in the form and on terms as agreed to by the parties prior to or during the Transition Year; and
- (d) Owner shall remit and deliver to Manager any and all prepaid deposits received by Owner or HECFI in relation to events scheduled to be held at the Facility.

Owner's prorated Contribution and the Transition Year Guarantee shall be paid to Manager monthly and in accordance with Section 3.4. All other terms for the Transition Year shall be in accordance with the remainder of this Agreement, applied on a *mutatis mutandis* basis, with all financial terms prorated to ten-twelfths (10/12) of their original value, where applicable.

Section 3.2. Owner Contributions.

Owner shall pay Manager a subsidy as follows in the manner, at the times and on the terms set out in this Agreement (the "**Owner Contribution**"):

- (a) For the first (1st) Operating Year: Three Hundred and Forty-Four Thousand and Four Hundred and Fifty-Four Dollars (\$344,454.00);
- (b) For the second (2nd) Operating Year: Two Hundred and Fifty Thousand Dollars (\$250,000.00);
- (c) For the third (3rd) Operating Year: Two Hundred Thousand Dollars (\$200,000.00);
- (d) For the fourth (4th) Operating Year: One Hundred And Twenty-Five Thousand Dollars (\$125,000.00); and
- (e) For the fifth (5th) Operating Year, and all subsequent Operating Years, there shall be no Owner Contribution.

Section 3.3. Manager's Utility Contribution.

Manager shall pay Owner a subsidy as follows in the manner, at the times and on the terms set out in this Agreement (the "**Manager Contribution**"):

- (a) For the first (1st) Operating Year: One Hundred and Fifteen Thousand Dollars (\$115,000.00);
- (b) For the second (2nd) Operating Year: One Hundred and Twenty-Five Thousand Dollars (\$125,000.00);
- (c) For the third (3rd) Operating Year: One Hundred and Thirty-Five Thousand Dollars (\$135,000.00);
- (d) For the fourth (4th) Operating Year: One Hundred and Forty-Five Thousand Dollars (\$145,000.00); and
- (e) For the fifth (5th) Operating Year, and all subsequent Operating Years: One Hundred and Sixty-Five Thousand Dollars (\$165,000.00).

Section 3.4. Payment Terms.

The first payment of Contributions by the parties as described in Section 3.1 shall occur on or before the Effective Date for one twelfth (1/12) of the annualized amount or one tenth (1/10) of the prorated amount. The parties shall thereafter, on or before first (1st) day of each month deposit in the Operating Account, or other account as directed by the applicable party, one twelfth (1/12) of the Contributions for the Operating Year. All amounts payable to by either party under this Agreement, including but not limited to the Contributions, shall be paid by way of cash, certified cheque/bank draft, direct deposit or such other manner as may be agreed to by the Parties.

Section 3.5. Manager's Annual Capital Contribution.

Starting in the first (1st) Operating Year, during each Operating Year, Manager shall make improvements to the Facility, as agreed to in advance by the parties, in the amount of the Annual Capital Contribution. Manager shall at its cost prepare and deliver to Owner unaudited statements showing the details of the Annual Capital Contribution, together with all supporting documentation, which unaudited statements and supporting documentation Owner shall be entitled to have audited at its own expense. Notwithstanding the monetary amounts fixed by this Agreement for the Capital Contribution and the Annual Capital Contributions, Manager shall be entitled with the consent of Owner to make capital contributions in any year which exceed the fixed Capital Contribution or Annual Capital Contribution in such year, as the case may be, and in so doing, Manager's Annual Capital Contribution obligation in the following year(s) shall be reduced on a dollar-for-dollar basis by the amount of such excess. During the Initial Term, if Manager demonstrates with an audited financial statement to Owner acting reasonably that Manager cannot make its Annual Capital Contribution and maintain profitability, the parties shall in good faith lower the amount of the Capital Contribution and the Annual Capital Contribution due during the Initial Term, provided that the aggregate amount of the Capital Contribution and the Annual Capital Contribution for the Initial Term shall never be lower than Seven Hundred and Fifty Thousand Dollars (\$750,000). If thereafter during the Initial Term, Manager maintains profitability, the parties shall in good faith discuss raising the amount of Manager's Capital Contribution and Annual Capital Contribution to original levels set out herein on reasonable terms.

Section 3.6. Audit; Yearly Financial Meeting.

Manager agrees at its cost to make available to Owner a certified audit report for the Transition Year on the accounts and records as kept by Manager for the Facility detailing the individual profits and losses within one-hundred and twenty (120) days following the end of the Transition Year. Such audit shall be performed by an external auditor approved by Owner, and shall be conducted in accordance with GAAP. Within one hundred and twenty (120) days of the end of each Operating Year, Manager shall meet with Owner's City Treasurer to discuss the financial operations of the Facility for the past Operating Year, including details of profits and losses and viewing of accounts and records as reasonably required, provided the City Treasurer has executed a commercially reasonable Confidentiality Agreement in favour of Manager negotiated by the parties thereto in good faith, and containing a clause stipulating that the parties thereto shall not be liable to each other for complying with federal or provincial laws, and further provided that Owner is not

permitted to remove, make copies of or otherwise retain possession of any of the financial documents reviewed nor any of the contents thereof.

ARTICLE 4 – TERM; TERMINATION

Section 4.1. Initial Term.

The term of this Agreement shall begin on and this Agreement shall come into force as of 12:01 a.m. on the Effective Date, and, unless sooner terminated pursuant to the provisions of Section 4.4, shall expire on 11:59 p.m. on the 31st day of December, 2019 (this date, or such earlier or later date as this Agreement may be extended or terminated pursuant to Section 4.2 and Section 4.4, referred to as the “**Termination Date**”)(the “**Initial Term**”).

Section 4.2. Renewal.

Owner acting reasonably may extend the Initial Term of this Agreement for five (5) years to expire on 11:59 p.m. on the 31st day of December, 2024 (the “**Renewal Term**”) by giving not less than ninety (90) days’ prior written notice, subject to Section 4.3. If the Initial Term is extended as aforesaid, Owner acting reasonably may further extend this Agreement for an additional five (5) years to expire on 11:59 p.m. the 31st day of December, 2029 (the “**Second Renewal Term**”) upon ninety (90) days’ prior written notice prior to the end of the Renewal Term (the Initial Term and the subsequent Renewal Term and Second Renewal Term, as applicable shall be referred to as the “**Term**”). Provided the recipient representative(s) of Owner execute on or before the day which is one hundred and fifty days (150) prior to the end of the Initial Term a commercially reasonable Confidentiality Agreement in favour of Manager negotiated by the parties thereto in good faith, and containing a clause that stipulates that the parties thereto shall not be liable to each other for complying with federal or provincial laws, Manager shall deliver to Owner an independently audited statement indicating whether Manager on average earned a profit from the operation of the Facility during the Initial Term, and if a profit is so indicated, the parties agree to negotiate in good faith within thirty (30) days of delivery of such statement an increase to Manager Contribution for the Second Renewal Term in the event Owner renews this Agreement. If the parties agree that the aforesaid negotiations cannot be completed within such thirty (30) day period, the parties shall be granted a further thirty (30) days for such negotiations. In the event the Term is extended for the Renewal Term, the parties shall meet at least one hundred and fifty (150) days prior to the end of the Renewal Term to discuss in good faith any financial or operation issues pertaining to this Agreement.

Section 4.3. Five Year Review; Effect of Non-Renewal of the Initial Term.

In the event that Owner does not deliver written notice of its intention to renew this Agreement within the time allotted therefor at the end of the Initial Term, then the books and records of the operations of the Facility shall be submitted to a duly qualified, independent business valuator mutually chosen by the parties, with costs evenly divided by the parties (the “**Valuator**”). The Valuator shall determine the fair market value of all events booked at the Facility by Manager between the end of the Initial Term and 11:59 p.m. on the 31st day of December, 2024 (the “**Events**”)

on an Event-by-Event basis in a manner consistent with usual practice concerning a like business, and applying generally accepted valuation principles (the “**Value**”). After the Value has been determined, such Value shall be paid by Owner into a trust account (the “**Trust Account**”), and Manager shall only be entitled to payments from the Trust Account upon the occurrence of any the Events. The Trust Account shall remain open for at least thirty (30) days after the final Event has taken place, or has been scheduled to take place, as it may have been rescheduled. Upon closure of the Trust Account, all unused funds shall be paid to Owner.

Section 4.4. Termination.

This Agreement may be terminated in the following circumstances, on the following bases and subject to the following conditions, but in all cases subject to Section 4.3 and Section 4.7:

- (a) automatically on expiration of the Term, as it may be extended;
- (b) by either party upon thirty (30) days’ written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during thirty (30) day notification period, provided that:
 - (i) if such failure cannot reasonably be cured within such thirty (30) day period, then a longer period of time shall be afforded to cure such breach, up to a further sixty (60) days, provided that the party in default is diligently seeking a cure and the non-defaulting party is not irreparably harmed by such extension of the cure period; and
 - (ii) an Event of Force Majeure does not constitute a failure entitling the other party to so terminate this Agreement, unless such event of Force Majeure continues uninterrupted for a period of one (1) year, subject to Section 12.5;
- (c) by either party immediately by written notice upon the other party being judged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the other party shall be appointed and shall not be discharged within one hundred twenty (120) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency Laws, or if such petition shall be filed against either party and shall not be dismissed within one hundred twenty (120) days after such filing;
- (d) by Manager if Owner fails to make any payment due to Manager required under this Agreement and such failure continues uncured for a period of ninety (90) days following delivery of written notice by Manager to Owner thereof, provided Manager is not in default of this Agreement; or
- (e) by either party with one hundred and twenty (120) days’ written notice pursuant to Sections 12.4 and 12.5.

Any time period set out in this Section 4.4 related to notice for termination of this Agreement shall be tolled by a Notice of Dispute issued pursuant to Section 12.1 until such time as (i) the Dispute in question has been resolved and any notice of termination under this Section 4.4 has been retracted; or (ii) the decision and reasons of the Arbitrator pursuant to the Notice of Dispute have been issued.

Section 4.5. Effect of Termination.

Subject to Section 4.3 and Section 4.7, upon the Termination Date, the following obligations shall apply to the parties in respect of the termination of this Agreement, and such obligations shall not merge on termination and shall survive the termination of this Agreement:

- (a) the engagement described in Section 2.1 shall be at an end and Manager shall promptly discontinue the performance of all Services;
- (b) Manager shall leave the Facility in a state of good repair or in substantially the same state of repair as at the commencement of the Term, as the case may be, in all cases subject to reasonable wear and tear;
- (c) return to the Facility all Existing Inventory And FF&E in a similar condition as it was at the beginning of the Term, reasonable wear and tear excepted, or replace such items with items of similar kind and quality;
- (d) Owner shall promptly pay Manager and/or Manager shall promptly re-pay, as the case may be, all Contributions and other payments due or payable to Manager or Owner under this Agreement accruing or payable up to the Termination Date, which Contributions shall be pro-rated to the extent the Termination Date does not fall on the last day of the applicable Operating Year or Transition Year;
- (e) Subject to Section 4.5(j), Manager shall be forever relieved, released and discharged from, all obligations relating to or arising after the Termination Date in respect of the management and operation of the Facilities, including but not limited to the Services and all obligations under any Operating Contracts, provided the Operating Contracts and other benefits and obligations associated with the Facility are assigned to Owner or its designee;
- (f) Neither party shall use any logo, trademarks, trade-names, branding or any other Intellectual Property of the other party, which for further clarity shall require that any composite logos or branding will be immediately discontinued and any domain names containing the trademarks or trade-names of both parties will be immediately discontinued and such registrations shall not be renewed by Owner;
- (g) Manager shall provide to Owner all documents and details required for Owner or one of its designees to run any events at the Facility which have already been booked and are scheduled to be held after the termination of this Agreement;
- (h) Manager shall not take any action in any form whatsoever to interfere with any events at the Facility which have already been booked and are scheduled to be held after the

termination of this Agreement, including without limitation, holding such events at another of Manager's venues;

- (i) Manager shall perform such acts and execute such documents as are necessary to assign all Operating Contracts to Owner or its designee; and
- (j) in addition to this Section 4.5 and Article 9, any provisions of this Agreement that are specifically indicated or intended to survive expiration or termination of this Agreement shall so survive.

Section 4.6. No Further Claims.

Except for the entitlements set out in Section 4.3, Section 4.5 or as otherwise described in this Agreement, and provided all such entitlements and obligations are fully complied with by Owner, Manager shall have no other right or remedy, at law or in equity, against Owner for a termination of this Agreement pursuant to Section 4.4(a).

Section 4.7. Closure and Re-Opening of the Facility.

In the event this Agreement is terminated as a result of the closure or cessation of operations of the Facility, and Owner at some subsequent time re-opens and resumes operations of the Facility, this Agreement shall at such time, continue and resume and become again in full force and effect as if it had never been terminated, save and except that the parties shall have been relieved of all obligations under this Agreement during the time in which the Facility was closed (other than those obligations pursuant to provisions of this Agreement which survive termination), and the Term shall be extended for a period of time equal to the period of time in which the Facility was closed. This Section 4.7 shall survive the termination of this Agreement.

ARTICLE 5 – OWNERSHIP; USE OF THE FACILITY

Section 5.1. Ownership of Facility, Data, Equipment and Materials.

Owner will at all times retain ownership of the Facility, including but not limited to real property, products of Capital Expenditures made by Owner, fixtures and similar property by Owner, but not including Manager's Property. Notwithstanding, Manager shall have exclusive control over the Facility and access thereto, subject to the terms of this Agreement. Owner and its staff, agents, and contractors, including but not limited to the City of Hamilton Director of Energy Fleet, Facilities and Traffic and its agents, staff and contractors, shall at all times be entitled to access to the Facility as required in order to perform its obligations hereunder or as it may otherwise reasonably require, provided consent is first obtained from Manager, such consent not to be unreasonably withheld, or an emergency requires immediate access to the Facility. Any data, equipment or materials furnished by Owner to Manager shall be returned to Owner when no longer needed by Manager to perform the Services.

Section 5.2. Manager's Property.

Except as provided in Section 5.5, the Operations Manual, all other Intellectual Property owned, created or developed by Manager before, during and after the Term without reliance upon or inputs from Intellectual Property of Owner, and all chattels provided or installed by Manager without reimbursement by Owner (collectively, the "**Manager's Property**") shall be and become the exclusive property of Manager. For greater certainty, any Intellectual Property containing the words "Hamilton Convention Centre" or any logo or image of the Hamilton Convention Centre or any other Intellectual Property of Owner which exists at the time of this Agreement or is developed during the Term shall not become Manager's Property, nor shall any Intellectual Property of Manager existing at the time of this Agreement or developed by Manager during the Term, whether in connection with the Facility or otherwise, become Owner's property where it is not coupled, blended or used in conjunction with the aforesaid Intellectual Property of Owner. Any Intellectual Property developed during the Term in connection with the Facility which contains a composite or hybridization of the Intellectual Property of the parties shall be owned jointly by the parties to the extent permitted by Law and shall be subject to the restrictions on use described in Section 4.5(f) following termination of this Agreement. For clarity, Intellectual Property developed by Manager for use, in whole or in part, for its business operations outside of the Facility shall remain with Manager to the extent such Intellectual Property does not directly pertain to the Facility, and any operational know how, techniques, methods and processes developed solely for the Facility shall be Owner's Property. Owner shall not use, retain or maintain copies of any of Manager's Property after the end of the Term, and hereby waives any and all right, title and interest therein, if any, including but not limited to moral rights and rights in equity. Upon termination of this Agreement, Manager may remove all of Manager's Property from the Facility at its own expense. Except as provided herein, Owner shall not appropriate, disclose, permit to be disclosed or otherwise infringe on Manager's Property in the Facility or Manager's Intellectual Property marked as confidential that has been provided to Owner under this Agreement during the Term. Notwithstanding the foregoing, any of Manager's Property left at the Facility after the Termination Date shall become the property of Owner thirty (30) days after the Termination, unless otherwise agreed to by the parties in writing prior to thirty (30) days after the Termination Date. Manager shall be liable for removal, disposal and any damage caused by Manager's Property left at the Facility after the Termination Date, unless otherwise agreed to by the parties in writing. In the event of any rebranding campaign for the Facility, Manager shall consult with Owner prior to any rebranding and shall cooperate with Owner to protect Owner's Intellectual Property.

Section 5.3. Right of Use by Manager.

Owner hereby grants Manager the right and license to use the Facility and other property described in Section 5.1, and Manager accepts such right of use, for the purpose of performing the Services. Owner shall provide Manager and its Employees and Subcontractors with unrestricted access to and within the Facility at all times. Such access shall include, the right to erect, move and deconstruct or disassemble within and on the property of the Facility signage, booths, food-service facilities, audio-visual equipment, supply stations, dining facilities and such other constructions and facilities as may reasonably be required in the provision of the Services, provided that Manager

obtain Owner's written permission in advance for any change to: (i) any immovable object at the Facility; (ii) the structure of the Facility; (iii) the Facility where union involvement is required under the Collective Agreements; or (iv) any other item as agreed to in good faith by the CMT; such permission shall be granted or withheld in Owner's sole and absolute discretion. The parties agree to cooperate to minimize the disruption to Manager's operation of the Facility to a commercially reasonable extent. Owner shall provide Manager with a sufficient amount of suitable office space in the Facility as is reasonably necessary to enable Manager to perform its obligations under this Agreement. Owner shall make available to Manager two (2) parking spaces as close as reasonably possible to the Facility at no cost.

Section 5.4. Existing Inventory.

Prior to the Effective Date, Owner shall provide to Manager a list of all consumable inventory at the Facility expected to exist as of the Effective Date, together with the cost to Owner of such inventory and reasonable verification of such costs. Owner hereby grants Manager the right to purchase at cost all such consumable inventory at the Facility on the Effective Date, provided written notice of the exercise of such grant has been given to Owner prior to the Effective Date.

Section 5.5. Use of Facility's Names and Logos.

Manager shall have the right to use for no charge throughout the Term (and permit Employees and Subcontractors to use), the name and all logos of the Facility, on Manager's stationary, in its advertising of the Facility, and whenever conducting business of the Facility or providing the Services, provided that Manager in consultation with Owner shall take all prudent and appropriate measures to protect the Intellectual Property rights of Owner relating to such names and logos. Notwithstanding ownership, which shall be governed by Section 5.2, all domain names for the Facility shall be registered in the name of Owner, as instructed, with reasonable rights granted to Manager to provide the Services.

Section 5.6. Facility Advertisements.

Owner hereby permits Manager to cause, and Owner shall itself ensure that, all advertisements for the Facility or events to be held at the Facility, whether such advertisements are in print, on radio, television, the internet or otherwise, shall include a designation that the relevant Facility is managed by Manager, in reasonable wording to be provided by Manager, which may be amended from time to time upon reasonable notice by Manager, which shall be no less than one hundred and twenty (120) days.

Section 5.7. Community Events.

Manager agrees to negotiate business terms in good faith with all local arts and cultural groups, as required, and to provide local arts and cultural groups with access to the Facility on reasonable terms.

Section 5.8. Use by Owner and Special Events.

Manager shall book events at the Facility from Owner on a priority basis, subject to availability. For all Owner events, Owner and Manager shall negotiate in good faith the terms of the booking, which shall include a base fee at market value, less a courtesy discount to be negotiated by the parties at the relevant time based on the total book of business over the course of a one (1) year period. In no event shall the fee charged to Owner be greater than any fee charged to a third party for a similar event in the same Operating Year or Transition Year, as applicable. Owner may hold events of significant regional, national or international importance, including without limitation state funerals, royal visits or the Commonwealth Games (“**Special Events**”) from time to time. Upon request from Owner, Manager shall make its best efforts to make the Facility available for Special Events, including cancelling or rescheduling prior bookings, at Owner’s expense, if such expense has been approved by Owner in advance. Although the parties agree that Special Events may occur with little notice, Owner shall give Manager one hundred twenty (120) days’ notice of any Special Event when possible, or as much notice as is reasonably possible. In the case of Special Events, Owner shall pay all expenses of the Facility related to such Special Event and the parties agree to negotiate in good faith a reasonable fee and all such other terms of the booking, and Owner acknowledges that a reasonable fee may include compensation for any cancelled events if such event cannot be rescheduled. During a Special Event, the parties agree to work together in good faith and agree that the Special Event shall take priority over all other events.

ARTICLE 6 – PROVISION OF THE SERVICESSection 6.1. Service-Levels.

In providing the Services, Manager shall:

- (a) ensure that all maintenance, repairs, replacements, alterations, changes, substitutions or improvements effected or required to be effected by Manager:
 - (i) are in all respects to a standard at least substantially equal to the quality and workmanship of the original work and material affected; and
 - (ii) meet all requirements of municipal and other governmental authorities and of any fire insurance maintained or required to be maintained under the Required Insurance;
- (b) not commit or allow waste or injury to the Facility or improvements or chattels or equipment thereon, and not to use or occupy or permit to be used or occupied the Facility or improvements or chattels or equipment thereon for any unlawful purpose, or in any manner which results in the cancellation of Required Insurance, or in refusal of an insurer to issue reasonable amounts of Required Insurance, or in refusal of an insurer to issue reasonable amounts of fire (all-risk) and liability insurance on the Facility, improvements, chattels and equipment as such insurance may constitute Required Insurance; and

- (c) substantially comply with all Laws, including but not limited to the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, or any successor or replacement legislation including any regulations to designated substances, and applicable Collective Agreements.

Section 6.2. Personnel.

Subject to the Collective Agreements, all staff and other personnel necessary for the operation of the Facility, including all part-time and full-time employees (collectively, the “**Employees**”) shall be engaged or hired by Manager or its Affiliate, and shall not be employees or contractors of Owner. Subject to the Collective Agreements, Manager shall select, in its sole discretion, the number, function, qualifications, and compensation, including salary and benefits, of its Employees and shall control the terms and conditions of employment (including, without limitation, termination calculated as of the Effective Date thereof) relating to such Employees, provided that Manager agrees to use reasonable and prudent judgment in the selection and supervision of such Employees. Manager may engage such vendors, contractors, suppliers, licensees (collectively, “**Subcontractors**”), as it may, in its sole discretion, determine in order to assist in, perform or participate in any of the Services or any of the events held at the Facility. For greater certainty, all amounts payable to Employees and Subcontractors in connection with the Services shall be considered Operating Expenses.

Section 6.3. General Manager.

Manager shall engage as an Employee an individual with managerial experience in similar facilities to serve as a full-time on-site General Manager of the Facility (the “**General Manager**”). Hiring of the General Manager by Manager shall not require the prior approval of Owner. The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facility, supervision and direction of Employees and Subcontractors, and management and coordination of all activities associated with events taking place at the Facility.

Section 6.4. Transition of Existing Facility Employees.

Except as otherwise mutually agreed by Manager, Owner and the applicable union bargaining agent, Manager agrees to offer employment to all unionized part-time and full-time Employees immediately prior to the Effective Date who are subject to the Collective Agreements. Manager shall not be obligated to offer employment to, or to engage, any non-unionized Employees working at the Facility immediately prior to the Effective Date. Owner will be responsible for any severance/termination and OMERS payments due to any individuals previously employed at the Facility (including without limitation those employed by HECFI) which amounts become due as a result of the cessation of employment with their prior employer as a result of Manager’s engagement hereunder (and such costs shall not be deemed to be an Operating Expense). Further, should Manager employ a non-unionized Employee of Owner immediately upon taking over the operations of the Facility and then terminate the employment of that Employee within ninety (90) days either (a) due to unsatisfactory work performance or for just cause, or (b) where such Employee(s) are any of Laurie Ham, Irene Gaudet, Jammy Ing and such Employee(s) agreed to be hired on the

understanding that their tenure with the Manager was temporary in nature and for the purposes of assisting in the transition of the Facility only, Owner will assume the responsibility for any termination, severance and OMERS pay owing to that Employee (and such costs shall not be deemed to be an Operating Expense).

Section 6.5. Inactive Employees.

A list of inactive Employees must be submitted and approved by Manager prior to the Effective Date, which list shall include the name of the individual, job title, reason for inactive duty and, if known, an expected return to work date. Any unionized Employees who are on leave due to illness, injury or approved leave shall remain Owner's Employees until the end of such absence due to illness, injury or leave, at which time Manager shall offer the Employee employment, with or without modifications. The above applies to all leaves including but not limited to short-term sick leave, long-term sick leave, workplace safety and insurance leave and pregnancy and parental leave.

Section 6.6. Non-Solicitation/Non-Hiring.

During the Term, neither Owner nor any of its Affiliates shall actively solicit for employment, any of Manager's Management-Level Employees, except for any Management-Level Employees previously employed at the Facility by Owner or HECFI prior to the Effective Date, which Employees Owner may solicit and hire for an effective date coincident with the expiration or termination of the Term. At the end of the Term, Manager will be responsible for any severance/termination payments due to any non-union Employees hired by Manager.

Section 6.7. Collective Bargaining.

Manager agrees to consult with Owner prior to making any proposals at collective bargaining and, unless otherwise agreed by Owner, agrees to make its monetary proposals consistent with (and, at the very least, not in excess of) Owner's financial mandate for the relevant year(s) as communicated in writing by Owner to Manager. Manager shall not enter into any collective bargaining agreement for a term in excess of the Initial Term (or, if this Agreement is extended by Owner, for a period in excess of such extension Term), without the prior written approval of Owner. In the event Manager agrees to financial terms with any of the bargaining agents in excess of Owner's financial mandate, Manager shall be responsible for reimbursing Owner for ongoing amounts equal to the difference between the agreed upon terms and Owner's mandate, in the event Owner takes back the operations of the Facility at the end of the Term and the terms agreed to by Manager are found to be binding on Owner.

Section 6.8. Owner's Responsibilities

In addition to any other matters or obligations which are made the responsibility of Owner pursuant to this Agreement, Owner covenants to perform the following at its own expense, and all such obligations shall be excluded from the scope of the Services:

- (a) maintaining the Central Utility Plant and ensuring the provision of energy/utilities supply including billing, metering and contract management;

- (b) servicing, repairing, cleaning, monitoring and ensuring preventative maintenance routines on the following:
 - (i) the Mechanical and HVAC systems in the Facility;
 - (ii) the Central Utility Plant/HECFI Building Automation System/Controls; and
 - (iii) the emergency generators and main electrical panels; and the exterior window cleaning of the Facility; and
- (c) providing planning, budgeting and project management services with respect to all Capital Expenditures in conjunction with Manager as outlined in Exhibit "E".

Section 6.9. Capital Expenditures.

Owner shall be solely responsible for all Capital Expenditures at the Facility. If agreed to by the parties, Manager shall make any repairs requiring a Capital Expenditure and Owner shall reimburse Manager, which may include any repairs made directly by Manager or one of its Affiliates, provide that terms and a price have been agreed upon in writing by the parties in advance of the repairs, the payment for which shall be outside the scope of this Agreement. In the event that Emergency Repairs are needed at the Facility that require a Capital Expenditure, Manager shall immediately notify Owner of the need for such repairs.

Section 6.10. Shared Services.

Manager and Global Spectrum shall enter into a written agreement for shared services amongst the Facility, Hamilton Place and Copsps Coliseum, naming Owner as a third party beneficiary, as the owner of the Facility, Hamilton Place and Copsps Coliseum (the "**Shared Services Agreement**"), which shall be executed within five (5) days of the Effective Date. Prior to executing the Shared Services Agreement, Manager shall in good faith consult with Owner and give Owner sufficient time and opportunity to give feedback on all drafts of the Shared Services Agreement.

Section 6.11. Site Visit.

The parties agree to conduct a joint inspection of the Facility following the execution of this Agreement, during which all cleaning, maintenance, repairs and capital improvements required in respect of the Facility, and the respective obligations of the parties in respect of such matters in accordance with this Agreement, shall be confirmed. The state of repair of the Facility determined pursuant to the aforesaid site visit shall form the basis for the standards of service required of the parties pursuant to Section 6.1, Section 6.8 and Section 6.9.

ARTICLE 7 – FACILITY CONTRACTS; TRANSACTIONS WITH AFFILIATES

Section 7.1. Existing Contracts.

With the exception of existing service agreements, the parties hereto shall perform such acts and execute such documents as may be necessary to assign or otherwise make Manager a party to the

Existing Contracts, including but not limited to obtaining such consents and approvals as may be required under the Existing Contracts from any other party thereto. Upon completion of the aforesaid assignment of such an Existing Contract, Manager shall administer and perform such Existing Contracts insofar as it relates to the Facility. Manager shall have the right to contract with any party to an Existing Contract for the Facility. For clarity, Manager, through itself or one of its Affiliates, shall enter into agreements with respect to service provided to the Facility during the Term.

Section 7.2. Execution of Operating Contracts.

Subject to the terms of the Existing Contracts, Manager shall have the right to enter into Operating Contracts in the course of providing the Services on such terms and conditions as Manager may reasonably approve. If Owner is required to consent to or become a party to any such Operating Contract, then Manager shall promptly inform Owner of such requirement and Owner approve such Operating Contract prior to such Operating Contract being executed, such approval not to unreasonably be withheld, provided that withholding consent by Council for the City of Hamilton for any reason whatsoever shall be considered reasonable. Any Operating Contract entered into by Manager shall contain standard indemnification and insurance obligations for the benefit of Owner on the part of each vendor, licensee or service provider, as is customary for the type of services or obligations being provided or performed by such parties. Manager shall obtain the prior approval of Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term that expires after the Term of this Agreement, unless such contract, by its express terms, can be terminated by Manager or Owner following expiration of the Term without any penalty. Nothing herein prohibits any Operating Contract from being entered into with or otherwise granted to any Affiliate of Manager, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties rendering comparable services, and upon request, Manager provide Owner with quotations demonstrating competitive pricing within thirty (30) days.

Section 7.3. Observance of Non-Operating Contracts.

Owner shall pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases bonds, debentures, loans and other financing and security agreements to which Owner is bound in connection with the Facility. Manager shall not enter into any agreements that encumber the Facility, Owner or any of Owner's other property.

Section 7.4. Central Utilities Plant; Utilities

Owner exclusively shall operate and maintain the Central Utilities Plant servicing the Facility ("CUP"), as further specified in Exhibit "E". Owner shall be the exclusive source of all utilities to Manager, unless Owner, in its sole discretion, gives thirty (30) days' notice that it will no longer be providing one or more utility to Manager. Manager shall not procure any utility in any form, including without limitation as commodities or futures, from a third-party as long as Owner is providing that utility to Manager. Manager shall make its reasonable best efforts to reduce its usage of utilities provided from the CUP, and shall cooperate with the City in any initiative to reduce utilities consumption.

ARTICLE 8 – AGREEMENT MONITORINGSection 8.1. Contract Management Team.

Within ten (10) days of the Effective Date, the parties shall establish a Contract Management Team (the “CMT”) consisting of three (3) members of Owner, namely the City Manager, the General Manager of Finance and the General Manager of Public Works or their designates and three (3) members of Manager with management-level roles and responsibilities (one of whom shall be the General Manager of the Facility) who shall monitor each party’s compliance with the terms of this Agreement. The CMT shall confer quarterly during the Term (or less frequently if agreed by the simple majority of the CMT). The CMT shall meet at a mutually convenient location or confer by telephone conference call or other means of simultaneous electronic communication agreed between the parties to discuss, among other things, relationship issues. Additionally, each party shall appoint a contract administrator who shall be a member of the CMT and shall serve as the other party’s primary point of contact for administration of this Agreement. Manager’s contract administrator shall be its General Manager of the Facility, unless Manager notifies Owner of a substitute contract administrator in writing. Owner’s contract administrator shall be the City Manager or its designee.

Section 8.2. Contract Administrators.

Any and all references in this Agreement requiring Manager’s or Owner’s participation or approval shall mean the participation or approval of such party’s contract administrator (although such persons shall not have the authority solely by virtue of this 0 to amend the terms of this Agreement).

ARTICLE 9 – INDEMNIFICATIONSection 9.1. Indemnification by Manager.

In addition to any other indemnities expressly granted in this Agreement, Manager and Mercanti shall jointly and severally defend, indemnify and hold harmless Owner and its officials, directors, officers, employees, agents, successors and assigns (the “**Owner Indemnitees**”) from and against any Claims suffered by such Owner Indemnitees, arising out of or in connection with:

- (a) any act or omission, or intentional misconduct, on the part of Manager or any of its Employees and Subcontractors in the performance of the Services;
- (b) any breach by Manager of any of its covenants, obligations or agreements under this Agreement;
- (c) inaccuracy or incompleteness of any of Manager’s representations or warranties made under this Agreement;
- (d) any act or omission carried out by Owner at or pursuant to the direction or instruction of Manager, its agents or employees, during the Term or prior to the Term; or

- (e) any action by Manager in connection with the Services at the Facility prior to the Term.

Section 9.2. Indemnification by Owner.

In addition to any other indemnities expressly granted in this Agreement, Owner shall defend, indemnify and hold harmless Manager, its Affiliates, and each of their respective directors, officers, employees, agents, successors and assigns (the “**Manager Indemnitees**”) from and against any Claims suffered by such Manager Indemnitees, arising out of or in connection with:

- (a) any act or omission, or intentional misconduct, on the part of Owner in the performance of its obligations under this Agreement;
- (b) any breach by Owner of any of its covenants, obligations or agreements under this Agreement;
- (c) inaccuracy or incompleteness of any of Owner’s representations or warranties made under this Agreement;
- (d) any environmental condition at the Facility or on or under the premises on which the Facility is located which are not caused by Manager or its Employees;
- (e) any structural defect with respect to the Facility;
- (f) any act or omission carried out by Manager at or pursuant to the direction or instruction of Owner, its agents or employees; or
- (g) any other matter for which this Agreement provides that Owner shall indemnify Manager.

Section 9.3. Procedure for Indemnification.

With respect to each separate Claim brought by any third party against which a party hereto (the “**Indemnitee**”) is to be indemnified by the other party (the “**Indemnitor**”) under this Article 9, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any such Claim, save and except that:

- (a) the Indemnitee may, at its option, participate in such defence or resolution at its expense and through counsel of its choice; and
- (b) the Indemnitee may, at its option, assume control of such defence or resolution if the Indemnitor does not promptly and diligently pursue such defence or resolution, provided that (i) the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith, and (ii) the Indemnitee shall agree to any settlement without the Indemnitor’s prior written consent (which shall not be unreasonably withheld or delayed).

Section 9.4. Cooperation and Notice

The Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such Claims, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such Claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 9.5. Availability of Insurance.

Any indemnification obligation herein shall be calculated less any insurance proceeds recovered by the Indemnitee. The Indemnitee shall promptly reimburse Indemnitor any insurance proceeds for a Claim, for which and to the extent that Indemnitor had previously paid Indemnitee pursuant to any indemnification obligation herein. Nothing in this Section 9.5 shall limit the right to subrogation of either party or their respective insurance companies.

Section 9.6. Survival.

The obligations of the parties contained in this Article 9 shall survive the termination or expiration of this Agreement, provided that no claim for indemnity may be made pursuant to this Article 9 based on any acts or omissions of the Indemnitor or events or facts occurring or arising after the Termination Date, save and except for any failure of any party to satisfy its obligations under Section 4.5.

ARTICLE 10 – INSURANCESection 10.1. Types and Amount of Coverage.

Manager agrees to obtain and maintain insurance coverage in the manner and amounts as set forth in Exhibit "F" (the "**Required Insurance**"). Manager shall maintain the Required Insurance coverage at all times during the Term, and will not make any material modification or change from these specifications without the prior approval of Owner. The cost of all Required Insurance shall be an Operating Expense.

Section 10.2. Rating; Additional Insured's.

Manager shall require that all Subcontractors of the Facility provide certificates of insurance evidencing insurance appropriate for the types of activities in which such Subcontractor is engaged with protection against applicable hazards or risks of loss and showing at a minimum Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000.00) per occurrence endorsed to the name of Manager and Owner as additional insured.

ARTICLE 11 – REPRESENTATIONS AND WARRANTIES

Section 11.1. Manager Representations and Warranties.

Manager hereby represents and warrants to Owner as follows:

- (a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of Manager herein, and that no third party consent or approval is required to grant such rights or perform such obligations hereunder;
- (b) that this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, or similar Laws affecting creditors' rights generally or by general equitable principles; that Manager will comply with all Laws, applicable to its provision of the Services, including but not limited to the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, or any successor or replacement legislation including any regulations to designated substances, provided that no Claim may be brought against Manager pursuant to Section 9.1 for non-compliance with Laws where avoiding or curing such non-compliance reasonably required a Capital Expenditure and Manager notified Owner of the need for such Capital Expenditure but Owner omitted or refused to undertake such Capital Expenditure within a reasonable amount of time after such notice;
- (c) that it maintains and will at all times maintain all such insurance policies in respect of the Facility as may be prudent or standard in accordance with industry practices which are not covered by the Required Insurance; and
- (d) that all information and documentation it has provided or will provide to Owner in connection with the Facility is and will be true, accurate and complete in all material respects.

Section 11.2. Mercanti Representation and Warranty

Mercanti hereby represents and warrants to Owner that Manager has sufficient funds and other resources to fulfill its obligations under this Agreement.

Section 11.3. Owner Representations and Warranties.

Owner represents and warrants to Manager as follows:

- (a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of Owner herein, and that no other third party consent or approval is required to grant such rights or perform such obligations hereunder;

- (b) that this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights generally or by general equitable principles;
- (c) that it is the registered and beneficial owner of the real property upon which the Facility are situated and is otherwise the legal and beneficial owner of the Facility;
- (d) that the Facility is, as of the Effective Date, in compliance in all respects with all applicable Laws relating to the construction, use and operation of the Facility, and that there exist no known structural defects or unsound operating conditions at the Facility;
- (e) that it has provided to Manager as of or prior to the date hereof true and complete copies of all Existing Contracts and Collective Agreements;
- (f) that it maintains and will at all times maintain all such insurance policies in respect of the Facility as may be prudent or standard in accordance with industry practices which are not covered by the Required Insurance;
- (g) that all information and documentation it has provided or will provide to Manager in connection with the Facility is and will be true, accurate and complete in all material respects; and
- (h) the Facility have not since the date of the MOU, and will not prior to the Effective Date, be operated or managed outside of the ordinary course nor engage in any extraordinary transactions without Manager's prior consent.

Section 11.4. Notice of Change.

Each party hereto shall promptly notify the other in writing upon its becoming aware that any representation given by it under this Agreement has ceased to be true, accurate or complete.

ARTICLE 12 – MISCELLANEOUS

Section 12.1. Dispute Resolution.

In the event one party (the “**Initiating Party**”) has a dispute in connection with any aspect of this Agreement (the “**Dispute**”) with the other party (the “**Responding Party**”) that cannot be resolved by the designated CMT, as set out in Section 8.1, the Initiating Party shall give written notice of the Dispute (“**Notice of Dispute**”) to the Responding Party. The Notice of Dispute shall include the name of one (1) representative of the Initiating Party with sufficient authority to negotiate the Dispute. Within five (5) Business Days of receiving the Notice of Dispute, the Responding Party shall appoint one (1) representative, with sufficient authority, to negotiate the Dispute and shall notify the Initiating Party in writing of the appointed representative. Within ten (10) Business Days of the Responding Party receiving the Notice of Dispute, the representatives of both parties shall meet to discuss and, in good faith, to negotiate the Dispute. If the Dispute has not been resolved

with ten (10) Business Days of the Responding Party receiving the Notice of Dispute, the Dispute shall be referred to the governing bodies of both Parties, namely the City Council for Owner and the Board of Directors or similar body for Manager. If the Dispute has not been resolved within thirty (30) Business Days of the Responding Party receiving the Notice of Dispute, the Dispute shall be referred to binding arbitration in accordance with the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended (the "**Arbitration Act**") and the following principles:

- (a) If within thirty (30) Business Days of the Responding Party receiving the Notice of Dispute, the Dispute has not been resolved, the Parties shall meet and attempt to agree upon an arbitrator. If the Parties are unable to agree on an arbitrator within five (5) Business Days, then an arbitrator shall be appointed by a Judge of the Superior Court of Justice for Ontario pursuant to section 10 of the Arbitration Act. The arbitrator so agreed upon or appointed, as the case may be, is herein referred to as an "**Arbitrator**";
- (b) The Arbitrator shall be an experienced arbitrator and shall be qualified by education and training to decide the particular question in dispute and shall be a person generally recognized in the business community as having familiarity with and expertise with the matter which is the subject of the dispute. The parties shall endeavour, to the extent possible, to utilize an Arbitrator with experience in the facility management industry. No person who is then employed by any of the parties or any person not dealing at arm's length with a party shall be appointed as the Arbitrator;
- (c) The Arbitrator will be required to render a decision and reasons to the Parties in an expeditious and prompt manner, and to set a schedule for the arbitration process which achieves this objective, while permitting all parties due process and an opportunity to present their case and respond to the case presented by the other party;
- (d) The decision and reasons of the Arbitrator shall be in writing and signed by the Arbitrator;
- (e) Such written decision and reasons of the Arbitrator shall be final and binding and the parties agree that there will be no right of appeal with respect thereto except as provided in the Arbitration Act;
- (f) The compensation and expenses of the Arbitrator shall be paid in equal portions by the parties hereto, unless otherwise determined by the Arbitrator, it being agreed that the Arbitrator has the power to allocate responsibility for such costs as he or she deems fit;
- (g) Notwithstanding anything herein contained and notwithstanding any failure to so state in any provision or provisions hereof, any dispute in respect of any matter set out in this Agreement shall be resolved by arbitration as described in this Section 12.1, after the party requesting arbitration has complied with the terms of the first paragraph of this Section 12.1, provided, however, that either party may at any time (and outside of any arbitration proceeding) file an action seeking equitable relief (including an injunction) with the Courts in Ontario;

- (h) Where arbitration is required by this Agreement, commencement and completion of such arbitration in accordance with this Agreement shall be a condition precedent to the commencement of an action at law or in equity in respect of the matter required to be arbitrated; and
- (i) The arbitration will be conducted in English, and the place of the arbitration will be Hamilton, Ontario.

Section 12.2. Definitive Operating Agreement.

This Agreement constitutes the “Definitive Operating Agreement” described and contemplated in the MOU.

Section 12.3. No Discrimination.

Manager agrees that it will not discriminate against any Employee or applicant for employment for work under this Agreement because of any of the grounds prohibited by Law, and will take affirmative steps to ensure that applicants are employed, and Employees are treated during employment, without regard to such prohibited grounds, save and except in both cases in the event of a *bona fide* occupational requirement.

Section 12.4. Force Majeure.

Neither party shall be liable or responsible to the other party for any delay, Claim, or non-performance of its obligations under this Agreement due to an Event of Force Majeure, provided that the party claiming the protection of this Section 12.4 shall provide written notice to the other party within thirty (30) days of the date on which such party gains actual knowledge of such Event of Force Majeure and the consequences thereof on its ability to perform under this Agreement.

Section 12.5. Damage or Destruction of Facility.

In the event of damage or destruction to a material portion of the Facility by reason of an Event of Force Majeure that renders the Facility (or a material portion thereof) unfit for occupancy or use in the manner contemplated by this Agreement, Owner shall use reasonable efforts to remedy such circumstances so as to render the Facility fit for such occupancy and use in a timely manner. If, notwithstanding such efforts, such damage or destruction so renders or is expected to so render the Facility (or a material portion thereof) unfit for a period estimated by an engineer/architect selected by Owner at Manager’s request, of at least one hundred eighty (180) days from the date of occurrence of such damage or destruction, the parties agree to renegotiate the financial terms of this Agreement in good faith in light of the changed circumstances. If the parties fail to agree to amended financial terms, either party may terminate this Agreement upon written notice to the other in accordance with Section 4.4.

Section 12.6. Relationship of Parties.

Manager and Owner acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Facility, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture, master-and-servant, employer-employee, agency or similar relationship between Owner and Manager.

Section 12.7. Notices.

Any notice, designation, communication, request, demand or other document required or permitted to be given or sent or delivered under or pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below or by facsimile, email or other generally used electronic transmission. All such notices to either party shall be deemed to have been delivered, sent, provided, given and received (i) when actually delivered, if delivered personally, (ii) three (3) days after mailed, if sent by registered or certified mail, (iii) on the next business day, if sent by generally recognized, prepaid, overnight air courier services, or (iv) on the date the sender receives confirmation of successful transmission, if delivered by electronic means.

If to Owner:
City of Hamilton
Attention: City Clerk
71 Main Street West, 1st Floor
Hamilton, ON
L8P 4Y5

If to Manager or Mercanti:
c/o 1520 Stone Church Road East
Hamilton, ON
L8W 3Y5
Attn: Peter Mercanti
Fax: 905 574-148
Email: pmercanti@carmens.com

The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

Section 12.8. Further Assurances.

Each party shall perform all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of all such acts and the execution of all such further documents as are within its power to cause the doing or execution of, as the other party hereto may from time to time reasonably request, in writing, and as may be necessary or desirable to give effect to this Agreement.

Section 12.9. Time of the Essence.

Time shall be of the essence of each and every term and obligation of this Agreement.

Section 12.10. Compliance with Laws.

Notwithstanding anything else in this Agreement, neither party shall be liable to the other for complying with any federal or provincial Law.

Section 12.11. Assignment.

Neither party may assign this Agreement, except with the prior written consent of the other, which consent shall not be at any cost to the party providing the consent, and shall not be unreasonably withheld or delayed, except that either party may, without the prior written consent of the other party but upon at least thirty (30) days' written notice to the other party, assign this Agreement in connection with a sale of all or substantially all its assets or equity interests; and, further, Manager may assign this Agreement to an Affiliate where such assignment is intended as part of an internal restructuring or reorganization and, in such case, (i) Manager will be jointly and severally liable for such Affiliate's performance under this Agreement; and (ii) any subsequent assignment must be approved by Owner, which shall not be unreasonably withheld or delayed. If either party assigns this Agreement for any form of consideration whatsoever, the other party shall be entitled to fifty percent (50%) of such consideration or a monetary payment of fifty percent (50%) of the fair market value of such consideration if it is impractical to divide such consideration. Any purported assignment in contravention of this Section 12.10 shall be void.

Section 12.12. Waiver; Remedies.

No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 12.13. Amendments.

Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 12.14. Counterparts.

This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the parties and transmitted by facsimile or electronic transmission, and if so executed and transmitted, shall be effective as if the parties had delivered an executed original of this Agreement.

EXECUTION VERSION

FACILITY OPERATING
MANAGEMENT AGREEMENT

(remainder of page intentionally left blank; signature page to follow)

EXECUTION VERSION

FACILITY OPERATING
MANAGEMENT AGREEMENT

IN WITNESS WHEREOF, each party hereto has executed this Facility Operating Management Agreement as of the date first set forth above.

CITY OF HAMILTON

Per: _____

Name: R. Bratina

Title: Mayor

Per: _____

Name: R. Caterini

Title: City Clerk

I/ We have authority to bind the corporation

**THE HOSPITALITY CENTRE
CORPORATION**

Per: _____

Name: Peter Mercanti

Title: Chairman

I have authority to bind the corporation

**MERCANTI BANQUET &
CONVENTION CENTRE LTD.**

Per: _____

Name: Peter Mercanti Jr.

Title: President

I have authority to bind the corporation

EXHIBIT "A" – OWNER'S CAPITAL EXPENDITURES

The following costs and expenses and any Claims associated therewith constitute Owner's Capital Expenditures for the purposes of this Agreement, subject to Section 1.1:

- (a) any repair, cleaning, maintenance or replacement of equipment at the Facility, including but not limited to HVAC, venting, escalators, elevators, freight elevators, roof system, and windows, but excluding dishwasher, slicers, fridges, walk in coolers and scissor lifts;
- (b) any repair, cleaning, maintenance or replacement of exterior brick & mortar, wood walls and railings, exterior concrete, interlocking brick and similar exterior facades and structures;
- (c) any repair, maintenance or replacement (but not routine cleaning) of sewers, vents, ductwork, HVAC equipment and similar structures and equipment within or affixed to the Facility;
- (d) any repair, maintenance or replacement of any security, fire detection or prevention, carbon monoxide detection or similar safety and security systems at the Facility;
- (e) any repair, maintenance or replacement of the roof, roof membrane, foundations, steel columns, ballroom divider walls, steel deck, concrete slab floors, concrete slab columns, or concrete slab walls of the Facility and partitions throughout the Facility;
- (f) any repair, maintenance or replacement of Utilities meters and similar equipment at the Facility;
- (g) any other matters relating to the operation, management, maintenance or improvement of the Facility which are described or contemplated by Section 6.8;
- (h) except for door closures, which shall be the responsibility of Manager, any entrance doors to the facilities from public entrances, walkways or exterior street level or stairways or overhead doors; and
- (i) all other obligations contained in the table attached to Exhibit "E" as "Convention Centre Duties and Responsibilities".

EXECUTION VERSION

FACILITY OPERATING
MANAGEMENT AGREEMENT

EXHIBIT "B" – EXISTING CONTRACTS

(See Attached)

Carmen's Contract Summary

Note: most agreements have historically covered all 3 venues; most agreements include venue specific revenue tracking or invoicing.

Revenue Generating Partnerships (HECFI Agreements)

1. Molson
 - a. Pouring rights for beer (3 venues)
 - b. Naming rights for the Molson Canadian Studio Theatre
2. PMA - Pouring rights for wine and spirits (3 venues)
3. Pepsi – Pouring rights for non alcoholic beverages (3 venues)

EXECUTION VERSION

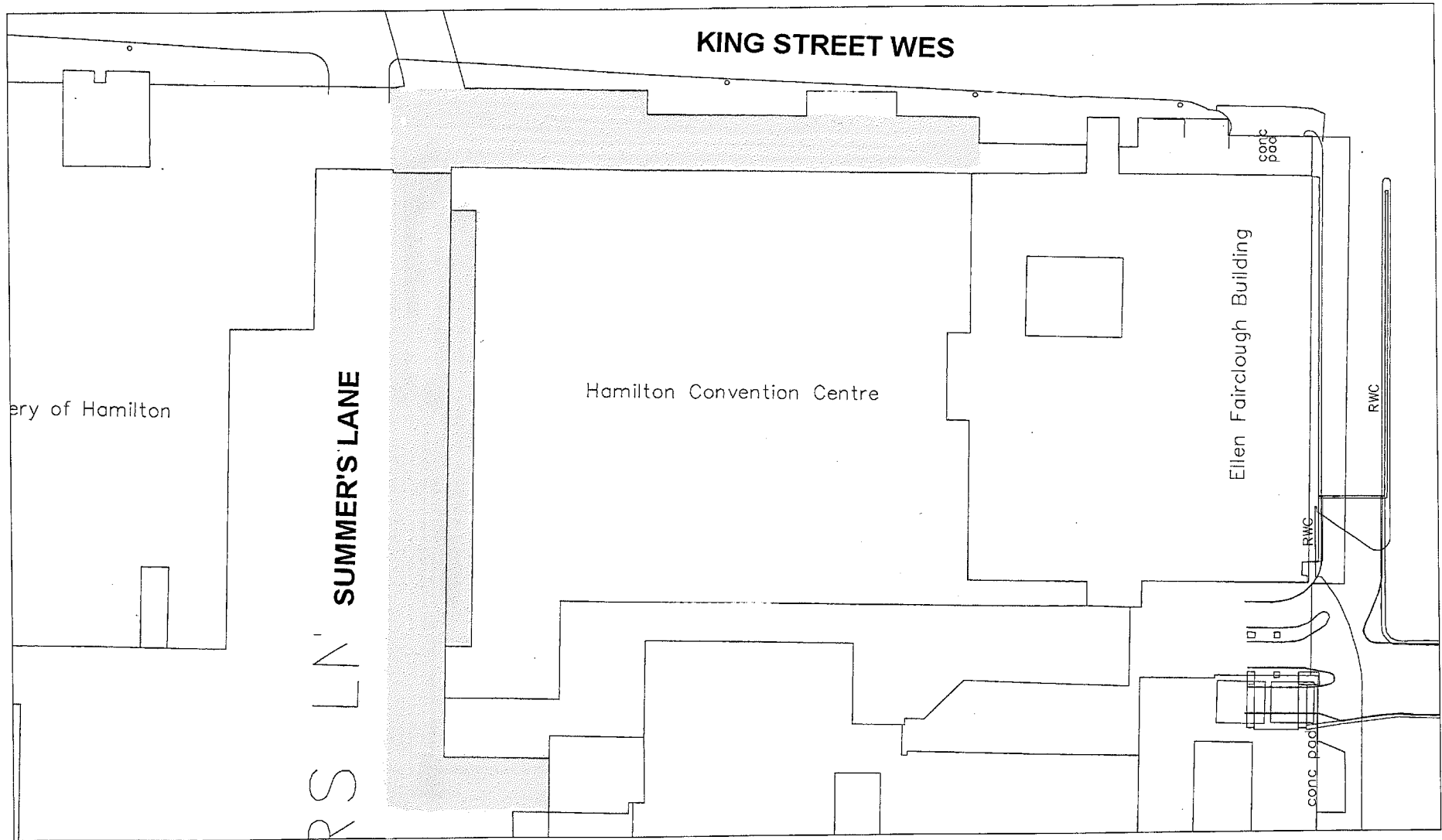
FACILITY OPERATING
MANAGEMENT AGREEMENT

EXHIBIT "C" – EXISTING INVENTORY AND FF&E

(See Attached)

EXHIBIT "D" – SURROUNDING FACILITY

(See Attached)



KING STREET WES

City of Hamilton

SUMMER'S LANE

Hamilton Convention Centre

Eilen Fairclough Building

RWC

RWC

conc. pad

conc. pad



HECFI Building Sites

Scale: 1:10

Hamilton Convention Centre

January 16, 2013

EXHIBIT "E" – MANAGER'S DUTIES

Manager's duties and responsibilities to be satisfied and services and obligations to be performed under this Agreement in connection with the management and operation of the Facility shall consist of the following:

- 1) At its sole cost, to repair, keep in repair and maintain at all times the Facility and improvements thereon, on the interior (excluding what is listed as Owner Responsibilities in Section 6.8 above), chattels and equipment at the Facility, and this covenant shall oblige Manager, without limitation:
 - a. to repair, keep in repair and maintain at all times in good order and in a first-class condition the fixtures, windows, interior doors, exterior door closures, walls, and the chattels and equipment, and including without limitation, entrances, fire exits, painting, exterior window cleaning, janitorial service, in the same manner and to the same extent as would a prudent owner and Manager will repair according to notice in writing from Owner; and
 - b. for such purposes, to maintain, make all necessary repairs, replacements, alterations, additions, changes, substitutions, renovations and improvements, foreseen and unforeseen, and to keep the Facility, improvements and other fixtures and chattels and equipment, on the Facility fully useable for all purposes for which they have been installed, erected or purchased.
- 2) To ensure that all maintenance, repairs, replacements, alterations, changes, substitutions or improvements required to be effected by Manager:
 - a. are in all respects to a standard at least substantially equal to the quality and workmanship of the original work and material affected;
 - b. do not alter the appearance of the Facility unless agreed to by Owner; and
 - c. meet all requirements of municipal and other governmental authorities and fire insurance underwriters.
- 3) Not to construct, build, erect or install any improvements, buildings, fixtures or other installations on the Facility (including installation from time to time of additional, replacement or expanded equipment or fixtures in the interior thereof for the benefit of users of the Facility) without the prior written approval of Owner, except as may be required in order to comply with Manager's obligation to repair.

- 4) not to call upon Owner at any time during the Term or any extension thereof to make repairs or replacements to any part of the Facilities, improvements, chattels or equipment on the Facilities, or any alteration, addition, change, substitution, or improvements, whether structural or otherwise to such Facilities, improvements, chattels and equipment, unless otherwise agreed in writing;
- 5) At the end of the Term or upon termination of the Definitive Operating Agreement for any other reason, to leave the Facility in good repair, reasonable wear and tear excluded.
- 6) Manager shall also be responsible for the following:
 - a. all site service contracts and their associated costs (e.g. cleaning, event services, staging etc.);
 - b. all site electrical maintenance and repairs (excluding main electricity panels);
 - c. all life safety equipment and regulatory approval (e.g. fire safety and alarms) (excluding emergency generators); and
 - d. all kitchen equipment (operations/maintenance/repairs/replacement).
- 7) That all maintenance performed by Manager in the facility(s) is recorded in a maintenance management systems that is compatible and to be integrated into the City system (known as ARCHIBUS – Facilities Management).

In addition to the foregoing, the following Manager's duties and responsibilities shall be satisfied and its services and obligations shall be performed under this Agreement in connection with the management and operation of the Facility, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual:

- 1) Manage all aspects of the Facility in accordance with the Operations Manual and the terms of this Agreement, including but not limited to managing purchasing, payroll, (including emergency evacuation plans, and drills), routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, admission procedures, and general user services;
- 2) Procure, negotiate, execute and administer Operating Contracts, including without limitation recording all contracts and key information contained therein in a matrix;
- 3) Require that all material vendors and licensees of the Facility execute Operating Contracts containing standard indemnification and insurance obligations on the part of each such vendor/licensee as required by Section 10.2;

- 4) Operate and maintain the Facility, including the equipment utilized in connection with its operation, and any improvements made during the term of this Agreement;
- 5) Arrange for and otherwise book events at the Facility in accordance with a booking schedule to be developed by Manager;
- 6) Plan, prepare, implement, coordinate and supervise all public relations and other promotional programs for the Facility;
- 7) Prepare, maintain and implement on a regular basis, a Marketing Plan for the Facility;
- 8) Manage and oversee the granting, license and/or sale of Commercial Rights at or in connection with the Facility;
- 9) Whether foreseen or unforeseen, repair, keep in repair, maintain and service at all times in good order and in a first-class condition the Facility, including the walls and the chattels and equipment thereon or thereof, and all replacements, alterations, additions, changes, substitutions, renovations and improvements thereto, and including without limitation, entrances, fire exits, painting, kitchen equipment, safety equipment, janitorial service, in the same manner and to the same extent as would a prudent owner and in a state fully useable and up-to-date for all purposes for which they have been installed, erected or purchased, provided that all of the foregoing obligations shall apply only to the extent any such repair, maintenance or servicing can properly be regarded as an Operating Expense and not Capital Expenditures pursuant to this Agreement;
- 10) Cause such other acts and things to be done with respect to the Facility, as determined by Manager in its reasonable discretion to be necessary for the management and operation of the Facility; and
- 11) All other obligations contained in this Agreement and the table attached hereto as "Convention Centre Duties and Responsibilities":

EXHIBIT "A"
CONVENTION CENTRE
DUTIES AND RESPONSIBILITIES

Item	Building System/Component	Additional Information	CITY		CARMEN'S Maintenance
			Capital	Maintenance	
1.0	HVAC SYSTEMS				
1.1	Heat Exchangers		✓	✓	
1.2	Air Handling Units		✓	✓	
1.3	Pumps <i>(excludes Fire Pump System & HW Circulating Pumps)</i>		✓	✓	
1.4	Domestic HW Storage Tank		✓	✓	
1.5	Exhaust Fans		✓	✓	
1.6	Relief Fans		✓	✓	
1.7	Fin Tube Perimeter Heaters		✓	✓	
1.8	Door Curtain		✓	✓	
1.9	Cabinet Heaters		✓	✓	
1.10	Unit Heaters		✓	✓	
1.11	Thermostat		✓	✓	
1.12	VAV Box		✓	✓	
1.13	IT & Power Closet AC Systems		✓	✓	
1.14	Fire Dampers		✓	✓	
1.15	Water Testing /Treatment Station		✓	✓	
1.16	Building Automation System		✓	✓	
2.0	PLUMBING & DRAINAGE SYSTEMS				
2.1	Water Closet		✓	✓	
2.2	Urinals		✓		✓
2.3	Sinks		✓		✓
2.4	Drinking Fountain		✓		✓
2.5	Backflow Preventer		✓	✓	
2.6	Sump Pumps		✓	✓	
2.7	External garden hose bibs		✓		✓
3.0	CONVEYANCE				
3.1	Elevators		✓		
3.1.1	Certified Service & Inspection				✓
3.1.2	TSSA Inspection				✓
3.1.3	Emergency Call System (WRS)		✓		✓
3.2	Escalators		✓		
3.1.1	Certified Service & Inspection				✓
3.1.2	TSSA Inspection				✓
4.0	ELECTRICAL SYSTEMS				
4.1	13.8kv Switchboard w/TB		✓	✓	
4.2	Transformers		✓	✓	
4.3	600v Switchboard w/TB		✓	✓	
4.4	Emergency Generator		✓	✓	
4.5	Auto Transfer Switch		✓	✓	
4.6	Load Bank		✓	✓	
4.7	Fire Pump Transfer Switch		✓	✓	
4.8	600V Distribution Panels		✓	✓	
4.9	347/600V Lighting Panels		✓	✓	
4.10	120/208V Power Panels		✓	✓	
4.11	Motor Control Centre		✓	✓	
4.12	Linear Fluorescent Fixtures	<i>Relamping Program</i>			✓
4.13	Compact Fluorescent Fixtures	<i>Relamping Program</i>			✓
5.0	FIRE & LIFE SAFETY SYSTEMS				
5.1	Test Detection, Alarm & Evac	<i>Monthly & Annual Inspection</i>			✓
5.2	Fire Pumps		✓	✓	

EXHIBIT "F"– INSURANCE**Insurance Requirements**

1. Throughout the term of the Agreement (including any renewal thereof), Manager shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance.
 - (a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily injury and personal injury liability, property damage, participants/spectator's liability, employers liability, and voluntary compensation, having an inclusive limit of not less than Twenty Million Dollars (\$20,000,000.00) per occurrence. Coverage shall be on a worldwide basis, shall not contain an exclusion for pyrotechnics or other special effects, shall include injury/loss/damage, due to pollution arising from "hostile fires" and shall be endorsed to include the City of Hamilton as an additional insured. Coverage shall be provided for Host Liquor Liability
 - (b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by Manager for the provision of services;
 - (c) Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than One Million Dollars (\$1,000,000.00) per occurrence in respect of vehicles not owned by Manager, that are used or operated on its behalf for the provision of services under the Agreement;
 - (d) Umbrella and/or Excess Liability Insurance policies may be applied to increase liability limits for primary coverages. Certificate(s) of insurance must specify the underlying policies to which the umbrella/excess coverages apply and indicate any applicable aggregates;
 - (e) Property Insurance All Risk to insure on a replacement cost basis any of Manager's Property which may potentially be or become fixtures of the Facility or is otherwise of a nature appropriate for property insurance coverage;
 - (f) Business Interruption Profits Form to include contingent business interruption, rental, extra expense and ingress/egress coverage in the amount of at least Ten Million Dollars (\$10,000,000.00); and
 - (g) Comprehensive Crime Insurance broad form coverage to adequately protect Owner against loss of monies, securities or other properties, including property of Owner

while such property is in Manager's care, custody, and control, for dishonesty, disappearance and destruction, to protect against incidents arising out of but not limited to theft, robbery or burglary; having a limit of not less than Fifty Thousand Dollars (\$50,000.00) for Employee Dishonesty (Commercial Blanket Form A), Loss inside the Premises, and Loss outside the Premises and including computer funds transfers and audit expense.

2. Manager shall maintain Property Insurance, all risk to insure its own property and property in its care, custody and control, including but not limited to coverage for customers/spectators goods and personal effects.
3. All policies of insurance within the scope of subsection (1) shall, subject to the terms of the indemnity provisions,
 - (a) be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to Owner, that is licensed to carry on business in Ontario;
 - (b) show all values in Canadian Funds;
 - (c) contain cross liability and severability of interest provisions, as may be applicable;
 - (d) preclude subrogation claims against Owner and any other person insured under the policy; and
 - (e) provide that at least 30 days prior written notice (15 days, in the case of automobile liability insurance, and 10 days in the event of non-payment of premiums) shall be given to Owner by the Insurer before the Insurer or Manager takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof
4. Owner reserves the right to require Manager to purchase such additional insurance coverage as Owner's Risk Management Services Office may reasonably require. Owner reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements due to material or significant change arising from such matters as the nature of the work, contract value, industry standards, and availability of insurance as Owner may reasonably require from time to time.
5. Any insurance coverage acquired under this Agreement shall in no manner discharge, restrict or limit the liabilities assumed by Manager under the Agreement. The dollar limit of insurance coverage shall not be limited by the dollar amount of the Agreement.

6. Manager shall pay all premiums on the policies as they become due provided that Owner may pay premiums as they become due and deduct the amount thereof from monies due from Owner to Manager should Manager fail to do so.

Proof of Insurance

1. Manager shall deposit with Owner such evidence of its insurance as provided in or required under the provisions of these Instructions, an Addendum or the Special Provisions at the time of execution of the Agreement and thereafter during the term of the Agreement, no later than 20 Business Days following the renewal date of each applicable policy, Manager shall deposit with Owner an original Certificate of Insurance originally signed by an authorized insurance representative, confirming thereon relevant coverage information including but not limited to the name/description of Owner contract, name of Insurer, name of Broker, name of Insured, name of Additional Insureds as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable, cancellation/termination provisions; or (at Owner's election) a certified copy of the insurance policy or policies required under section 22. Certificate Holder will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario, L8P 4Y5, Attn: Risk Management Services. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address
2. Manager shall not do or omit to do anything that would impair or invalidate the insurance policies.
3. Delivery to and examination or approval by Owner of any certificates of insurance or policies of insurance or other evidence of insurance shall not relieve Manager of any of its indemnification or insurance obligations under the Agreement. Owner shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance or to advise Manager in the event such insurance coverage is not in compliance with the requirements set out in the Agreement.