



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 15.2
Audit & Finance Standing Committee
September 19, 2018

TO: Chair and Members of Audit & Finance Standing Committee

Original Signed

SUBMITTED BY: _____
Brad Anguish, Director, Parks & Recreation

Original Signed

Jacques Dubé, Chief Administrative Officer

DATE: September 10, 2018

SUBJECT: Multi-District Facility Management Agreements Supplemental

ORIGIN

August 14, 2018 Halifax Regional Council motion:

MOVED by Councillor Karsten, seconded by Councillor Nicoll

THAT Halifax Regional Council:

1. Approve the management agreements between:
 - a. HRM and the Dartmouth Sportsplex Community Association, as set out in Attachment 1 of the staff report dated July 5, 2018;
 - b. HRM and the Halifax Forum Community Association, as set out in Attachment 2 of the staff report dated July 5, 2018;
 - c. HRM and the St. Margaret's Community Centre Association, as set out in Attachment 3 of the staff report dated July 5, 2018; and
 - d. HRM and the Centennial Pool Association, as set out in Attachment 4 of the staff report dated July 5, 2018

and authorize the Chief Administrative Officer or their delegate to execute the agreements and to exercise at their discretion the renewal options set out in the agreements;

2. Subject to the execution of the management agreements as set out in recommendation one (1), approve that the total receivables and debts outstanding from the Dartmouth Sportsplex Community Association, the Halifax Forum Community Association, the St. Margaret's Community Centre Association, and the Centennial Pool Association to HRM as of the date of the execution of the management agreements, be written out of the books of account, and any accumulated deficits be absorbed by HRM, reducing their outstanding receivables, debts and accumulated deficits to zero;

3. Authorize the opening of bank accounts for the Dartmouth Sportsplex Community Association, St. Margaret's Community Centre Association, and Centennial Pool Association for the purpose of operating the respective facilities as authorized per standard Halifax Regional Municipality procedures; and

4. Direct staff to continue negotiations with the remaining multi-district facilities (Alderney Landing, Canada Games Centre, and Cole Harbour Place) and return to Audit & Finance Standing Committee no later than the end of September 2018.

MOTION PUT AND PASSED UNANIMOUSLY.

This report speaks to recommendation number four only.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, S.N.S. 2008, c. 39

42 The Treasurer shall promptly advise Council of

(a) all moneys due to the Municipality that the Treasurer considers cannot reasonably be collected after pursuing all reasonable avenues of collection; and

(b) the reasons for the belief that such moneys cannot be collected, and the Council may write off the amounts determined to be uncollectible.

75 (1) The Municipality may agree with any person for the provision of a service or a capital facility that the Municipality is authorized to provide.

(2) An agreement made pursuant to subsection (1) may allow for the lease, operation or maintenance of the facility or provision of the service by a person...

79 (1) The Council may expend money required by the Municipality for

...

(k) recreational programs;

...

(x) lands and buildings required for a municipal purpose;

...

(y) furnishing and equipping any municipal facility;

...

(ah) playgrounds, trails... bicycle paths, swimming pools, ice arenas and other recreational facilities;

Administrative Order 18, The Revenue Collections Policy

5.0 Other Collection Policies

...

(f) No account will be sent to write off unless all efforts have been exhausted in its collection and will only be so sent after recommendation of supervisor and concurrence of team leader and manager.

(g) Only Council can approve final write off of any revenue accounts. Such write off reports will be provided not less than once per year.

RECOMMENDATION

It is recommended that the Audit and Finance Standing Committee recommend that Halifax Regional Council:

1. Approve the management agreements between:
 - a. HRM and the Canada Games Centre Society, as set out in Attachment 1;
 - b. HRM and the Community Builders Inc., as set out in Attachment 2; and
 - c. HRM and the Alderney Landing Facility Association, as set out in Attachment 3,

and authorize the Chief Administrative Officer or their delegate to execute the agreements and to exercise at their discretion the renewal options set out in the agreements;

2. Subject to the execution of the management agreements as set out in recommendation 1, approve that the total receivables and debts outstanding from the Canada Games Centre Society, the Community Builders Inc., and the Alderney Landing Association, to HRM as of the date of the execution of the management agreements be written out of the books of account, and any accumulated deficits be absorbed by HRM, reducing their outstanding receivables, debts and accumulated deficits to zero; and
3. Authorize the opening of bank accounts for the Canada Games Centre Society, Community Builders Inc., and Alderney Landing Facility Association, for the purposes of operating the respective facilities as authorized per standard Halifax Regional Municipality procedures.

BACKGROUND

Overall, recreation services in HRM are delivered through a hybrid system, with several facilities operated by third parties and others directly operated by HRM. This system currently uses eight governance models to provide recreation programs and services to residents. Within the regional facilities outlined in the Multi-District Facilities (MDF) project alone, four of these models exist.

HRM's recreation portfolio includes approximately 70 indoor recreation buildings, which have a footprint of approximately 190,000 square metres or 45 acres. The MDFs are a significant portion of the municipality's recreation footprint and expenditures. The MDFs range in size from 10,000 to 12,000 square meters. These MDFs typically serve populations of 60,000 to 80,000 citizens. Based on the overall replacement value of HRM's recreation portfolio, which was determined to be \$553 million (2011 dollars), these facilities represent an estimated replacement value of over \$230 million.

HRM's recreation portfolio has total annual expenditures of approximately \$45 million. Based on the current governance models of the various facilities, 70% of the operating expenditures relate to facilities that are operated by community Boards and, as such, fall outside the direct control of Regional Council. As a result, those expenditures are not impacted or adjusted as part of HRM's budget deliberations. Instead, Regional Council is only able to make expenditure adjustments to the 30% of recreation spending that falls under its direct control. Since a key focus of HRM's recreation mandate is to reduce barriers to recreation programming for citizens, restricting Regional Council's ability to oversee and manage 70% of the recreation operating expenditures limits HRM's ability to provide effective and efficient services to its citizens.

As a result, in the fall of 2011, staff undertook an analysis of challenges facing HRM's major facilities. A report titled "Multi-District & Event Facilities-A Case for Action" identified key issues and challenges facing the MDF portfolio. Subsequently, at the November 8, 2011 meeting of Regional Council, staff were directed to undertake a two-phased priority project to address the issues identified in the report. The initial work

involved establishment of reporting and accountability and resulted in the establishment of dedicated staffing resources.

The scope of the MDF project included the following facilities:

- Alderney Landing;
- Canada Games Centre;
- Centennial Pool;
- Cole Harbour Place;
- Dartmouth Sportsplex;
- Halifax Forum;
- Sackville Sports Stadium; and
- St. Margaret's Centre.

The eight MDFs included in the review represent 39% of the total footprint, and 42% of the estimated replacement value of HRM's recreation facility portfolio. Further, with annual operating expenditures exceeding \$23 million, these eight facilities represent 51% of the annual operating expenditures of HRM's recreation facility portfolio. Because of the size and resources utilized, the MDFs are a significant component of HRM's recreation service.

On March 19, 2013, Regional Council declared Phase 1 of the MDF Project (Accountability and Reporting) complete. Based on work in Phase 1, it was determined that work on community alignment and HRM's mandate is significantly impacted by the governance model. Therefore, at the same meeting, Regional Council directed staff to undertake completion of Phase 2 of the MDF Project and expanded the scope of the phase to include governance.

Phase 2 recommendations were presented to the Community Planning & Economic Standing Committee (CPED) on January 23, 2014 seeking direction to consult with the MDF Boards regarding the establishment of a Regional Advisory Committee(s) structure and to develop a transition plan to transfer direct oversight of the MDFs to Regional Council. CPED referred the matter back to staff for supplementary information and authorized staff to undertake consultation with the community Boards. Staff presented the supplementary report to CPED at its September 17, 2015 meeting. At the October 6, 2015 meeting, Regional Council directed staff to develop a standard board governance model for the facilities included in the MDF Project Phase 2 and implement new agreements that achieve the specific components outlined in the origin of this report.

At the December 13, 2016 meeting, a report outlining the proposed key terms for new management agreements was presented. Regional Council subsequently directed staff to negotiate five-year Management Agreements for the seven facilities listed as per the key terms and conditions. In addition, upon the successful negotiation with the community Boards for new management agreements, staff would outline the process and funding options to complete the absorption of outstanding debts and accumulated deficits for each of the facilities.

On August 14, 2018, Regional Council approved new management agreements for Dartmouth Sportsplex, Halifax Forum, St. Margaret's Centre and Centennial Pool. Staff provided an update on the negotiations with the remaining MDF Boards in that report and Regional Council also directed staff to continue with those negotiations. This report recommends approval of management agreements with the three remaining MDF Boards.

DISCUSSION

Current Status

Staff has been working with the community-operated boards to negotiate new management agreements

which meet the key terms and conditions approved by Regional Council on December 13, 2016. The negotiations have involved numerous draft agreement versions and meetings, to achieve the autonomy required for the Boards to continue to effectively operate the facilities. The new management agreements strike a balance that provides increased accountability, transparency and program delivery expectations to Regional Council, while enabling the community boards to successfully operate the facilities on behalf of HRM. This will enable Regional Council to ensure that the facilities are meeting citizen's needs, and enable board's success with increased efficiencies. The new agreements will enable improvements towards standard governance of the operation of these regional facilities.

Regional Council previously approved four MDF management agreements and this report outlines the remaining three agreements that incorporate the same governance requirements as those previously approved. Agreement in principle was reached between the Canada Games Centre Society (CGCS) and HRM after the Board ratified a vote on August 27, 2018. The CGCS operates the Canada Games Centre, a MDF Facility, and a key hub in the Clayton Park area for the delivery of recreational programming.

Subsequently, agreement in principle was also reached between the Community Builders Inc. (CBI) and HRM after the Board ratified a vote on September 5, 2018. The CBI operates Cole Harbour Place, a MDF, and a key hub in the Dartmouth area for the delivery of recreational programming.

Agreement in principle was also reached between Alderney Landing Facility Association (ALFA) and HRM after the Board ratified a vote on September 7, 2018. ALFA operates Alderney Landing, a key cultural hub in the Dartmouth area for the delivery of culture and recreation programming.

These agreements require the approval of Regional Council prior to being executed.

Management Agreements

The proposed management agreements include language that increases accountability, transparency, and administrative efficiencies in the following areas:

- Capital Reserve Funds
- Budget and Business Planning
- Information Communication and Technology (ICT) Services
- Safety Reviews
- Employee Relations
- Regional Funding
- Community Access & Pricing
- Debt and Accumulated Deficit Absorption

A brief overview of each area is outlined below.

Capital Reserve Funds

The new management agreements are structured similar to the capital reserve process currently in place for the BMO Centre and the Dartmouth 4-Pad and the four MDF management agreements approved on August 14, 2018 by Regional Council. This long term financial planning tool will allow the allocation of funds for future capital projects at the specific facilities. The agreement requires the transfer of current accumulated surplus funds, and any future surpluses and existing reserves to the Multi-District Capital Reserve allocated to the individual facilities. HRM's existing reserve for MDF facilities will be utilized to fund capital work for those facilities without a surplus. Planning and budgeting for facility capital work will be conducted as part of the annual capital budget process. The capital reserves will offset the costs of ensuring facilities are maintained in a safe, functional and good state of repair. These reserves will assist in the mitigation of high cost deferred revitalization projects which will occur in future years. This process will ensure that there is transparency and accountability through the HRM capital budgeting process with how the funds are spent at the individual facilities.

Budget and Business Planning

The management agreements have provisions in place to ensure effective stewardship of publicly owned assets in support of HRM's recreation outcomes. As part of the new management agreements, CGCS, CBI, and ALFA have agreed to deliver a proposed annual budget and business plan to HRM for presentation to Regional Council that outlines:

- how the operations of the facility support HRM's recreation outcomes;
- specific plans to enhance HRM's recreation outcomes;
- all proposed changes to facility programming with detailed rationale; and
- proposed annual budget which may include a requested operating subsidy

The presentation of the community Board's budget and business plans will be aligned with HRM's budgeting process for approval by Regional Council. This will ensure that all recreation expenditures will inform HRM's budget deliberations. As well, if approved, the MDF's banking arrangements will move under HRM's umbrella of banking arrangements. This will enable Regional Council to have additional control and oversight of the majority of expenditures within HRM's recreation programming. Moreover, the process will provide the community Boards with an annual opportunity to inform Council of the efforts in support of the community and budget requirements to deliver those services. This process will provide transparency on the operation of the facilities and will mitigate risk to ensure that the network of facilities is adequately funded to ensure unsustainable operating debts and deficits do not re-occur.

There is also a requirement within the new management agreements that MDFs must meet their approved budgets. The agreement indicates that if in any fiscal year, a deficit is realized in excess of the approved budget by Regional Council, the Board is required to submit a written explanation which details the magnitude of deviation, explanation of contributing factors, and planned mitigation steps to be undertaken by the Board in the upcoming fiscal year. If an operating-deficit in excess of the approved budget is realized for three consecutive years, the management agreement can be terminated.

ICT Services

HRM has purchased new recreation software from Legend Recreation Inc. to provide a new standardized, centralized booking program for all recreational programs and services which will streamline services to the public. HRM operated facilities, BMO Centre, Dartmouth 4-Pad, and the MDFs will have the new software implemented as part of a phased approach. The implementation of the software will replace the current state where facilities have sourced and supplied their own ICT programs and services, including different recreation services software. Once Legend is incorporated, it will allow for the collection of data which will be used to make informed decisions for regional recreational assets and programming, and enable citizens to view all program offerings from a single platform. The new management agreements require the utilization of Legend and ICT services once the execution of the agreements is completed and implementation of the software can be expanded to the facility. Staff has provided updates on the Legend implementation plan and has included the MDF's operational requirements into the new software scope to enable that phased implementation. Upon full implementation of a single recreation software platform, the eventual goal is the implementation of a "one-client model".

The implementation of Legend will help automate the various reporting requirements outlined in the new management agreements. This will reduce administrative requirements for both the community boards and HRM staff. Information will be automatically produced in a consistent and timely manner to facilitate informed decision making, issue identification and resolution. As part of the implementation of Legend, banking account services need to be centralized to enable the processing of financial transactions. This will provide consistent banking services, including all regulatory requirements concerning financial transitions are standardized across the regional network. As a result, this report outlines a recommendation for Regional Council to authorize opening of bank accounts for three facilities: Canada Games Centre, Cole Harbour Place, and Alderney Landing.

Safety Review

As the operators of the facilities, the community boards will continue to be accountable to resolve operational issues identified in relation to safety issues. HRM will continue to be responsible for capital issues within the facilities. Both parties will work cooperatively to ensure the public space is safe for both patrons and staff. The new management agreements contain language that clearly defines the board's responsibilities to address any safety concerns within their respective facilities. HRM Corporate Safety staff will work with the facility operators to conduct regular facility safety inspections to identify any concerns requiring resolution. In addition, HRM as the facility owner, with responsibilities under the *Nova Scotia Occupational Health & Safety Act*, will make available its expertise upon request from the board, as there are no dedicated occupational health and safety resources in the facilities.

Employment Relationships

Under the new management agreements, the employees at the these MDF facilities continue as board employees. The community boards continue to have responsibility for the management of their staff. The agreement has been negotiated to reflect the autonomy required by the community boards in the day-to-day operations of the facility, which enables staff to take their direction from the community board.

Regional Funding

Within the new management agreements, as part of HRM's annual Budget and Business Planning Process, each community board will provide an annual operating budget in congruence with HRM's budgeting process. By aligning the budgets and business plans with HRM processes, there will be administrative mechanisms to review proposed budgets and identify potential concerns early in the process, so they are addressed proactively prior to operating debts and deficits being incurred. The agreements outline a requirement for annual approval of funding subsidy requests by Regional Council and subsequent consideration of any funding adjustments to support community boards in addressing program delivery and inflationary pressures. With this approach, Regional Council will have appropriate oversight of the community board's budgets to ensure the recreation service model is reflective of citizen's needs and expectations.

This model will require a transparent and evidence based assessment of any requested subsidies required by the boards, and will enable Regional Council to be presented with the board's annual budget and business plan. Currently, HRM budgets \$718,000 annually to provide operating subsidies to the MDFs. The distribution and exact amounts for potential future operating subsidy requirements will be subject to Regional Council approval as part of the 2019/20 budgetary process.

Community Access and Pricing

The management agreement enables HRM and the MDF boards to collaborate on Regional Council's priorities, including ways to meet community needs and access. As well, HRM is undertaking a recreation fee study which is scheduled to be completed later this year. The agreements outline that HRM shall advise the boards of the results, as well as any Council direction related to them and the boards shall consider that in preparation of their annual budget and business plan for the operation of the facility. This will enable the move towards a one client pricing and membership model across the regional network of facilities. Improved consistency of user fees and community access will be incorporated into the annual budgeting and business planning process and will be further supported by the implementation of the Legend software. Any changes to pricing will have a correlative impact on revenues, and may have an impact on requests for subsidies.

Debt and Deficit Absorption Approach

As outlined in previous reports to Council, there is little to no ability for some MDFs to address debts and deficits; HRM has covered and continues to cover these outstanding receivables, debts and accumulated deficits for some of the MDFs.

The Canada Games Centre Society had an amount owing to HRM of \$440,473 as of March 31, 2018. This is for payroll and HST and has since been recovered and no longer outstanding. Regional Council had previously absorbed outstanding fundraising commitments associated with the construction of the facility.

Community Builders Inc. had an amount owing to HRM of \$76,448 as of March 31, 2018. This is for payroll and has since been recovered and no longer outstanding.

The Alderney Landing Association (ALA) total payables to HRM and debt outstanding as of March 31, 2018 was \$1,081,000; \$1,051,000 has been charged to the General Rate Surplus and the other \$30,000 is taxes outstanding and has since been recovered and no longer outstanding. Within the current management agreement, ALA receives annual subsidy funding in the amount of \$175,000 toward their operating budget. Pursuant to Regional Council's direction, when the agreements are approved, all outstanding payables to HRM, debts and accumulated deficits will be absorbed by HRM. The measures in place throughout the management agreement will mitigate the risk of additional unsustainable deficits, debts and payables being accumulated by ALA.

Alderney Landing Association

Currently, Alderney Landing Association has a management agreement with HRM for the operations of the Facility referred to as Alderney Landing, dating to 2002. However, Alderney Landing Association also carries on other business and sees its mandate as being broader than the operation of Alderney Landing for HRM. Alderney Landing Association, through Alderney Landing Limited and Alderney CFF Limited, is a beneficiary of a number of Provincial public private partnership arrangements which were established in 1999. There are public private partnership arrangements involving Nova Learning Inc., Alderney Landing Ltd. and the Province of Nova Scotia related to schools, and involving Hampton Leasing & Sales Ltd. and Alderney CFF Ltd. related to Central Nova Scotia Correctional Facility. These arrangements and the service provided are separate and unrelated to the operation of the Alderney Landing Facility. Alderney Landing Association also undertakes work as a service provider for other entities and events, including waste collection and recycling services. As HRM has no role in these undertakings, Alderney Landing Association suggested the creation of a new entity for the management of the Alderney Landing Facility. Staff recommends that establishing a new not for profit will create role clarity and make the relationship for the operation of Alderney Landing more transparent.

Alderney Landing Association is proposing that Alderney Landing Facility Association be the new not for profit entity established for management of the facility and programming at Alderney Landing. It will ensure focus and role clarity for the Board as HRM's agent in relation to the operation of Alderney Landing. Roles and tasks the Alderney Landing Association undertakes outside of HRM's requirements are not part of the new agreement, the sole focus of which is the management of the Alderney Landing Facility. It will be incumbent on the new Alderney Landing Facility Association to ensure that its operation of, and accounting for, the Alderney Landing Facility is kept separate from Alderney Landing Association.

Creating a new entity will allow the volunteer board to continue to serve the community, while enabling HRM to mitigate risk through an updated management agreement which will align budgets and business plans to HRM's processes and ensure safety issues are addressed. This agreement will ensure the strategic direction from Regional Council is included in the operation and management of the facility, while maintaining a degree of autonomy in strategic planning, management and operations with the current volunteer board governance model.

FINANCIAL IMPLICATIONS

The agreements specify a process for Regional Council review of the facilities budgets including any annual subsidy to a facility. Currently HRM provides \$718,000 in annual funding to the major facilities. While there may be pressure to increase individual subsidies, there are also efficiencies in the system that should come to light through the greater oversight provided through the agreements.

Tables 1a and 1b highlight the financial impact to HRM of absorbing the debt and deficits for these MDF facilities as of March 31, 2018. As noted, pursuant to Regional Council's direction, when the agreements are approved, all outstanding payables to HRM, debts and accumulated deficits will be absorbed by HRM.

Table 1a: Impact of Debt Absorption

Multi District Facility	Operating Accounts Receivable	Other Items Not Recorded on the Financial Statements of the MDF	Total Receivables and Debts Outstanding	Amounts Already Charged to the General Rate Surplus	March 31/18 Accounts Receivable Amounts Collected in Fiscal 2018/19	Additional Costs to HRM to Write Off the Receivables and Debts Owed to HRM
Alderney Landing	30,001*	1,051,000	1,081,001	(1,051,000)	(30,001)	-
Cole Harbour Place	76,448	-	76,448*	-	(76,448)	-
Canada Games Centre	440,473	-	440,473*	-	(440,473)	-
Total	546,922	1,051,000	1,597,922	(1,051,000)	(546,922)	-

Source: HRM Audited Financial Statements and Accounts Receivables as of March 31, 2018

*Accounts Receivable is primarily for payroll, HST and taxes

Table 1a highlights the total receivables and debts outstanding as of March 31, 2018 by CGCS, CBI, and ALA to HRM, for a total of \$1,597,922. HRM has recorded an allowance for the Alderney Landing receivable in the amount of \$1,051,000 and the other amounts have since been recovered and are no longer outstanding.

Table 1b: Impact of Debt Absorption

Multi District Facility	Accumulated Operating Deficit (Surplus)	Accumulated Capital and Equipment Reserves	Net Accumulated Deficit (Surplus)	Impact on Accumulated Deficit (Surplus) Adjustment for Write off of Debt and Other Receivables	Remaining Deficit (Surplus)	Additional Costs to HRM to Write Off the Remaining Deficit
Alderney Landing	(23,284)	-	(23,284)	(1,051,000)	(1,074,284)	-
Cole Harbour Place	-	(491,439)	(491,439)	-	(491,439)	-
Canada Games Centre	(1,617,571)	-	(1,617,571)	-	(1,617,571)	-
Total	(1,640,855)	(491,439)	(2,132,294)	(1,051,000)	(3,183,294)	-
Combined Additional HRM Costs						-

Source: Based on Facility Financial Statements as at March 31, 2018

Table 1b shows that the CGCS, CBI and ALA have net accumulated surpluses of \$(2,132,294) as of March 31, 2018.

Subject to confirmation of the current amounts upon the day of execution of the new management agreements, the additional payables, debts and accumulated deficits will be charged to the General Rate Surplus rather than remain as outstanding receivables to HRM. This will reduce all payables, debts and accumulated deficits to zero.

Canada Games Centre, Cole Harbour Place, and Alderney Landing Association as of March 31, 2018 do not have an operating deficit, or net accumulated deficit. Their accumulated surpluses will be transferred to the Capital Fund reserve upon execution of the agreement.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered rate Low. The new management agreements include wording to mitigate a number of risks associated with the operation of these facilities as a result of their complexity and existing outdated agreements.

COMMUNITY ENGAGEMENT

Consultation was completed with the volunteer community boards and general managers.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

- Alternative 1: The Audit and Finance Standing Committee may choose to recommend that Regional Council not approve either one, two, or all of the management agreements.
- Alternative 2: The Audit and Finance Standing Committee may choose to recommend that Regional Council direct staff to negotiate new agreements with different terms. This would be inconsistent with the key terms previously approved and require additional negotiation with the boards followed by a supplementary report.
- Alternative 3: The Audit and Finance Standing Committee may choose to recommend that Regional Council not approve the amount charged to the General Rate Surplus for Alderney Landing Association.

ATTACHMENTS

- Attachment 1: Management Agreement - Canada Games Centre
- Attachment 2: Management Agreement - Community Builder's Inc. (Cole Harbour Place)
- Attachment 3: Management Agreement - Alderney Landing Facility Association

A copy of this report can be obtained online at by or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Jen Heddon, Major Facility Coordinator, 902.476.0992

MANAGEMENT AGREEMENT

Attachment 1

Between:

Halifax Regional Municipality

and

Canada Games Centre Society

Halifax Regional Municipality
Parks & Recreation
PO Box 1749
Halifax, Nova Scotia B3J 3A5

HALIFAX

MANAGEMENT AGREEMENT

Between:

HALIFAX REGIONAL MUNICIPALITY

a municipal corporation in the Province of Nova Scotia (“HRM”)

- and -

CANADA GAMES CENTRE SOCIETY (HALIFAX)

a society incorporated in Nova Scotia (the “Board”)

WHEREAS HRM has a mandate to provide recreation services to its residents;

AND WHEREAS HRM is the sole owner of the Canada Games Centre (the “Facility”), located at 26 Thomas Raddall Drive in Halifax, Nova Scotia;

AND WHEREAS the Board is a community-based society which has played an important role in HRM’s delivery of recreational services, including by delivering programming and services that ensure a healthy, engaged and inclusive community, and managing the Facility on HRM’s behalf;

AND WHEREAS HRM’s Multi-District Facilities represent Regional recreation centres;

AND WHEREAS HRM and the Board agree that all residents of the Halifax Regional Municipality should have similar opportunities, regardless of gender, age, sexual orientation, ability, race, culture, faith or socio-economic status;

AND WHEREAS HRM wishes to engage the services of the Board to be responsible for the operation, management, maintenance and repair of the Facility, for and in conjunction with HRM;

AND WHEREAS HRM desires to engage the Board to promote the use of, operate, manage, maintain and repair the Facility and the Board agrees to perform such services for and on behalf of HRM, in accordance with the terms of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the mutual covenants herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

Capitalized words and phrases used herein shall, for all purposes of this Agreement and the Schedules hereto (unless there is something in the subject matter or context inconsistent therewith or unless otherwise defined herein) have the meaning set out in the definitions below:

“**Approvals**” means all approvals, authorizations, certificates, consents, licenses, permits, qualifications or orders of any Governmental Authority required by applicable Laws in connection with any of the following:

- (a) the operation, management or maintenance of the Facility; and
- (b) the performance by the Board of its obligations pursuant to this Agreement,

or any waivers or exemptions from the requirements for any such Approvals, provided that any such waivers or exemptions are in full force and effect;

“Best Value” means the bid that is determined by the Board to be in its best interests, not necessarily the lowest price bid, which is determined by evaluation of bids based on criteria or factors that may include purchase price, life cycle cost considerations, environmental and social considerations, delivery, servicing, past experience and performance, and any other criteria or factors stated in the bid documents;

“Betterment” means the cost incurred to enhance the service potential of a tangible capital asset, by increasing the previously assessed service capacity, lowering the associated operating costs, extending the useful life, or improving the quality of output, including additions to a capital asset, or the substitution of a better component for one currently used;

“Business Day” means any day excluding Saturday, Sunday or a statutory or civic holiday observed by chartered banks in Halifax, Nova Scotia;

“Capital Expenditure” means the funds required for the acquisition, construction, development, or betterment of a tangible capital asset, including the cost of its installation at the location and in the condition necessary for its intended use, which may be comprised of the purchase price, installation costs, design and engineering fees, legal fees, survey costs, site preparation costs, freight charges, transportation, insurance costs, and duties;

“Capital Fund Reserve” means a reserve fund, maintained and controlled by HRM for funding Capital Work in relation any MDF;

“Capital Work” means work done on the Facility as directed by HRM’s department of Facility Design and Construction and approved in the HRM capital budget;

“Claims” means any and all claims, liabilities, demands, losses, damages, actions and causes of action of any kind or nature including, without limitation, expenses, costs and legal fees;

“Community Facility Master Plan 2” means the framework approved by Regional Council on February 7, 2017 for municipal decision-making regarding recreation facilities;

“Costs” means all outlays, payments, expenses and costs of every kind and nature including, without limitation, costs, expenses, fees, disbursements, dues, sums of money, salaries, interest, wages, rentals and legal fees on a solicitor-client basis, and for greater certainty shall exclude damages awarded by a court;

“Council” means the municipal council of HRM;

“Dispute Resolution Procedures” means the procedures set forth in Article 19 to be used by the Board and HRM for dispute resolution of certain disputes as provided in this Agreement;

“Effective Date” means the date on which the last of the Board and HRM has executed this Agreement, as indicated by the date associated with that party’s signature;

“Emergency” means a sudden, unexpected, or impending situation that poses an inherent risk to people, property, or a significant interference with normal activities;

“Expiry Date” means the date five (5) years after the Effective date;

“Facility” means the property owned by HRM known as Canada Games Centre located at 26 Thomas Raddall Drive in Halifax Nova Scotia;

“Generally Accepted Accounting Principles (GAAP)” means a framework of accounting standards, rules and procedures which are in effect in Canada, including those published in Standards and Guidance Collection of the Chartered Professional Accountant of Canada, or any successor;

“Goods” means materials, furniture, merchandise, equipment, stationery and other supplies required by the Board for the transaction of its business and affairs, including services that are incidental to the provision of such supplies;

“HRM’s Representative” means such HRM employee(s), designated as such from time to time by HRM, who will act on behalf of HRM with respect to all powers, duties and authorities of HRM under this Agreement;

“HST” means the Goods and Services Tax or the Harmonized Sales Tax, as the case may be, which is or may be imposed under the *Excise Tax Act* (Canada), as amended, or any successor or similar legislation, including provincial legislation that is intended to impose a tax on the consumption of goods or services;

“Lands” means that land located at 26 Thomas Raddall Drive, Halifax, Nova Scotia;

“Law” or **“Laws”** means the common law and any statute, regulation, by-law, ordinance, policy, standard, code, order, permit, license, or rule of any Governmental Authority having jurisdiction in relation to any aspect of the Facility, as same may be amended, substituted, replaced or enacted from time to time;

“Multi District Facility (“MDF”) means Regional Recreation Facilities that serve a large geography area of the municipality. They provide specialized programming and services which may include pools, fitness centres, arenas, gymnasiums, and community meeting spaces.

“Operating Account” has the meaning as attributed to it in Article 7.4;

“Operating Budget” has the meaning as attributed to it in Article 6.1;

“Operating Period” means the period commencing on the Effective Date and ending on the Expiry Date, subject to the earlier termination of this Agreement in accordance with the terms hereof;

“Operations Contract” means an agreement, contract or purchase order entered between the Board, as agent for HRM, and a Supplier to furnish services, equipment, supplies or other things required for the proper operation and maintenance of the Facility during the Operating Period;

“Operations Requirements” means the requirements for the management, operation and maintenance of the Facility as set out in this Agreement and as otherwise specified from time to time by HRM and includes HRM policies applicable to the use of the Facility (which by way of example only, includes policies in respect of tobacco and alcohol use on municipal properties or the closure of municipal venues, by the Chief Administrative Officer, due to inclement due to inclement weather), as these policies may be adopted and amended from time to time;

“Operation Services” means the provision of all labour, materials and services required to manage, operate and maintain the Facility in accordance with the terms and conditions of this Agreement and in accordance with applicable Laws both prior to and during the Operating Period. Operation Services shall include the employment and furnishing of all equipment, supplies, tools, storage, transportation and other things and services of every kind whatsoever necessary for the proper, effective and cost efficient management, operation and maintenance of the Facility and all administrative, accounting, record-keeping, and similar responsibilities of every kind whatsoever incidental to such obligations. A reference to “Operation Services” shall mean “any part and all of the Operation Services” unless the context otherwise requires;

“Performance Standard” means at any particular time during the Operating Period:

- (a) in relation to the state of condition, maintenance and repair of the Facility, the performance by the Board of all Work hereunder to a level reasonably comparable to what would be provided by a similar facility, having regard to the age of the Facility and allowing for reasonable wear and tear; and
- (b) in relation to the operation of the Facility, to at least the standard of management and operation of a similar facility;

consistent with this Agreement and consistent with the quality of operations of a prudent owner and the facility condition assessment report;

“Permits” means all permits, permissions and approvals required, or as the context requires, granted by Governmental Authorities for the design, construction and operation of the Facility;

“Plant Equipment” means the heating, ventilation, refrigeration, air-conditioning and other related equipment, not including fixtures or program supplies;

“Programming” means physical, Recreation, Sport, cultural, educational, social and capacity-building programs and other services offered to members of the public through registered or unregistered programs administered and run in or through the Facility;

“Recreation” is the experience that results from freely chosen participation in physical, social, intellectual, and creative pursuits that enhance individual and community wellbeing;

“Renovation” means an alteration of the Facility, or an addition, re-construction or demolition of a portion of the Facility, undertaken at any time;

“Repair” means non-Capital Work in the nature of a repair to the Facility undertaken at any time;

“Required Condition” means the condition of the Facility at any time, including on the Termination Date, that meets the Performance Standard;

“Retail Space” means the space within the Facility as may from time to time by agreement between HRM and the Board be leased to, licensed to, or otherwise operated by, third parties including, without limiting, any retail establishment, restaurant, canteen, beverage or concession outlets, commercial or office space;

“Revenue” means all monies, proceeds, and funds of every nature and kind received by the Board in respect of the Facility from and after the Effective Date that are either:

- (a) derived directly or indirectly from operations at the Facility (including but not limited to fees paid for services provided in or from the facility, or for use of the Facility, or other payments from lessees or concessionaires in the Retail Space, Advertising and Sponsorship Fees, any parking revenues and any fees from any licensee for the use of any space forming part of the Facility but not including the gross revenues of bingo, licensees, lessees or concessionaires and any other charges to such licensees, lessees or concessionaires such as taxes, common area costs or premiums for insurance), determined in accordance with GAAP consistently applied, excluding, however, the following:
 - (i) applicable HST, excise, sales, gross income, entertainment and use taxes or similar government charges collected directly from patrons or guests, or as a part of the sales price of any goods, services or displays, such as gross receipts, admission, cabaret or similar or equivalent taxes;
 - (ii) proceeds from the sale or other disposition of capital assets or unwanted inventory;
 - (iii) rebates, discounts or credits of a similar nature (not including credit card discounts which shall be included as an item of revenue and shall be considered an operating expense); or
- (b) by way of grants, gifts, sponsorships, bequests, donations, fund-raising or otherwise;

“Schedules” means the schedules attached hereto which form part of this Agreement;

“Services” means services required by the Board for the transaction of its business and affairs, excluding services provided by an employee of the Board through a Personal Services Contract;

“Sport” means an activity involving physical exertion and skill in which an individual or team competes against or others and follows prescribes rules;

“Supplier” means any person, other than the Board and employees of the Board, entering into an Operations Contract to furnish services, equipment, supplies or other things in connection with operation and maintenance of the Facility during the Operating Period;

“Termination Date” means the date on which this Agreement expires or terminates; and

“Work” means any or all of the things to be furnished or performed by the Board pursuant to this Agreement.

1.2 Headings

Headings, recitals and the provision of a table of contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 References

Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, subsection, clause, sub clause or other subdivision is a reference to such Schedule, Article, Section, subsection, clause, sub clause or other subdivision of this Agreement. The terms “hereof”, “hereto”, “herein”, “hereby” and “hereunder”, and similar expressions mean and refer to this Agreement and, unless the context otherwise requires, not to any particular Article.

1.4 Parties

References in this Agreement to the “Parties” shall mean the parties to this Agreement and a reference to a “Party” shall mean one (1) of the parties to this Agreement.

1.5 Number and Gender

Words importing the singular only shall include the plural and vice versa, words importing any gender shall include other genders and references to persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations. Any capitalized word which is a derivative of any word defined in 0 shall have a meaning corresponding to the defined word.

1.6 Statutes and Regulations

Any reference in this Agreement to all or any part of any statute, regulation, by-law or other legislative enactment shall, unless otherwise expressly stated, be a reference to that statute, regulation, by-law or legislative enactment or relevant part thereof as amended, substituted, replaced or re-enacted from time to time.

1.7 Accounting Terms and Principles

Unless otherwise expressly stated, all accounting terms and principles applicable to this Agreement shall be interpreted and applied in accordance with GAAP which are in effect in Canada, including those published in the handbook of the CPA , or any successor, as at the date on which such calculation is made or is required to be made.

1.8 Time

Time shall be of the essence of this Agreement. If the last day of any period of days set out herein falls on a day which is not a Business Day, such period of days shall be extended to the first Business Day immediately following the last day of such period of days. If anything herein falls to be done or held on a day which is not a Business Day, the same shall be done or held on the next succeeding Business Day.

1.9 Authority

Where reference is made to a direction, response, act, decision, determination, consent, waiver, approval, notice, request or other communication of HRM that is required or that may be done, performed or carried out by HRM pursuant to this Agreement, it may be so done, performed or carried out by the HRM Representative or such other Person or Persons as may be authorized by HRM to act in his stead and any such Person or Persons or any other Persons who may be designated from time to time as HRM Representative for the purposes of this Agreement by notice

from HRM to the Board in accordance with this Agreement.

1.10 Governing Law

This Agreement is made in the Province of Nova Scotia and shall be governed by and construed in accordance with the laws in force in the Province of Nova Scotia. The parties submit to the jurisdiction of the Supreme Court of Nova Scotia, subject to any restrictions relating to access to such court under applicable Laws, with respect to all claims and proceedings arising out of or related to this Agreement.

1.11 Amendments in Writing

No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the Parties, either individually by counterpart or collectively. Any amendment, variation or waiver shall take effect on the date specified in the amendment, variation or waiver or, if not so specified, on the date on which the last Party executes and delivers the amendment, variation or waiver.

1.12 No Waiver

- (a) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.
- (b) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall extend only to the party to whom such waiver is expressly granted and shall not be construed as a waiver in favour of any other party in respect of such provision or breach and shall not prejudice the rights of any other party from insisting upon performance of such provision.
- (c) The failure of any party to give notice to the other party, or to take any other steps in exercising any right in respect of the breach or non-fulfillment of any provision of this Agreement, shall not operate as a release or waiver of that right or as a release of the other party from its obligations and liabilities nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.
- (d) The acceptance by any party of payment or performance of any obligation after the breach or non-fulfillment by the other party of any provision of this Agreement shall not constitute a waiver of the provisions of this Agreement.

1.13 Severability

If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable, unless such invalid provision is fundamental to the efficacy of this Agreement, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by Laws.

1.14 Schedules

The following Schedules are attached, and form part of this Agreement:

Schedule "A" Privacy Protection Schedule

1.15 Force Majeure

Notwithstanding anything to the contrary in this Agreement, if HRM or the Board is bona fide delayed in or prevented from performing any obligation arising under this Agreement by reason of third party strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion, EMO responsibilities or other act of God, and not caused by its default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause exists, and the party so delayed shall and is entitled to carry out such obligation within the reasonable time period after the cessation of such cause.

ARTICLE 2 - MANAGEMENT, OPERATION AND MAINTENANCE OF THE FACILITY

2.1 General

The Board agrees to manage, operate, maintain and promote the use of the Facility as agent for HRM from and after the Effective Date and to perform the Work. The Board agrees and HRM authorizes the Board to promote the use of, manage, operate and maintain the Facility on behalf of HRM from the Effective Date in accordance with and subject to the provisions of this Agreement.

2.2 HRM's Objectives

The Board acknowledges that HRM's objectives in entering this Agreement with the Board are as follows:

- (a) Undertaking the operations of the Facility in a cost effective and efficient manner;
- (b) Building a broad based public support for the Facility through the high quality of operation making the Facility a place of civic and community pride;
- (c) Establishing an informed partnership with the Board to generate innovative ideas, share resources, and increase collaboration;
- (d) Making the Facility available to a wide range of community groups; and
- (e) Promoting fair and equitable access by user groups based on community, culture, socio-economic status, ability, sexual identity, and sport and gender.

The Board shall use its reasonable best efforts to promote the use of, operate, manage, and maintain the Facility to meet HRM's objectives as set out in this Article.

2.3 Use

The Board covenants that the Facility will only be used throughout the Term for Programming and activities and events that are appropriate and desirable for municipal purposes and the Board covenants and agrees that it may only use the Facility as contemplated by this Agreement and the Annual Budget and Business Plan or as otherwise permitted in writing by HRM from time to time.

ARTICLE 3 - DUTIES AND RESPONSIBILITIES OF THE BOARD

3.1 Board Mandate

The Board shall perform its duties and exercise the powers and authority set out in this Agreement in a timely, diligent, competent, professional and workmanlike manner and according to the Performance Standard, and in accordance with the terms and provisions of this Agreement and the Annual Budget and Business Plan.

In all events, the Board shall perform its duties and responsibilities in a diligent, honest, competent and professional manner and in accordance with any applicable directives, instructions, guidelines, policies and procedures of HRM not inconsistent with the terms of this Agreement and at all times maintain the Facility in the Required Condition.

3.2 Specific Duties of the Board

The Board will generally do and perform and, where necessary, contract (either in its own name or, if permitted by this Agreement or authorized by HRM, as agent for HRM) for all matters and things necessary for the proper and efficient management of the Facility, and to carry out the intent of this Agreement. The Board agrees to perform the following specific duties, without limitation to the Board's general obligation to manage, operate, promote and maintain the Facility on behalf of HRM:

- (a) To perform the Operations Services so as to provide continuous service, subject to the terms of this Agreement, to customers in compliance with all applicable Law and Approvals including, without limiting the foregoing, according to the Annual Budget and Business Plan;
- (b) To develop, deliver and staff programming and services which encourage healthy lifestyles through participation in inclusive physical, recreational, cultural, educational, social and capacity-building programs in the Facility;
- (c) to advertise and promote the Facility, and to cross-promote and share marketing with HRM as applicable;
- (d) to consider advertising and sponsorship as potential sources of revenue for inclusion in the Facility's Annual Budget. In so doing, the Board shall use its best efforts to market and sell, at the best price possible, sponsorship and advertising opportunities at the Facility. All advertising, promotional, and sponsorship activities undertaken by the Board shall be conducted in accordance with, but not limited to, Administrative Order 55, *Respecting Sponsorship* as amended from time-to-time. The naming of the Facility shall be conducted in accordance with, but not limited to, Administrative Order 56, *Naming Rights* and Administrative Order 46, *Respecting HRM Asset Naming Policies*, as amended from time-to-time;

- (e) to charge and collect on behalf of HRM from users of the Facility all user charges, revenues from advertising and sponsorship contracts, rents for the Retail Space established by this Agreement, and any and all revenues received from the operations or use of the Facility, as revised from time to time in accordance with this Agreement, plus applicable taxes including HST and property taxes to deposit immediately all amounts collected to the Operating Account established pursuant to this Agreement;
- (f) to conduct inspections with tenants of Retail Space moving into or out of the Facility;
- (g) to conduct regular inspections of the entire Facility for the purpose of determining any repairs, maintenance or capital improvements, or renovations that may be required to maintain the Plant Equipment and building systems and to provide HRM with a reasonably detailed report with respect to each such inspection;
- (h) to use its reasonable best efforts to collect arrears of rent, all Advertising and Sponsorship Fees, or other concession or user fees and rents for the Retail Space and to report quarterly to HRM of any arrears, provided, however, that the Board shall not pursue any legal action on behalf of HRM for the purpose of collecting such arrears without the express written permission of HRM (provided further that nothing in this provision absolves the Board from its obligation to have appropriate payment procedures in place for payment of monthly rents and fees in advance by tenants and users and to collect on behalf of HRM such advance payments of such amounts). Any account arrears that are considered at risk, or are past 90 days need to be reported to HRM;
- (i) to interview prospective tenants and make recommendations to HRM concerning prospective tenants and to negotiate leases or user license agreements with prospective tenants for the Retail Space consistent with a recreation facility on terms and conditions approved by HRM;
- (j) to arrange for the supply, as may be required, of electricity, gas, steam, fuel, water, telephone and other services and to arrange, for the effective and economical operation, maintenance and repair of the Facility and its Plant Equipment (including, without limitation, any heating, ventilating, air-conditioning, plumbing, electrical and elevator equipment) as may be required by HRM or so as to comply with the Performance Standard, and Laws and to arrange for janitorial and any other cleaning services, including window cleaning, building security, ice and snow removal, landscaping, grounds maintenance, painting and any alterations approved by HRM;
- (k) to provide operation and maintenance of the Plant Equipment, furniture fixture and equipment (FF&E) and the Land to the Performance Standard and arrange for technical instruction and training of staff which may be required for the proper operation and maintenance of the Facility, FF&E and the Lands;
- (l) to pay all accounts payable under applicable contracts that are being retained by the Board in the ordinary course of business in a timely manner;
- (m) to provide supervision and control of the activities of users of the Facility, tenants, concessionaires and holders of privileges and their employees, including the removal of users and tenants for non-payment of rent or other proper cause; and
- (n) to follow HRM's policies and directives in respect of the safety of employees and visitors to

the Facility, or to develop, implement and maintain internal policies and practices that are equivalent to or exceed HRM's policies and directives.

3.3 Authority to Contract on Behalf of HRM

Subject to the provisions of this Agreement, HRM authorizes the Board to enter into such contracts and agreements as agent of HRM as may be necessary in the performance of the duties, responsibilities and obligations of the Board as described in this Agreement and HRM appoints the Board as its agent for the following purposes:

- (a) for the collection of rent, Advertising and Sponsorship Fees, facility rental rates and any other items of revenue (including HST) relating to the operation of the Facility;
- (b) in the event of an emergency requiring immediate remedial action to be taken and if the Board is unable to contact HRM for instructions, then the Board shall be authorized to act as agent for HRM for the purpose of taking any remedial action reasonably necessary in the circumstances;
- (c) to retain Suppliers as independent contractors pursuant to Operations Contract subject to the Operating Budget approved by HRM for the Facility and the terms of this Agreement;
- (d) to undertake Facility rentals, as Agent for HRM, with various user groups at rents and fees set out in its Annual Budget and Business Plan.
- (e) to enter into, as agent for HRM, leases and other tenancy agreements, contracts, licenses or other arrangements, at market value, in forms approved by HRM with tenants, occupants, licensees, concession grantees or other uses used consistent with a recreation facility;
- (f) to enter into, as agent for HRM, advertising and sponsorship contracts; and
- (g) as otherwise authorized from time to time by HRM in writing.

3.4 Limitations of Authority

Unless expressly authorized in this Agreement, or by prior written approval of HRM, the Board shall not have the authority to do any of the following:

- (a) obtain loans for HRM, whether secured or unsecured, or give or grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Facility or any portion thereof or any interest of HRM therein, or obtain replacements of any mortgage or mortgages;
- (b) prepay, in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Facility or any portion thereof, except to the extent contemplated by the Annual Budget and Business Plan approved by HRM or as contemplated and approved in writing by HRM;
- (c) cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or corporation;
- (d) cause HRM to enter any contracts with respect to the Facility other than contracts in the

ordinary course of managing the Facility which are in accordance with the provisions of this Agreement;

- (e) sell, exchange or convey the Facility or any portion thereof;
- (f) release, compromise, assign or transfer any claim, right or benefit of HRM, except in the ordinary course of managing the Facility pursuant to this Agreement;
- (g) allow a default judgment to be entered against HRM or the Facility or any assets associated with the Facility;
- (h) modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facility;
- (i) grant easements or other property rights in the Facility;
- (j) lease, purchase or sell any real property on behalf of HRM;
- (k) install or modify closed circuit television equipment without consulting with HRM Corporate Security;
- (l) undertake purchases where the Board has not complied with the competitive bidding practices set out in Article 5 hereof;
- (m) permit or undertake cash advances from any Facility bank accounts; or
- (n) utilize Facility funds for any purposes other than the operation of the Facility.

3.5 Renovations by Board

The Board agrees that it shall not make any Renovation to the Lands and the Facility without the written approval of HRM. Without limiting the generality of the foregoing, the Board shall not excavate or drill or lay new asphalt or concrete pads on the Land nor construct, renovate, install or erect any buildings, structures, fixtures, major improvements or other facilities without first obtaining the written approval of HRM for such works.

3.6 Lease Arrangements

With respect to Retail Space and any leasing, contracting, and licensing, the Board agrees to:

- (a) provide tenant and users coordination services including the review of rental applications, and offers to lease, and to engage in good-faith consultations with HRM regarding the terms thereof;
- (b) prepare leases or user license agreements as applicable on a form approved by HRM;
- (c) negotiate with tenants and/or users regarding any modification to the terms of such leases or user license agreements and to arrange for their execution;
- (d) receive plans and specifications for any tenant changes, leasehold improvements, signage or other agreements and to arrange for any approvals required in connection with them; and

- (e) arrange for the completion of any work required of HRM pursuant to the terms of any offer to lease, license agreement or lease, user or tenants agreement and to make or arrange for the payment of any allowance or contributions from HRM to which tenants may be entitled after the satisfactory completion of any tenant or user work including partitioning and any other leasehold improvements.

The terms and conditions of any property lease negotiated by the Board shall be subject to the prior approval of HRM and shall be at market value unless otherwise approved by HRM.

The Board shall supervise the moving in and out of tenants and, so far as is reasonably possible, to arrange the times thereof so that there shall be a minimum of disturbance to the operation of the Facility and inconvenience to any other users. The Board shall use its reasonable best efforts to arrange for performance of all covenants, duties and obligations of HRM pursuant to all leases, licenses, and other agreements and/or user license agreements which are in effect during the Operating Period in so far as such performance is consistent with the terms of this Agreement and any subsequent instructions given from time to time by HRM.

Notwithstanding the foregoing, any tenants, concessionaires, licenses or other operators in the Facility must receive Board permission and obtain all appropriate licences to conduct gambling and lottery activities, not including VLTs or similar gaming devices. The Board is permitted to conduct gambling or lottery activities, provided that they obtain the appropriate licences and do not make use of VLTs or similar gaming devices.

3.7 Advertising and Sponsorship Contracts

With respect to Advertising and Sponsorship Contracts, the Board agrees to:

- (a) provide coordination services for advertising and sponsorship in the Facility, including the review of advertising and sponsorship contracts and good-faith consultations with HRM regarding the terms thereof; and
- (b) receive plans and specifications for any associated signage, including arranging for any approvals required in connection therewith.

HRM shall consult with the Board on digital signage advertising content provided by HRM to be used in the Facility to ensure advertisements and sponsorships are not in conflict with Board sponsorship and advertising agreements.

3.8 Employees

All personnel employed by the Board in the management, administration and operations of the Facility, continue to be selected for employment by, and will be employees of, the Board, and shall under no circumstances or at any time be deemed or implied to be employees of HRM. The Board shall be solely responsible for the hire, dismissal, control, direction, supervision, instruction, and training of its employees. The wages, salaries and benefits of such employees are the responsibility of the Board and shall be paid directly by Board.

The Board shall continue to be responsible for the development of employment policies, and will ensure appropriate coverage for Workers' Compensation purposes, statutory payroll deductions and remittance to appropriate taxing authorities. The Board shall ensure that fidelity bonds, credit checks, criminal records checks and sex-abuse registry records have been obtained and are in

place in respect of all employees of the Facility where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations. The Board will take all measures required in compliance with the Occupational Health and Safety Act to ensure the safety of employees and onsite contract workers.

The Board may arrange with HRM for its employees to have access to HRM training programs, where applicable, on a fee-for-service basis and subject to available space.

3.9 Property of HRM

(a) Books and Records

The Board shall maintain or cause to be maintained at the Facility complete and accurate books and records in connection with the management and operations of the Facility in accordance with GAAP. HRM shall have the right at its own expense, and upon reasonable notice and at all reasonable times during normal business hours to audit, examine, make copies and take extracts from the books of account and records maintained by the Board pursuant to this Agreement. Such right may be exercised through any agent or employee designated by HRM.

Upon any termination of this Agreement, all books and records shall be turned over forthwith to HRM at no cost to ensure the orderly continuance of the operation of the Facility. All books and records will thereafter be available to the Board at the Facility, at all reasonable times, for inspection, audit, examination and copying.

(b) Equipment and Material

All equipment, located in or purchased for the Facility at any time by the Board and material relating to the management, operation, capital and maintenance of the Facility shall be and remain the property of HRM and, upon termination of this Agreement, the Board shall return or turn over possession of the same to HRM.

Any equipment with remaining useful life, which does not meet the Board's current or foreseeable future need, may be declared surplus by the Board. Any equipment that is declared surplus shall be made available to HRM for its business units or agents before being disposed of to a third party. Any surplus equipment that cannot be redistributed by HRM internally shall be disposed of by HRM in accordance with the provisions of its Procurement Policy respecting surplus assets, and any funds realized will be directed to the Facility.

3.10 Municipal Records

For greater certainty, all records, reports, books of account and other documents and materials relating to the management, operation, capital and maintenance of the Facility that are the property of HRM under this Article constitute records under the control of a municipality for the purposes of section 463(1) of the *Municipal Government Act* and are subject to Part XX (Freedom of Information and Protection of Privacy) of the *Municipal Government Act*, S.N.S. 1998, c. 18.

Requests for municipal records may be directed to the HRM Access & Privacy Office.

The Board shall cooperate with the HRM Access & Privacy Office within the legislated timelines for requested records.

For greater certainty, all records, reports, books of account and other documents and materials relating to the management, operation, capital and maintenance of the Facility that are the property of HRM under this Article constitute records under the control of a public body for the purposes of section 4(1) of the *Personal Information International Disclosure Protection Act*, S.N.S. 2006, c. 3 and are subject to the Act. In its capacity as manager of the Facility, the Board constitutes a service provider under the Act, and shall comply with its provisions.

The Board shall comply with the requirements as set out in Schedule A, the Privacy Protection Schedule, with respect to the use of personal information as therein defined.

ARTICLE 4 - TERM

4.1 Term

Subject to earlier termination of this Agreement and in accordance with the terms herein, the term of this Agreement shall commence on the Effective Date and end on the Expiry Date which is the date five (5) years after the Effective Date. The period from the Effective Date to the Expiry Date shall be referred to as the Operating Period. The term of the Operating Period may be terminated earlier in accordance with the terms hereof.

4.2 Renewal

This Agreement may be renewed by HRM at its option for two additional five-year terms on terms as contained herein or as amended as acceptable by both parties. HRM shall provide the Board with its notice of intention to exercise this option no later than 12 months prior to the end of the then current Term.

ARTICLE 5 - OPERATIONS CONTRACTS

5.1 Board's Right to enter Operations Contract on behalf of HRM

Subject to the provisions of this Agreement including, without limitation Articles 5.2, 5.3 and 5.4, the Board may enter into Operations Contracts; provided that the Board shall not thereby be relieved of any of its obligations to HRM as set forth in this Agreement. All Operations Contracts shall be in writing. If the Operations Contract is for an expenditure, it shall be for an expenditure that is within the limits of the Annual Budget and Business Plan approved by Council pursuant to this Agreement.

5.2 Prices Subject to Competitive Bidding

When making purchases on behalf of HRM for the Facility, the Board shall comply with the following:

- (a) purchases exceeding \$25,000 must be solicited by HRM, and shall not be divided into multiple purchases so as to reduce the purchase value below that threshold;
- (b) all purchases of goods and services made by the Board exceeding \$1,000 and less than \$25,000, on behalf of HRM shall be done in accordance with the terms of this Agreement, applicable laws, and procurement best practices;

- (c) seek competitive bids/quotes for all purchases of goods and services exceeding \$1,000 but less than \$25,000, and award to the bid providing best value to HRM, unless:
 - (i) HRM provides express written permission to use an alternative method of procurement; or
 - (ii) an unforeseeable situation of urgency exists and the goods or services cannot be obtained in time seeking competitive bids/quotes;
- (d) competitive bids/quotes are not required for purchases valued below \$1,000;
- (e) when selecting a list of vendors to be provided the opportunity to provide bids/quotes, the Board is responsible to ensure a fair and open process is followed:
 - (i) the Board is only required to invite qualified bidders to submit bids/quotes, however they are not to consistently invite bids/quotes from the same or a select group of vendors;
 - (ii) invitations and bidding opportunities are to be equitably distributed among all potential bidders in an area, and all interested and qualified vendors are to be evaluated on a consistent and equitable basis; and
 - (iii) it is recommended that Board retain the names of the vendors contacted for each opportunity;
- (f) document attempts to obtain best value, and retain such documentation (including quotes) and make it available to HRM or HRM's Auditor General for review upon request;
- (g) draw upon HRM's standing offers for the acquisition of commonly purchased goods and services whenever possible, unless HRM provides express written consent permitting otherwise, and where the Board is named in a standing offer, complete a vendor evaluation scorecard at the completion of the contract;
- (h) HRM's standing offers contain commercial confidential information and this information shall not be shared outside of the relationship between the board, HRM and the standing offer holder; and
- (i) the Board shall be responsible for:
 - (i) identifying and initiating procurement activities within their Facility;
 - (ii) complying with this Agreement and other procurement procedures established by HRM's Procurement Section from time to time;
 - (iii) monitoring, managing and enforcing contracts requisitioned by the Facility; and
 - (iv) ensuring the specific objectives of contracts requisitioned by the Facilities are achieved.

5.3 Conditions respecting Operations Contracts

The Board agrees that:

- (a) the Board shall make available to HRM a copy of all executed Operations Contracts for the Facility upon request, and a list thereof with each Monthly Report;
- (b) subject as hereinafter provided, no Operations Contract shall be amended, varied or terminated without the prior consent of HRM; provided however, HRM's prior consent is not required for amendments or variations which do not cause the Operation Services to vary from the Operations Requirements or the terms and conditions of this Agreement;
- (c) the Board shall make available to HRM a copy of all amendments or variations to all Operations Contracts forthwith, upon execution thereof, and a list thereof with each Monthly Report; and
- (d) any operations contracts awarded by the Board in accordance with this Agreement shall require contractors to provide the Board with a Certificate of Insurance evidencing a Commercial General Liability policy with limits of not less than Two Million Dollars (\$2,000,000.00) or, for those situations involving a higher risk (including, but not limited to, those involving welding, boiler and machinery, chemical, pyro techniques, or sale of alcohol) not less than Five Million Dollars (\$5,000,000.00), with HRM as Additional Named Insured on the policy, and the contractors shall also be required to provide evidence of WCB converge for their employees, with the same required of any sub-contractors contemplated by the operations contract.

5.4 Long-Term Operations Contracts

The Board shall not enter into any Operations Contract having a term extending beyond the Expiry Date without the prior written consent of HRM.

ARTICLE 6 - BUDGETS AND BUSINESS PLAN

6.1 Budgets

Not later than December 31st or 30 days after receipt of a request from HRM in each Operating Year, the Board shall deliver a detailed proposed Annual Budget for the Facility containing:

- (a) an operating budget, including:
 - (i) projections of anticipated revenues (including a breakdown of use by Subsidized and Non Subsidized Users if applicable);
 - (ii) proposed user charges for the Facility for the upcoming fiscal year;
 - (iii) operating and maintenance expenses; and
 - (iv) amount of subsidy requested from HRM if required, with a written narrative explaining any significant changes from the previous year's budget or the projected revenues/deficits.

- (b) a capital budget, including:
 - (i) estimates of expenditures required, if any, from the Capital Fund Reserve; and
 - (ii) a project component, including project costs (which includes capital expenditures, which shall meet the criteria for Capital Fund Reserve expenditures, as set out in section 7.3).

The Board and HRM staff shall jointly review the proposed Annual Budget for the Facility to agree upon the priorities for operations and to discuss potential alternatives available with respect to capital projects and ensure alignment with Council priorities and Council's direction on HRM's annual budget. Where directed by HRM, the Board shall include in its Annual Budget the implementation of initiatives associated with the Community Facility Master Plan 2 and Regional Council priorities. HRM shall advise the Board of any changes required by HRM, acting reasonably, to the proposed Annual Budget for the Facility and, within one (1) month thereafter, the Board shall submit to HRM a revised budget reflecting the changes required by HRM.

The final proposed Annual Budget for the Facility will subsequently be included with HRM's annual budget for consideration by Halifax Regional Council and the Board shall be prepared to present to Halifax Regional Council if requested, and to answer questions of councillors with respect to the proposed Annual Budget for the Facility.

The proposed budget, or revised budget, as the case may be, approved by HRM in writing shall constitute an approved operating budget for the Facility ("**Operating Budget**") for the purposes of expenditures for operations and maintenance of the Facility for the applicable Operating Year, but shall not be considered authorization for the Board to undertake any capital expenditures (all of which must be specifically approved in writing by HRM).

If, during the fiscal year, the Board proposes changes to the Facility's operation outside of the approved Operating Budget and Business Planning process, a business plan to support the proposed operational change shall be provided to HRM, and will require approval by Regional Council.

The Board shall, as part of the HRM's Budget Process, provide to HRM Representative, a 5 year strategic plan for financing service level improvements and alterations to the Facility as a planning guide for future service level improvements and alterations to the Facility as a planning guide for future required improvements or alterations to the Facility. This will be updated annually.

6.2 Community Access & Pricing

HRM is undertaking a fee study for HRM-owned recreation facilities. When the fee study is complete, HRM shall advise the Board of the results, as well as any Council direction arising therefrom, and the Board shall consider it in its preparation of the annual budget and business plan for the operation of the Facility.

The Board shall establish user charges for the services offered at the Facility, subject always to the prior approval of HRM.

6.3 Current Year Surplus and Accumulated Surplus

If, in any fiscal year, a surplus is realized, such surplus shall be transferred to HRM to fund HRM's

Capital Fund Reserve, and shall be for the exclusive use of the Facility. The parties shall agree to the date for the transfer annually, following the end of the fiscal year.

Any accumulated surplus held by the Board shall be transferred to HRM's Capital Fund Reserve on the Effective Date, for the exclusive use of the Facility.

All transfers of surpluses shall be a transfer of cash to HRM. Interest will be paid on operating cash balances. Surplus funds in a capital reserve account will earn interest which will be added to the capital reserve fund for the use of the Facility.

6.4 Operating Deficit

If, in any fiscal year, a deficit is realized in excess of the budget approved by Halifax Regional Council in accordance with this Agreement, the Board shall prepare and submit a written report (the deficit report) at the time it submits its Annual Budget to HRM, outlining the magnitude of the deficit, the reasons, and the recommendation for dealing with it in the coming year.

Where the Board is in a deficit position for three consecutive years, HRM shall have the right, in its sole discretion, to terminate this Agreement, or to take any other measures it deems necessary.

For greater certainty, any deficit, or portion thereof, caused solely by:

- (a) a force majeure, more particularly described in Article 1.15;
- (b) the short-term use of the Facility for urgent or emergency purposes by HRM, more particularly described in Article 9.2(g);
- (c) the commencement of unscheduled capital works;
- (d) an initiative directed by HRM outside of the approved Annual Budget or Business Planning process; or
- (e) changes to the schedule of previously scheduled capital work,

shall not be considered by HRM in its determination of whether the Board is in a deficit position for the purposes of termination under this Article.

6.5 Debt Absorption

Upon execution of this Agreement, HRM shall undertake the process to complete the absorption of any outstanding operating and capital debts owed to HRM by the Board for its previous operation of the Facility, subject to appropriation of funds and approval by Regional Council.

6.6 Business Plan

HRM shall provide to the Board a list of programming focus areas to inform its development of a proposed Business Plan for the Facility on or before October 15th in each Operating Year.

Not later than December 31st, or 30 days after receipt of a request from HRM, in each Operating Year, the Board shall deliver a detailed proposed Business Plan for the Facility that encompasses CFMP2 and Regional Council priorities containing, at a minimum:

- (a) vision and mission statement;
- (b) strategic priorities and goals;
- (c) performance measures; and
- (d) risk analysis.

The Business Plan shall be in such form as is required by HRM.

ARTICLE 7 - FINANCIAL ARRANGEMENTS

7.1 Management Fee

No management fee shall be paid by HRM to the Board for activities carried out pursuant to this Agreement.

7.2 Revenues

All Revenues with respect to any activities associated with operation or management of the Facility, and interest earned on such Revenues, shall belong to HRM and when collected or recovered by the Board shall be deemed to be held in trust for the benefit of HRM.

7.3 Capital Fund Reserve

HRM shall establish and maintain a Capital Fund Reserve in accordance with HRM policies and processes including, but not limited to, Administrative Order 2014-015-ADM, *Respecting Reserve Funding Strategies* as amended from time-to-time.

The Capital Fund Reserve shall only be used to fund Capital Work that is not, in the sole discretion of HRM, regular maintenance, and that:

- (a) is a new construction, expansion, renovation, or replacement project for an existing facility, with a total cost of at least \$25,000.00 over the life of the project, including costs of land, engineering, architectural planning, and contract services required for the project;
- (b) is a purchase of major equipment (assets) costing \$50,000.00 or more with a useful life of at least ten years; or
- (c) is a major maintenance or rehabilitation project for existing facilities with a cost of \$25,000.00 or more and an economic life of at least 10 years.

7.4 Operating Account

The Board shall maintain a bank account (the "Operating Account") for the Revenues of the Facility, including but not limited to any interest paid on balances in the Operating Account from time to time. All rents and other Revenues from the operations of the Facility (including but not limited to Revenues from retail space, advertising and sponsorship fees, programming, and rental rates and taxes) collected by the Board shall be deposited immediately in the form in which they are received without set-off or deductions into the Operating Account. Where any of the Revenues from the operations of the Facility are collected directly by HRM, they may be deposited by HRM into a bank account of HRM's choosing.

The Operating Account shall be either:

- (a) established and administered under HRM's existing banking arrangements; or
- (b) established at a bank acceptable to HRM.

Where the Operating Account is established at a bank acceptable to HRM, the Board shall transfer the Operating Account to HRM's existing banking arrangements as soon as is practicable, having regard to existing third-party contracts.

The Board shall have signing authority on the Operating Account and may make payments from the Operating Account from time to time in accordance with this Agreement and subject to any agreement between HRM and the Board.

Where the Operating Account is administered under HRM's existing banking arrangements:

- (a) it shall be separate from HRM's accounts, with HRM Finance staff having the ability to view the account and to transfer funds with appropriate authorizations;
- (b) changes to the Operating Account signatories or online access to the Operating Account will be processed by HRM through its Finance Department; and
- (c) HRM Finance staff shall grant online access to the bank account to individuals in consultation with the Board.
- (d) associated banking fees included as part of HRM's existing banking arrangements will be paid by HRM.

Notwithstanding any other provision of this Agreement, all funds in the Operating Account shall be the property of HRM exclusively.

The Board shall adhere to HRM's Cash Management Policies, including any companion Standard Operating Procedures as provided to the Board by the HRM Representative from time to time. Any surplus cash may be invested, and any such investment shall be in accordance with HRM's Investment Policy by authorized HRM Finance staff.

7.5 Payment of Expenses

From and after the Effective Date, the Board shall be permitted to issue cheques or electronic payments from the Operating Account for the purpose of paying all reasonable and proper expenses incurred on behalf of HRM in connection with the operation and maintenance of the Facility or by the Board for its employment of staff to operate the Facility, subject to and in accordance with this Agreement and the Operating Budget, but the Board shall not issue cheques or electronic payments from the Operating Account to pay capital expenditures or for any other purpose unless approved by HRM in writing. Notwithstanding any other provision of this Agreement, the Board shall not pay out of the Operating Account and shall not undertake or authorize any expenditure, work, repairs, alterations or maintenance estimated to cost in excess of twenty-five thousand dollars (\$25,000.00) for any one item unless:

- (a) HRM's written approval is first obtained; or
- (b) the expenditure relates to a monthly or recurring operating charge and HRM's approval has been provided by the approval of Operating Budget or by acceptance of lease agreements with tenants; or
- (c) any such work is urgently required to be done and failure to do so would cause personal injury or damage to the Facility or its equipment or contents or could impair the value of HRM's investment and HRM or its duly authorized representatives cannot be located for the purpose of giving approval for such work, or if failure to do such work might expose either HRM or the Board, or both to the imposition of penalties, fines, or any other liability, then, in any such case, the Board is authorized to proceed with any such work as it in its absolute discretion reasonably determines to be urgently necessary for the protection and preservation of the Facility or its equipment or contents or HRM's investment therein or to protect HRM and the Board from exposure to fines, penalties, or any other liability.

7.6 Payroll

HRM may prepare and process payroll as a fee for service.

7.7 Taxes

The Board will deliver to HRM, no later than the 22nd of each month, such information and supporting documentation as may be required for HRM to enable it to compute the amount of HST or other Value Added Taxes collected by the Board on HRM's behalf during the preceding month with respect to the operation of the Facility. HST collected by the Board (in the capacity of Agent for HRM) in respect of the Facility's operations (under HRM HST # 89428 3845RT0001) will be accounted for and remitted by HRM and HST paid in respect of expenses of maintaining and operating the Facility will only be claimed by HRM. The Board shall, in respect of any property or services acquired by it on behalf of HRM pursuant to this Agreement, obtain from the supplier of such property or service sufficient evidence, in such form as may be required from time to time pursuant to the *Excise Tax Act* and any regulations made thereunder, as will be necessary to enable the amount of any tax credits which may be claimed by HRM in respect of such expenses to be determined and validly claimed.

The Board is liable for any applicable taxes that it is required to collect for amounts it receives to perform the services that it renders to HRM under this Agreement.

7.8 Receipts and Documentation

The Board shall at all times during the Operating Period secure and maintain invoices, bills and accounts for all expenses related to the Facility, copies of all correspondence, contracts, inventories and records of income, deposits and charges with respect to the Facility and its operation. The Board shall at all times keep and maintain in accordance with generally accepted accounting principles, approved by HRM and consistently applied, full, true and accurate books of account fully reflecting all matters relating to the Facility including all income and expenditures. The books of account shall be kept in such a manner as to clearly separate all income and expenses and to indicate to which source they are attributable.

7.9 Capital Work

HRM shall be responsible for all aspects of the Capital Work. HRM shall give reasonable consideration to requests or comments provided by the Board relating to the Capital Work, including in respect of prioritization, cost and performance of the Capital Work. The Board is not liable for payments for the Capital Work. Without limiting, the Board's obligations with respect to capital Work include:

- (a) On or before August 31st of each year of the Term, the establishment of a Capital Work Program, to be provided to HRM, which shall:
 - (i) include work plans, priorities, budgets and funding estimates;
 - (ii) be determined having regard to the age and condition of the Facility;
 - (iii) be sufficient to enable the Facility to continuously meet the Applicable Law and Approvals; and
 - (iv) be consistent with Good Industry Practice; and
- (b) On or before August 31st of each year of the Term, the establishment of a Capital Work Budget for the ensuing Operating Year, to be provided to HRM, which shall:
 - (i) set out the estimated amount of Capital Expenditures required for the Capital Work proposed to be completed under the Capital Work Program during the next Operational Year;
 - (ii) conform to the priorities established; and
- (c) reflect and at all times remain subject to HRM annual budgetary approval process; the Board and HRM shall both review the priorities for Capital Work and the alternatives available with respect to the funding of Capital Work by HRM. HRM, shall finalize the approved Capital Work reflected in the Capital Work Budget not later than thirty (30) days following HRM's approval of its budget during each year of the Term;
- (d) The Capital Work Program and the Capital Work Budget may be amended by agreement of the Parties during an Operating Year as circumstances may dictate.

7.10 Statement and Audits

The Board shall provide HRM with an audited annual financial statement on the operation of the Facility for each Operating Year, prepared in accordance with GAAP and setting out all Revenues and expenditures. The annual financial statements shall be submitted to HRM's Representative within one hundred twenty (120) days, after the end of each Fiscal Year.

HRM shall have the right to inspect and audit the operations of the Facility and the books and records relating to such operations at any time and from time to time.

The Board shall have the option to utilize HRMs auditor through an optional pricing clause.

7.11 Limitations of Financial Authority

Unless expressly authorized by prior written approval of HRM, the Board shall not have the authority to do any of the following for the Facility:

- (a) open a new bank account except as approved in writing by HRM;
- (b) obtain a credit card for any Facility employee or Board Member in the name of that person on behalf of the Facility except as approved in writing by HRM;
- (c) enter into an arrangement with a payment processor except as approved in writing by HRM;
or
- (d) enter into an arrangement with an ATM provider except as approved by HRM.

7.12 Donations

Donations made to the Board for the Facility may be made to HRM, noting that the donation is to be directed to the Facility or its operations. HRM will issue a charitable receipt directly to the donor, and the funds will be directed to the appropriate account.

ARTICLE 8 - FINANCIAL AND OPERATIONAL REPORTS

8.1 Monthly Financial Reports

The Board shall prepare and furnish to HRM monthly, in a form satisfactory to HRM, a statement of receipts and disbursements and a report on the operations of the Facility including:

- (a) amount of rent and other Revenue collected including, and Advertising and Sponsorship Fees;
- (b) the amount of any arrears of rent, Rink Rental Rates and Advertising and Sponsorship Fees;
- (c) aged summary of accounts receivable;
- (d) schedule of allowance for doubtful accounts;
- (e) a description of any maintenance work, in an amount equal to or exceeding \$5000, performed in respect of the Facility and the cost of the same;

- (f) unaudited financial information including a Statement of Financial Position and a Statement of Operations and Accumulated Surplus prepared in accordance with GAAP.

Where ICT programs and services are capable of providing reporting details for the reports set out in this Article directly to HRM through SAP, the Board shall not be required to provide those monthly financial reports and they shall be generated by HRM directly.

8.2 Quarterly Operations Reports

The Board shall provide a Quarterly Operations Report to the HRM Representative no later than 45 days after the end of each quarter, including the following components:

- (a) discussion and analysis of quarter results highlighting significant variances from budget and latest quarterly forecast;
- (b) discussion and analysis of updated annual forecast and significant variances against budget; and
- (c) discussion and analysis on all recreational program and sporting events held, to include detailed Facility membership numbers, participants per sporting event, recreational activities, rentals, etc.

8.3 Annual Report

The Board shall deliver a detailed annual operation and maintenance report to HRM not later than ninety (90) days following the end of each Fiscal Year during the Operating Period. The annual operation and maintenance report shall be in a form acceptable to HRM and shall include, but not be limited to, the following for the year ended:

- (a) a general overview of the operation of the Facility in the previous year, including usage of the Facility, Revenues and expenditures, physical status of the Facility at year end;
- (b) detailed information, by month, of the use of the Facility by category of facility users and Revenues, with annual totals and comparisons of previous years, and a brief written narrative to highlight significant changes, if any;
- (c) an annual report on all recreation program and sporting events held, to include detailed Facility membership numbers, participants per sporting event, recreational activities, rentals, etc.;
- (d) detailed information, by month, of the status of leasing arrangements and the volumes of sales revenues generated from Retail Space in the Facility to the extent applicable to determining proportionate rent;
- (e) detailed information, by month, of operations and maintenance activities and costs for the Facility, with annual totals and comparison of previous year's activities and costs, and a brief written narrative to highlight significant changes, if any;
- (f) the fee schedule for all recreational programs, as well as facility rental rates, for the previous year; and

(g) all other information reasonably requested by HRM.

8.4 Reports Not Binding on HRM

The Board agrees that HRM's receipt of the annual report shall not imply that HRM approves of the Board's management, operation or maintenance of the Facility.

8.5 Acknowledgement of Report

HRM shall acknowledge, with written receipt, the annual report thirty (30) business days after all documents, including Audited financial statements are provided. The acknowledgement will include any areas of concern and any incidents of non-compliance with this Agreement as identified in HRM's review of the annual report.

8.6 Other Reports

The Board shall, if and when, requested from time to time by HRM, prepare and furnish to HRM, such other reports or statements as HRM may reasonably require including, without limiting, status and update reports, on any material aspects of the Work. Other than in the event of an Emergency, reasonable notice of a minimum of 15 business days will be given. HRM will acknowledge receipt of any reports within writing within 15 business days.

ARTICLE 9 - BOOKS, ACCESS AND INSPECTIONS

9.1 Books, Records and Accounts

The Board shall:

- (a) prepare and maintain at all times at a location in Halifax, or location otherwise mutually agreed to by the parties, proper, accurate and complete books, records, accounts and documents in which fair and proper entries shall be made of all activities and transactions in respect of the management, operation and maintenance of the Facility;
- (b) ensure that HRM has access to such books, records, accounts and documents in order that it may exercise its rights of inspection and audit; and
- (c) ensure that such books, records, accounts and documents shall not be destroyed until the HRM's rights of access, inspection and audit have expired or, if arbitration or court proceedings to which such books, records, accounts or documents are relevant have been commenced, until such arbitration or court proceedings have been finally concluded.

9.2 Access

The Board agrees that HRM shall have the rights as follows:

- (a) to enter the Facility at any time and conduct or cause to be conducted such on-site observations and inspections and such civil, structural, mechanical, electrical, chemical or other tests as HRM deems desirable to ascertain whether the Board is in compliance with this Agreement. Unless deemed an Emergency reasonable notice of a minimum of 72 hours, will be given to the Board of any inspections and or tests;

- (b) the representatives and agents of HRM may at any time have access to the Facility and have access to test results, samples, books, records, accounts and documents related to the Facility, and may carry out such tests as HRM deems necessary in order to exercise its right of inspection and audit or where necessary for the administration of this Agreement .
- (c) the Board shall provide, and shall cause the Suppliers to provide, HRM and its authorized representatives with all requested information and documentation and access thereto on a timely basis;
- (d) HRM in exercising its rights of access, inspection and audit pursuant to this Agreement, shall use all reasonable effort to minimize any disruption to any other Person;
- (e) the existence or exercise by HRM of its rights of access, inspection and audit shall not in any manner reduce or limit the obligations and responsibilities of the Board pursuant to this Agreement;
- (f) the Board shall provide sufficient, safe and proper facilities at all times for the inspection activities by HRM and its authorized representatives and all inspection and testing activities by Governmental Authorities; and
- (g) HRM reserves the right to use the Facility, at no charge, for civic priorities such as special events, including municipal elections and major sporting or cultural events, or short term use for urgent or emergency purposes, such as emergency situations as directed by the Emergency Management Organization, but this shall not be interpreted to include routine use by HRM for regular business. In the event that HRM requires the exclusive use of the Facility, or the majority thereof, for an extended period of time for a civic priority, the costs associated with such use shall be considered in the Annual Budget and Business Planning process.

9.3 Annual Inspections

The Board shall perform reasonably detailed annual inspections of all aspects of the Facility no later than July 1 of each year during the Operating Period, and HRM's Representative shall be invited to and given three (3) weeks written notice to be present at such inspections. The inspection team of the Board shall be led by the Board's General Manager.

ARTICLE 10 - OPERATIONAL OBLIGATIONS

10.1 Work Management / Office

The Board shall provide and supervise an effective operating management team for the Facility. The management team shall at all times be fully and adequately staffed and sufficiently qualified and experienced to deal with all issues relating to the management, operation and maintenance of the Facility.

10.2 General Manager

The Board shall appoint a qualified individual as the Board's on site General Manager. The Board's General Manager shall devote such of his or her time as is necessary for the proper management of the Facility throughout the Operating Period. The Board's General Manager shall

have full authority to act in all matters as are necessary for the proper management, operation and maintenance of the Facility in accordance with the terms of this Agreement. His or her duties shall include the following:

- (a) to be knowledgeable about all aspects of the Facility and all requirements of this Agreement;
- (b) to co-ordinate all activities required under this Agreement and provide regular and careful attention and supervision; and
- (c) to attend meetings with HRM as contemplated by this Agreement.

The Board shall provide HRM with written notice of the name, current address, day and night phone numbers and fax number of the Board's General Manager.

10.3 Meetings and Access to Personnel

The Board shall cause the Board's General Manager, or Acting General Manager to meet with HRM's Representative upon HRM's request, provided the Board is given one (1) week's notice, to discuss and review the management, operation and maintenance of the Facility. In addition, the Board's General Manager shall inform the HRM Representative in a timely manner of all emergencies, the occurrence of all uncontrollable events, and any other significant information as would be expected under customary and prudent business practices given the nature of the Facility.

The Board shall invite the HRM Representative to attend all meetings of the Board and shall provide them with copies of the meeting minutes of all Board and Committee meetings, except those meetings or portions thereof pertaining to personnel or labour relations issues for Board employees, or negotiations between the Board and HRM. Correspondence to HRM from the Board shall include the HRM Representative.

10.4 Information Communications & Technology

The Board acknowledges and agrees that Legend Recreation System Software Inc., a common recreation and registration management system that is designated, owned and operated by HRM, or any other alternative software solution supplied by HRM, will be exclusively used by the Board at such time that the system is provided to the Board by HRM. Upon implementation, HRM will, at its cost, arrange for training for Board staff on the use of Legend recreation System Software.

Subject to HRM's appropriation of funding, the Board agrees to use HRM-delivered ICT programs and services, and any applicable systems and reporting integration that these may require, as they become available, including:

- (a) recreation service software;
- (b) core ICT services and support, including email, computers, and basic productivity tools;
- (c) SAP and support;
- (d) Telecom; and
- (e) Digital Signage.

All information technology software, business systems, hardware, data, wireless hardware and software, information technology infrastructure, and telecommunications equipment installed or utilized in the Facility with connection to HRM networks will be owned, supplied, managed, maintained and repaired by HRM.

If the Board wishes to install any Board-owned software on HRM computers, it must first obtain the prior written approval of HRM.

Once implemented, where ICT programs and services are capable of providing reporting details directly to HRM through SAP, the Board shall no longer be required to provide those monthly financial reports as set out in Article 8.1, the information for which is available to HRM directly through SAP.

10.5 Use of Business Systems and Information Technology

The Board's use of the IT Assets, including the Registration System, will be subject to the following conditions:

- (a) **Applicable Laws:** Usage of all IT Assets must be in compliance with Applicable Laws, including, for greater certainty, all privacy legislation and Part XX of the *Municipal Government Act*, and the *Personal Information International Disclosure Protection Act*, as such laws may be amended or replaced from time to time;
- (b) **Security:** Usage of all IT assets will be in accordance with HRM information technology security policies and standards;
- (c) **PCI:** The Board shall maintain all IT assets in compliance with the current Payment Card Industry (PCI) standards, as applicable, in accordance with Article 10.6;
- (d) **Privacy Policy:** the Board shall implement a privacy policy equivalent to or exceeding HRM's privacy policy, including provisions respect breach notification;
- (e) **Access rights:** Network and software access will be granted in accordance with HRM Information Technology Identity Management, network access, and applications access policies and standards; and
- (f) **Hardware:** Usage of information technology hardware will be in accordance with HRM information technology "acceptable use" policy,

as all such policies and standards may be amended or replaced from time to time.

10.6 Payment Card Industry Data Security Standards Inclusion

As part of being in compliance with PCI standards, the Board shall achieve and maintain compliance with the most-current version of the Payment Card Industry Data Security Standards (PCI DSS) as published on the PCI SSC (PCI Security Standards Council) website and shall provide evidence of compliance to HRM upon request.

HRM has resources to assist and provide guidance with PCI DSS compliance.

The Board shall:

- (a) adhere to HRM's Payment Card Industry Data Security Standards (PCI DSS) Compliance and Protecting Cardholder Data Policy, including any companion Standard Operating Procedures (SOP) as provided by HRM;
- (b) engage HRM before entering into any agreement that deals with customer credit card or debit card information in any manner, and use the PCI DSS language provided by HRM in any contract or agreement, including, but not limited to parking payment systems, online booking systems, payment processors;
- (c) ensure that all Board employees who handle customer credit card data take regular security awareness training, and maintain appropriate records of same;
- (d) pay any and all costs associated with maintaining its compliance with PCI DSS requirements and shall pay any and all costs including, but not limited to the costs of obtaining evidence of validation or confirmation of compliance with PCI DSS requirements. The Board shall pay any fines, fees, assessments, costs, including card re-issuing costs, and charges levied (whether by the card brands, the processor or bank) as a result of its non-compliance with the PCI DSS requirements and all other card association rules and regulations applicable to it;
- (e) notify HRM in writing within seven (7) calendar days of discovering that it is not compliant with the PCI DSS Requirements and shall include in this written notice to HRM the steps being taken to remediate the non-compliant status; and
- (f) notify HRM immediately upon learning of a "Compromise" as defined in the most recent version of the PCI DSS and PA-DSS Glossary of Terms, Abbreviations, and Acronyms. Without limiting the generality of the foregoing a Compromise includes an intrusion into a computer system where unauthorized disclosure/theft, modification, data compromise, data breach or destruction of cardholder data is suspected. The notification must include the steps being taken to remediate the Compromise.

10.7 Observance of Applicable HRM Policies

The Board covenants that it will act consistently with, or cause to act consistently with, all applicable HRM Policies provided to it by HRM during the Term of this Agreement in discharging its obligations under this Agreement.

10.8 Observance of Applicable Laws

The Board covenants that it will comply with, or cause to be complied with, all applicable Laws, in discharging its obligations under this Agreement including all Laws which relate to the Facility and to the equipment, maintenance, operation and use of the Facility and improvements and to the making of any repair, replacements, alteration, additions, changes, substitutions or improvements of or to the Facility, or any part thereof. The Board covenants to comply with or cause to be complied with all lawful, police, fire and sanitary regulations imposed by any federal, provincial or municipal authorities and to observe and obey all Laws governing the conduct of any businesses conducted at the Facility.

10.9 Occupational Health and Safety Inspections

At a mutually agreed upon time, HRM and the Board may conduct at least one OHS audit of the Facility annually. HRM shall be responsible to implement any recommendations regarding capital works. The Board shall be responsible to implement any non-capital recommendations and shall provide a report to HRM within 60 days of the audit report outlining how the implementation will occur.

10.10 Compliance with Occupational Health and Safety Laws and Environmental Laws

With respect to Laws respecting health and safety of the workplace, the environment and Hazardous Substances or any Law related thereto, the Board:

- (a) covenants to use, operate, manage, maintain and repair the Facility (and to cause its employees, sub-tenants, licensees, occupants and invitees to use the Facility), in compliance with all Laws, related to the protection of the environment, health and safety. The Board warrants and represents that, during the Term, no Hazardous Substances shall be used, generated, released, manufactured, refined, produced, processed, stored, disposed of or allowed anywhere on, under or about the Facility, other than in accordance with the applicable Law. Without limiting the generality of the foregoing, the Board warrants and represents that it shall comply with all Applicable Laws (including, but not limited to municipal by-laws) regulating the use, generation, storage, transportation and disposal of Hazardous Substances on, under or about the Facility;
- (b) acknowledges that (i) it will be the occupier of and employer at the Facility during the Operating Period and will have far greater control over the Facility than HRM on a day-by-day basis, (ii) it has the authority and the obligation under this Agreement to assume the primary responsibility for creating and maintaining a safe and healthy workplace at the Facility, and (iii) as part of the provision of Operation Services, the Board shall undertake all necessary and prudent actions in respect of occupational health and safety at the Facility, including but not limited to the following:
- (c) shall take every precaution that is reasonable in the circumstances to operate and maintain the Facility in a manner that ensures the health and safety of Persons thereupon;
- (d) shall exercise the precautions and duties of an “occupier of lands or premises used as a workplace” and “employer”, as those terms are used in the Occupational Health and Safety Act and the regulations;
- (e) shall comply with HRM’s policies and programs relative to workplace health and safety and adopt internal policies and programs (subject to HRM’s review and approval) that are substantially similar to HRM’s policies and programs, but which may differ to the extent required to adapt the Board’s policies and programs to operate the Facility in accordance with the Occupational Health and Safety Act and the regulations;
- (f) shall produce such reports from time to time as HRM may reasonably require to audit and verify the Board’s efforts in respect of health and safety and the Facility;
- (g) shall comply with the Occupational Health and Safety Act and the regulations; and

- (h) shall immediately disclose to relevant Governmental Authority and to HRM the occurrence of an event whereby the Board failed to comply with the Occupational Health and Safety Act or the regulations.

ARTICLE 11 - HRM COVENANTS

11.1 HRM Representative

HRM shall provide the Board with written notice of the name, current address, day and night telephone numbers and fax number of the HRM Representative.

ARTICLE 12 - OPERATIONAL OR FACILITY MODIFICATIONS

12.1 Modifications by HRM

- (a) Operational

HRM shall have the right at any time during the Operating Period and for any reason whatsoever to require the Board to make modifications to its operating procedures for the Facility, including modifications to its maintenance practices, provided such modifications will not have a material adverse effect on the Board's ability to perform any of its obligations under this Agreement.

- (b) Facility

HRM shall have the right at any time, and from time to time, to make modifications to the Facility itself. HRM may at its sole discretion issue a public call for proposals or a tender for modifications to the Facility. Such modifications may result in disruption to Facility usage, up to and including temporary closure. HRM will provide as much notice as is reasonably possible in the circumstances of any such disruptions.

ARTICLE 13 - FACILITY CONDITION

13.1 Required Condition

The Board covenants and agrees that, except to the extent the Board is relieved of any of the following obligations under the provisions of this Agreement, at all times, including on the Termination Date, the Facility shall meet all the criteria required for the proper operation and maintenance of the Facility according to the Performance Standard as provided for in this Agreement.

13.2 Facility Condition Assessment

HRM may conduct a comprehensive, independent inspection of the condition of the Facility at any time during the Operating Period that the Board or HRM, on reasonable grounds determines is necessary and as soon as possible after any Termination Date of this Agreement is determined prior to the Expiry Date. The inspection shall include an examination of: all structural components, decks and roofs; the exterior of the Facility including all architectural features, adjacent pavement and landscaping; all Plant Equipment; all electrical systems and equipment;

all FF&E requirements; all plumbing and drainage systems, the condition of leasehold improvements in retail premises and all finishes. This Facility Condition Assessment Report shall contain recommendations as to the work, if any, that is essential to ensure the integrity of the Facility and its equipment, with a time frame for that work, and, if necessary, that certain items or procedures in the Operations Manual be amended or updated.

13.3 Inspection Activities

The Board shall, as part of each inspection undertaken in accordance with this Agreement:

- (a) coordinate and cooperate with and assist HRM in all aspects of the inspection of the Facility;
- (b) provide reasonable access to the Facility;
- (c) permit motors, electrical and other systems to be inspected and tested;
- (d) provide all relevant records which relate in any way to the inspections and conditions;
- (e) provide such other assistance and facilities as are required by HRM such that it can perform the necessary inspection and assessment functions; and
- (f) the Board may request from HRM inspections be completed.

13.4 Correction of Deficiencies

If any deficiency in the condition of the Facility arises from the failure of the Board to provide routine maintenance and Repairs in accordance with this Agreement, then HRM may at the Board's cost, correct or repair all such deficiencies.

The Board shall not be responsible for deficiencies that are a result of deferred Capital Repairs that are known to HRM.

13.5 Additional Criteria for the Facility

In addition to correction of deficiencies identified in the Facility Capital Condition Assessment the Board shall be responsible to ensure that the Facility is in the Required Condition at all times, during the Operating Period and on any Termination Date, except to the extent the Board is relieved of such obligations under the terms of this Agreement, where sufficient capital funds have not been provided to maintain the required condition, and except for reasonable wear and tear:

- (a) all structural components including foundations and walls shall be in sound condition;
- (b) any cracks or spalling of concrete or other defects shall be adequately repaired;
- (c) all steel surfaces shall be in good condition, with new applications of suitable protective coatings;
- (d) electrical systems and lighting shall be in satisfactory condition;
- (e) the exterior to the structure, including all architectural features, adjacent pavements, landscaping, vegetation and other ancillary components shall be in good condition;

- (f) all parking areas are to be in good condition;
- (g) all Plant Equipment, mechanical systems, controls, elevators and other equipment and systems including, without limiting the FF&E and all systems related to the maintenance and creation of the Facility, are to be in a satisfactory working condition; and
- (h) All roofing to be in good condition.

ARTICLE 14 - DEFAULTS BY BOARD, TERMINATION, SUSPENSION AND REMEDIES

14.1 Termination for Material Breach

This Agreement may be terminated in writing by either party for a material breach of any of its terms, provided that the party that is in material breach is first given written notice of the breach.

The party alleging breach shall give a written notice of the breach to the party in breach, and that party shall remedy the default to the satisfaction the other party within ten (10) business days of receipt of such written notice, or if such default cannot reasonably be remedied within such ten (10) business day period, the party shall promptly begin to remedy the default within the ten (10) business day period and thereafter diligently prosecute to conclusion all acts necessary to remedy the default, then such default shall be deemed to be remedied.

If the Board fails to remedy a default in accordance with this Article, HRM shall have the right, at its election, to exercise any or all of the following remedies:

- (a) terminate in whole or in part, the rights or obligations of the Board under this Agreement;
- (b) take possession of the Facility; and
- (c) remedy or cause to be remedied the default.

14.2 Right to Dispute Breach Notice

In the event that either party delivers written notice of a material breach to the other party pursuant to Article 14.1, that party may within seven (7) days of such notice deliver a dispute notice to the other and the matter shall be referred for resolution pursuant to the Dispute Resolution Procedures.

14.3 Termination Notice on Failure of Board to Remedy

On the occurrence of a default which HRM in its sole discretion considers may cause irreparable harm to any Person or to the Facility then HRM shall have the right to terminate this Agreement and exercise all of the other rights and remedies described in Article 14.1 and if HRM elects to terminate this Agreement, the Board shall have no right to dispute the matter.

14.4 Remedies are Cumulative

This Agreement shall not be construed as limiting HRM's rights or remedies at law or in equity and any such rights or remedies of HRM whether at law or in equity or under this Agreement:

- (a) may be exercised individually or together with any one or more of its other rights or remedies and as often or in such order as HRM deems expedient; and
- (b) are cumulative and are in addition to and not in substitution for any other rights and remedies.

14.5 Emergencies

Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable opinion of HRM there is a real or apprehended Emergency or damage to persons, property or the environment arising out of or in connection with any matter, state, condition or thing relating to this Agreement, as a result of a breach by the Board of this Agreement, HRM may, without notice and without prejudice to other remedies, (but without obligation to do so) rectify any such matter, state, condition or thing and, in which event the Board shall be responsible for all costs and expenses incurred by HRM in connection therewith.

14.6 Discretionary Right to Terminate

This Agreement may be terminated at any time by either of the parties hereto for any reason whatsoever, acting reasonably, on twelve (12) months written notice to the other party or by mutual agreement.

14.7 Obligations of the Board on Termination

Where HRM or the Board has terminated this Agreement in accordance with the terms hereof, the Board shall on the effective date of the termination:

- (a) stop the performance of all Work and services hereunder;
- (b) terminate all Operations Contracts as HRM may specify in writing;
- (c) provide to HRM a detailed list of all tangible and intangible property relating in any way to the management, operation and maintenance of the Facility including all items required under Article 3.9 and all equipment, machinery, fixtures, supplies, designs, concepts, plans, drawings, specifications, schedules, models, samples, patents, technology leases, licenses, books and records and an updated list of the names and addresses of all tenants, licensed users and customers of the Facility;
- (d) be deemed to have licensed to HRM a royalty and license to use any and all patented and proprietary information, designs or processes contemplated to be used by HRM in the operation, management and maintenance of the Facility, and shall forthwith execute and deliver to HRM a paid up royalty and license, in form and substance satisfactory to HRM, to use any and all such patented and proprietary information, designs or processes contemplated to be used in the management, operation and maintenance of the Facility;

- (e) assign and transfer to HRM the Board's right, title and interest in and to all liquor and other licenses and permits, if any, used by the Board in the operation of the Facility;
- (f) deliver all books and records;
- (g) remove from the Facility all material, debris, equipment and supplies that are designated in writing by HRM to be so removed;
- (h) do all such acts, execute and deliver to HRM all such documents, conveyances, deeds, assignments, transfers, bills of sale, assurances and certificates and take all actions as may be required by HRM to exercise its rights hereunder;
- (i) take any other action towards termination of the Work which HRM acting reasonably shall request in writing; and
- (j) deliver to HRM a sufficient quantity of inventory and supplies to operate and maintain the Facility for thirty (30) days.

14.8 Further Assurances

The Board agrees that, upon the reasonable request of HRM, it will do all such acts and execute all such further documents, assurances, certificates and the like as may be necessary or desirable in HRM's opinion, acting reasonably, to effect the purpose of this Article 14, whether before or after this Agreement is terminated.

14.9 Termination

Where this Agreement is terminated in accordance with the terms herein, the Board shall on the effect date of termination:

- (a) vacate and surrender the Facility to HRM and no longer provide management services as contemplated under this Agreement;
- (b) no longer hold itself out to be the agent of HRM in respect of the Facility;
- (c) provide HRM with an updated list of the names and addresses of all tenants and current user groups of the Facility, as well as all suppliers;
- (d) provide to HRM a detailed list of all entities to which Canada Games Centre Society held itself out as an agent of HRM in respect of the Facility;
- (e) provide to HRM a detailed list of all tangible and intangible property relating in any way to the management, operation and maintenance of the Facility, and assign, transfer and deliver to HRM the Board's right, title, interest in and possession of same;
- (f) deliver to HRM all of the books and records respecting the Facility; and
- (g) take any other action that HRM, acting reasonably, shall request in writing.

ARTICLE 15 – INSURANCE

15.1 Insurance for the Operating Period

All insurance coverage language, policies and limits will be amounts deemed reasonable and prudent by HRM. The Board shall complete or assist in the completion of all insurance applications as may be required and provide substantiating documentation as required.

15.2 Insurance coverage provided by HRM

HRM shall provide the following insurance coverages for the Facility, with the Board as an Additional Insured:

(a) Automobile

In accordance with the provincial Direct Compensation Property Damage Process, HRM will insure those HRM-owned and Board-operated vehicles with insurance coverages as appropriate.

(b) Commercial General Liability

HRM will provide insurance coverage related to legal liability imposed upon HRM or the Board for negligent acts that cause bodily injury and/or property damage to a third party arising from entering onto, leaving or while on the Facility premises, any products sold or other Facility operations or activities, including programs.

(c) Excess Liability Coverage

HRM will provide excess policies as known to HRM to ensure sufficient levels of insurance coverage are in place to best protect HRM and the Facility.

(d) Property (including business interruption)

HRM will insure all real and personal property owned by HRM or the Board or for which the Board is or HRM is legally responsible. This coverage insures for all risks of direct physical loss or damage including, but not limited to, fire plus many other hazards including windstorm and lighting.

(e) Crime Insurance

HRM will insure the Facility for crime losses that are not insured under other insurance policies.

(f) Boiler and Machinery Coverage (accident to an object)

HRM will provide insurance coverage against the sudden and accidental damages of pressure vessels, mechanical and electrical equipment owned and maintained by HRM or the Board, including expediting expense and contingent business interruption.

HRM shall purchase the following coverage for the Board under a policy for all HRM Multi-District Facilities, with HRM as an Additional Insured:

(g) Directors and Officers

HRM will provide insurance coverage to insure against claims related to the wrongful acts or omissions committed or omitted by directors and board members, including for acts related to decisions and organization policies.

15.3 Claims Summaries

HRM shall provide the Board with a summary of all outstanding and paid claims by fiscal year upon reasonable request from the Board, but not less than on a quarterly basis.

15.4 Settlement of Claims

Settlement authority for claims against or on behalf of HRM or the Board or involving the Facility shall be at the sole authority of HRM.

The Board shall cooperate with HRM, Insurers or others as may be necessary to assist in identification, quantification, assessment and mitigation of risks to the Facility, HRM or the public by implementing recommended strategies to manage risks.

15.5 Notification of Claims

The Board shall notify the HRM Representative in writing as soon as possible after: i) receipt of notice of any injury occurring in, on or about the Facility, that could reasonably be expected to result in a claim being made against HRM and/or the Board that involves the Facility, or ii) of any claim against HRM and/or the Board which involves the Facility. The Board shall take no action (such as the admission of liability) which would or could reasonably be anticipated to operate to bar HRM from obtaining any protection afforded by any policies of insurance it may hold or which would or could reasonably be anticipated to operate to prejudice the defence in any legal proceedings involving HRM or the Facility, or otherwise prevent HRM from protecting itself against any such claim, demand or legal proceeding. The Board shall fully cooperate with HRM in the defence of any claim, demand or legal proceeding.

15.6 Workers' Compensation Insurance

The Board shall obtain workers' compensation insurance for its employees in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia). The Board shall also ensure that workers' compensation insurance in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia) is provided by all Suppliers.

ARTICLE 16 - GENERAL COVENANTS

16.1 General Covenants of the Board

The Board agrees as follows:

(a) Maintenance of Status and Existence

The Board shall maintain in good standing its status under the *Societies Act*, RSNS 1989, c.435, shall conduct itself at all times in accordance with its constitution and by-laws and the requirements of the *Societies Act*, and shall carry on no business other than that of the management and operation of the Facility under this Agreement.

(b) Compliance with Laws and Maintenance of Approvals

The Board shall comply with all applicable Laws in connection with the Facility and, at all times during the undertaking of and with respect to the performance of the Work, shall obtain and maintain in good standing all Approvals and Permits necessary in connection with the Work and shall ensure that all Approvals and Permits which are obtained may be enforced by the Board. The Board will use all reasonable efforts to ensure that all Approvals and Permits may be enforced by HRM if this Agreement is terminated;

(c) Notification of Litigation

The Board shall give notice to HRM, with separate notice being given to the Municipal Clerk, of any action, suit or proceeding pending, or proceeding or orders undertaken by any Governmental Authority, or before any arbitrator, mediator or referee that materially adversely affects or, would reasonably be expected to materially adversely affect the Facility;

(d) Notice of Events

The Board shall provide notice to HRM of any event, circumstance or Laws known to the Board that materially adversely affects or would reasonably be expected to materially adversely affect:

- (i) the Facility or this Agreement or the interest of the Board therein;
- (ii) the capacity of the Board to perform the Board's obligations under this Agreement;
- (iii) the capacity of HRM to perform its obligations under this Agreement;
- (iv) the validity or enforceability of this Agreement; or
- (v) the rights of HRM as specifically set out in this Agreement.

ARTICLE 17 - INDEMNITY

17.1 Indemnification

HRM shall indemnify, defend and hold harmless the Board, and each officer and director thereof, against any loss, expense, damage, claim, liability obligation, judgement or injury suffered or sustained by reason of any act, omission or alleged act or omission arising out of the activities of the Board pursuant to this Agreement provided, however, that the Board, member officer or director, as the case may be, has acted in good faith and the act or omission giving rise to the claim is not fraudulent, deceitful, intended to cause harm or injury, or illegal.

ARTICLE 18 - CONFIDENTIAL INFORMATION

18.1 Non-Disclosure

All information concerning HRM, the Facility and the tenants and users of the Facility (including but not limited to "Personal Information", as defined in the *Municipal Government Act*) obtained by the Board in the performance of its duties under this Agreement shall be held in strict confidence and shall not be used or stored by the Board or disclosed to any third party without HRM's prior written consent and always in accordance with applicable Laws. This provision shall survive any termination of this Agreement.

In addition to the above, the Board shall abide by the provisions of Schedule A, the Privacy Protection Schedule, with respect its handling of Personal Information.

Confidential Information shall be held in the strictest confidence by the Board and HRM and no Confidential Information shall be disclosed to any Person, except Confidential Information:

- (a) of a party where that party consents in writing to its disclosure;
- (b) in the public domain through no wrongful act of the disclosing party;
- (c) received from a Third Party without restriction on further disclosure and without breach of this Agreement;
- (d) developed independently without breach of this Agreement;
- (e) disclosed in accordance with the mandatory disclosure requirements of any Laws;
- (f) disclosed in accordance with HRM's policies in effect from time to time;
- (g) required to be disclosed by order or direction of a court of competent jurisdiction or pursuant to any regulation, policy, guideline, statement, order, direction, conditional order, license or Approval, or request of any Governmental Authority or other body having statutory powers of decision; or
- (h) provided to an arbitral tribunal appointed pursuant to the terms and conditions of this Agreement where the disclosing party has taken all reasonable steps to ensure that the arbitrator is bound by a confidentiality agreement substantially the same as the provisions of this Article.

HRM represents and the Board acknowledges that HRM is a municipal body governed by provincial legislation, including, without limitation, the *Halifax Regional Municipality Charter* (Nova Scotia), the *Municipal Government Act* (Nova Scotia), and the *Personal Information International Disclosure Protection Act* (Nova Scotia) and as such this Agreement is subject to the freedom of information and protection of privacy provisions of the above-noted legislation.

18.2 Permitted Disclosure

Notwithstanding Article 17.1, Confidential Information received by a party may be disclosed to its corporate directors, employees and the auditors, accountants, legal counsel, engineering and other consultants, financial advisors, insurers and sureties (collectively “Representatives”) for the purpose of administering or enforcing this Agreement provided such representatives (i) have a need to know; (ii) use the Confidential information for the purpose of administering or enforcing this Agreement; and (iii) are contractually bound to protect the Confidential Information as required hereunder.

HRM may disclose Confidential Information to members of Regional Council, HRM officials and employees of HRM if and to the extent only that such disclosure of such Confidential Information is necessary to the performance of the duties of such Persons or for the purpose of administering or enforcing this Agreement but for no other purpose.

18.3 Liability for Breach

A Party disclosing Confidential Information pursuant to Article 17.2 shall be liable for damages resulting from any breach of confidentiality arising from the acts or omissions of the Person to whom the Party disclosed such Confidential Information.

18.4 Survival

The provisions of this 18 shall remain in force and effect for a period of ten (10) years after the satisfaction of all of the obligations of the Board pursuant to this Agreement.

ARTICLE 19 - DISPUTE RESOLUTION

19.1 Commencement of Process

If HRM and the Board are unable to agree on any aspect of the Agreement that is subject to arbitration, either the Board or HRM may give notice of a dispute to the other, which is to contain the particulars of the matter in dispute and the relevant provisions of this Agreement. The other party shall reply in writing within 10 business days after receiving it, setting out in such reply the details of its response and any other relevant provisions of this Agreement.

19.2 Amicable Negotiations

HRM and the Board shall use best efforts to resolve any dispute.

If the dispute is not resolved within 15 business days following receipt of the reply, the dispute shall be resolved in accordance with Article 19.3.

19.3 Arbitration Proceedings

All differences between the parties arising out of this Agreement that cannot be resolved through amicable negotiations shall be submitted to arbitration as follows:

- (a) If the parties are unable to agree, either HRM or the Board (the initiating party) may appoint an arbitrator by notice in writing to the second party. The second party will have 10 business days after receipt of the notice to appoint its arbitrator, or to agree to have the matter heard by the arbitrator named by the initiating party, written notice of which will be given to the initiating party. Where two arbitrators are chosen, they shall, within 10 business days after the appointment of the second arbitrator, appoint a third arbitrator who shall be the sole determiner of the matter;
- (b) The single arbitrator shall provide a decision in writing within ten (10) business days of his or her appointment;
- (c) The parties shall each be responsible for their own costs of arbitration and shall be jointly and equally responsible for the cost of the single arbitrator who determines the matter; and
- (d) The decision of the single arbitrator shall be final and binding.

No one shall be appointed or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either party.

19.4 Governance of Arbitration

The following provisions shall govern the arbitration:

- (a) to the extent not inconsistent with this Article, the arbitrator shall conduct the arbitration in such a manner as the Board considers appropriate, but each of HRM and the Board shall be treated fairly and shall be given full opportunity to present a case;
- (b) arbitration hearings shall be held in the Halifax Regional Municipality;
- (c) all arbitration hearings shall be in private unless the parties otherwise agree; and
- (d) any party may be represented at any arbitration hearing by legal counsel.

19.5 Matters not Subject to Arbitration

Notwithstanding Article 19.3, the following matters are not subject to arbitration:

- (a) policies and standards established by HRM, provided that such policies and standards do not directly contradict the express terms of this Agreement;
- (b) allocation of HRM budget and resources;
- (c) compliance with Applicable Laws and corporate policies; and
- (d) the ownership of the Facility.

19.6 Applicable Law

The Parties agree that any arbitration pursuant to this Agreement shall be governed by the terms of this Article 18 and to the extent not inconsistent therewith, the Commercial Arbitration Act (Nova Scotia).

19.7 Continuation of Work During Dispute

Notwithstanding that a matter or matters have been referred to the Dispute Resolution Procedures set forth in this Article 19, each of the Board and HRM shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay.

ARTICLE 20 – NOTICES

20.1 Notices

Any consent, waiver, approval, notice, request, direction, response, determination or other communication (collectively, “notice or other communication”) required or permitted to be given or made pursuant to this Agreement shall only be effective if in writing and shall be sufficiently given or made if:

- (a) delivered during normal business hours on a Business Day and left at the relevant address set forth below:

to the Board, addressed as follows:

Attention: Mr Brian Lane, Chair, Canada Games Centre Society
Canada Games Centre
26 Thomas Raddall Drive
Halifax, Nova Scotia
B3S 0E2

if to HRM, addressed as follows:

Attention: Brad Anguish, Director, Parks and Recreation
Halifax Regional Municipality
1841 Argyle Street
P.O. Box 1749
Halifax NS B3J 3A5

Any notice or other communication so given or made shall be deemed to have been given or made on the same day and to have been received on the day of delivery if delivered as aforesaid or on the day of receipt of same by telex, telefax, e-mail or other recorded means of electronic communication, as the case may be, provided such day is a Business Day and that such notice is received prior to 3:00 p.m. Halifax time, and, if not, on the first Business Day thereafter.

Each party may change its address, telephone and telefax number or e-mail address by notice to the other pursuant hereto.

ARTICLE 21 – GENERAL

21.1 Assignment

Neither HRM nor the Board may assign any or all of its interest in this Agreement except with the consent of the other party provided, however, the Board hereby consents to HRM assigning its interest in any of this Agreement to a municipal agency or municipal corporation provided the assignee acquires all of HRM's interests, rights, benefits and obligations under such assigned agreements and such assignment does not release HRM from its obligations under this Agreement and provided further that HRM may arbitrarily and unreasonably withhold its consent to any assignment, in whole or in part of this Agreement, by the Board.

21.2 No Partnership, Joint Venture or Agency

Nothing in this Agreement, nor the conduct of any party, shall in any manner whatsoever constitute or be intended to constitute HRM as the agent or representative or fiduciary of the Board or any other party, nor constitute or be intended to constitute a partnership or joint venture between HRM and the Board or any other party, but rather as between HRM and the Board each party shall be severally responsible, liable and accountable for its own obligations under this Agreement or otherwise for any conduct arising therefrom and for all claims, demands, actions and causes of action arising directly or indirectly therefrom. Neither party shall have the authority to make nor shall it make any statements, representations or commitments of any kind, or take any action that will bind the other party except as expressly provided in this Agreement or as otherwise authorized in writing by the applicable party.

The Board shall, for all purposes under this Agreement and in relation to any aspect of the performance of its obligations in respect of the work, be an independent contractor and will have responsibility for and control over the details and means of performing such obligations in accordance with the terms and conditions of this Agreement.

21.3 Official Dealings with HRM

No communication or dealing between the Board and any department, committee or body functioning under the administration of the Halifax Regional Municipality shall be deemed to be a communication or dealing under the provisions of this Agreement between HRM and the Board as parties to this Agreement or to effect the HRM or the Board with notice of any such communication or dealing under this Agreement; it being intended and agreed that any communication or dealing between the HRM and the Board as parties to this Agreement shall only be effective if provided in the manner provided by Article 20 of this Agreement. No communication or dealing between the Board as a party to this Agreement, shall relieve the Board from the responsibility of discharging its lawful obligations to the Halifax Regional Municipality as a municipality separate and apart from the obligations of the Board imposed by this Agreement.

21.4 Further Assurances

Each of the parties shall, from time to time, at its own Cost and expense, execute or cause to be executed all such further documents and do or cause to be done all things which are necessary

to give effect to the provisions of this Agreement.

21.5 Entire Agreement

This Agreement is the entire agreement between HRM and the Board with respect to operation, management and maintenance of the Facility. Unless otherwise expressly stated, this entire agreement supersedes all prior agreements, understandings or writings among the parties, whether written or oral and whether legally enforceable or not in respect of the Facility. Subject to applicable Law, no party shall be bound by or be liable for any statement, representation, promise, warranty, inducement, agreement, obligation or understanding of any kind or nature not set forth in this Agreement.

21.6 Effective Date

This Agreement will become effective when both parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

21.7 Independent Legal Advice

Each of the parties acknowledge that they have been advised to obtain and have been afforded sufficient opportunity to obtain independent legal advice prior to entering into this Agreement.

21.8 Enurement

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

EXECUTION

The parties have executed this agreement through authorized representatives on the date stated opposite each respective party's signature.

CANADA GAMES CENTRE SOCIETY

Date

Name:
Title:

Date

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Date

Mike Savage, Mayor

Date

Kevin Arjoon, Municipal Clerk

Schedule "A"

Privacy Protection Schedule

Definitions

1. In this Schedule,
 - (a) "**access**" means disclosure by the provision of access;
 - (b) "**applicable legislation**" means the *Personal Information International Disclosure Protection Act* and the Freedom of Information and Protection of Privacy provisions contained within Part XX of the *Municipal Government Act*;
 - (c) "**contact information**" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
 - (d) "**personal information**" means recorded information about an identifiable individual, including (i) the individual's name, address or telephone number, (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations, (iii) the individual's age, sex, sexual orientation, marital status or family status, (iv) an identifying number, symbol or other particular assigned to the individual, (v) the individual's fingerprints, blood type or inheritable characteristics, (vi) information about the individual's health-care history, including a physical or mental disability, (vii) information about the individual's educational, financial, criminal or employment history, (viii) anyone else's opinions about the individual, and (ix) the individual's personal views or opinions, except if they are about someone else.

Purpose

2. The purpose of this Schedule is to:
 - (a) enable HRM to comply with HRM's statutory obligations under the applicable legislation with respect to personal information; and
 - (b) ensure that, as a service provider, the Board is aware of and complies with the Board's statutory obligations under the applicable legislation with respect to personal information.

Collection of personal information

3. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Board may only collect or create personal information that is necessary for the performance of the Board's obligations, or the exercise of the Board's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Board must collect personal information directly from the individual the information is about.

5. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Board must tell an individual from whom the Board collects personal information:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated by HRM to answer questions about the Board's collection of personal information.

Accuracy of personal information

6. The Board must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Board or HRM to make a decision that directly affects the individual the information is about.

Requests for access to personal information

7. If the Board receives a request for access to personal information from a person other than HRM, the Board must promptly advise the person to make the request to HRM unless the Agreement expressly requires the Board to provide such access and, if HRM has advised the Board of the name or title and contact information of an official of HRM to whom such requests are to be made, the Board must also promptly provide that official's name or title and contact information to the person making the request.

Correction of personal information

8. Within 5 Business Days of receiving a written direction from HRM to correct or annotate any personal information, the Board must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, HRM must advise the Board of the date the correction request to which the direction relates was received by HRM in order that the Board may comply with section 10.
10. Within 5 Business Days of correcting or annotating any personal information under section 8, the Board must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to HRM, the Board disclosed the information being corrected or annotated.
11. If the Board receives a request for correction of personal information from a person other than HRM, the Board must promptly advise the person to make the request to HRM and, if HRM has advised the Board of the name or title and contact information of an official of HRM to whom such requests are to be made, the Board must also promptly provide that official's name or title and contact information to the person making the request.

Protection of personal information

12. The Board must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to personal information

13. Unless HRM otherwise directs in writing, the Board must not store personal information outside Canada or permit access to personal information from outside Canada.

Retention of personal information

14. Unless the Agreement otherwise specifies or unless HRM directs otherwise in writing, the Board must retain personal information for at least one year following the date of its use and securely dispose of personal information no later than three years after its use.

Use of personal information

15. Unless HRM otherwise directs in writing, the Board may only use personal information if that use is for the performance of the Board's obligations, or the exercise of the Board's rights, under the Agreement.

Disclosure of personal information

16. Unless HRM otherwise directs in writing, the Board may only disclose personal information inside Canada to any person other than HRM if the disclosure is for the performance of the Board's obligations, or the exercise of the Board's rights, under the Agreement.
17. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Board must not disclose personal information outside Canada.

Notice of foreign demands for disclosure

18. In addition to any obligation the Board may have to provide the notification contemplated by section 6(1) of the *Personal Information International Disclosure Protection Act*, if in relation to personal information in the custody or under the control of the Board, the Board:
 - (a) receives a foreign demand for disclosure;
 - (b) receives a request to disclose, produce or provide access that the Board knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
 - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Board must immediately notify HRM and, in so doing, provide the information described in section 6(2) of the *Personal Information International Disclosure Protection Act*. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 2(1) of the *Personal Information International Disclosure Protection Act*.

Notice of unauthorized disclosure

19. If the Board knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Board, the Board must immediately notify HRM. In this section, the phrase “unauthorized disclosure of personal information” will bear the same meaning as in section 2(1) of the *Personal Information International Disclosure Protection Act*.

Inspection of personal information

20. In addition to any other rights of inspection HRM may have under the Agreement or under statute, HRM may, at any reasonable time and on reasonable notice to the Board, enter on the Board’s premises to inspect any personal information in the possession of the Board or any of the Board’s information management policies or practices relevant to the Board’s management of personal information or the Board’s compliance with this Schedule and the Board must permit, and provide reasonable assistance to, any such inspection.

Compliance with the applicable legislation and directions

21. The Board must in relation to personal information comply with:
 - (a) the requirements of the applicable legislation to the Board as a service provider, including any applicable order under the applicable legislation; and
 - (b) any direction given by HRM under this Schedule.
22. The Board acknowledges that it is familiar with the requirements of the applicable legislation governing personal information that are applicable to it as a service provider.

Notice of non-compliance

23. If for any reason the Board does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Board must promptly notify HRM of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

24. In addition to any other rights of termination which HRM may have under the Agreement or otherwise at law, HRM may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Board, terminate the Agreement by giving written notice of such termination to the Board, upon any failure of the Board to comply with this Schedule in a material respect.

Interpretation

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.

26. Any reference to the “Board” in this Schedule includes any subcontractor or agent retained by the Board to perform obligations under the Agreement and the Board must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of the Board in this Schedule will survive the termination of the Agreement.
28. If a provision of the Agreement (including any direction given by HRM under this Schedule) conflicts with a requirement of the applicable legislation or an applicable order under the applicable legislation, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
29. The Board must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires the Board to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the applicable legislation.

MANAGEMENT AGREEMENT

Attachment 2

Between:

Halifax Regional Municipality

and

Community Builders Inc.

Halifax Regional Municipality
Parks & Recreation
PO Box 1749
Halifax, Nova Scotia B3J 3A5



HALIFAX

MANAGEMENT AGREEMENT

Between:

HALIFAX REGIONAL MUNICIPALITY

a municipal corporation in the Province of Nova Scotia (“HRM”)

- and -

COMMUNITY BUILDERS INC.

a company limited by guarantee incorporated in Nova Scotia (the “Board”)

WHEREAS HRM has a mandate to provide recreation services to its residents;

AND WHEREAS HRM is the sole owner of Cole Harbour Place (the “Facility”), located at 51 Forest Hills Pkwy, Dartmouth, Nova Scotia;

AND WHEREAS the Board is a community-based society which has played an important role in HRM’s delivery of recreational services, including by delivering programming and services that ensure a healthy, engaged and inclusive community, and managing the Facility on HRM’s behalf;

AND WHEREAS HRM’s Multi-District Facilities represent regional recreation centres;

AND WHEREAS HRM and the Board agree that all residents of the Halifax Regional Municipality should have similar opportunities, regardless of gender, age, sexual orientation, ability, race, culture, faith or socio-economic status;

AND WHEREAS HRM wishes to engage the services of the Board to be responsible for the operation, management, maintenance and repair of the Facility, for and in conjunction with HRM;

AND WHEREAS HRM desires to engage the Board to promote the use of, operate, manage, maintain and repair the Facility and the Board agrees to perform such services for and on behalf of HRM, in accordance with the terms of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the mutual covenants herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

Capitalized words and phrases used herein shall, for all purposes of this Agreement and the Schedules hereto (unless there is something in the subject matter or context inconsistent therewith or unless otherwise defined herein) have the meaning set out in the definitions below:

“**Approvals**” means all approvals, authorizations, certificates, consents, licenses, permits, qualifications or orders of any Governmental Authority required by applicable Laws in connection

with any of the following:

- (a) the operation, management or maintenance of the Facility; and
- (b) the performance by the Board of its obligations pursuant to this Agreement,

or any waivers or exemptions from the requirements for any such Approvals, provided that any such waivers or exemptions are in full force and effect;

“Best Value” means the bid that is determined by the Board to be in its best interests, not necessarily the lowest price bid, which is determined by evaluation of bids based on criteria or factors that may include purchase price, life cycle cost considerations, environmental and social considerations, delivery, servicing, past experience and performance, and any other criteria or factors stated in the bid documents;

“Betterment” means the cost incurred to enhance the service potential of a tangible capital asset, by increasing the previously assessed service capacity, lowering the associated operating costs, extending the useful life, or improving the quality of output, including additions to a capital asset, or the substitution of a better component for one currently used;

“Business Day” means any day excluding Saturday, Sunday or a statutory, special, or civic holiday observed by chartered banks in Halifax, Nova Scotia;

“Capital Expenditure” means the funds required for the acquisition, construction, development, or Betterment of a tangible capital asset, including the cost of its installation at the location and in the condition necessary for its intended use, which may be comprised of the purchase price, installation costs, design and engineering fees, legal fees, survey costs, site preparation costs, freight charges, transportation, insurance costs, and duties;

“Capital Fund Reserve” means a reserve fund, maintained and controlled by HRM for funding Capital Work in relation to any MDF;

“Capital Work” means work done on the Facility as directed by HRM’s department of Facility Design and Construction and approved in the HRM capital budget;

“Claims” means any and all claims, liabilities, demands, losses, damages, actions and causes of action of any kind or nature including, without limitation, expenses, costs and legal fees;

“Community Facility Master Plan 2” means the framework approved by Regional Council on February 7, 2017 for municipal decision-making regarding recreation facilities;

“Costs” means all outlays, payments, expenses and costs of every kind and nature including, without limitation, costs, expenses, fees, disbursements, dues, sums of money, salaries, interest, wages, rentals and legal fees on a solicitor-client basis, and for greater certainty shall exclude damages awarded by a court;

“Council” means the municipal council of HRM;

“Dispute Resolution Procedures” means the procedures set forth in Article 19 to be used by the Board and HRM for dispute resolution of certain disputes as provided in this Agreement;

“Effective Date” means the date on which the last of the Board and HRM has executed this Agreement, as indicated by the date associated with that party’s signature;

“Emergency” means a sudden, unexpected, or impending situation that poses an inherent risk to people, property, or a significant interference with normal activities;

“Expiry Date” means the date five (5) years after the Effective date;

“Facility” means the property owned by HRM known as Cole Harbour Place located at 51 Forest Hills Parkway in Dartmouth Nova Scotia;

“Generally Accepted Accounting Principles (GAAP)” means a framework of accounting standards, rules and procedures which are in effect in Canada, including those published in Standards and Guidance Collection of the Chartered Professional Accountant of Canada, or any successor;

“Goods” means materials, furniture, merchandise, equipment, stationery and other supplies required by the Board for the transaction of its business and affairs, including services that are incidental to the provision of such supplies;

“HRM’s Representative” means such HRM employee(s), designated as such from time to time by HRM, who will act on behalf of HRM with respect to all powers, duties and authorities of HRM under this Agreement;

“HST” means the Goods and Services Tax or the Harmonized Sales Tax, as the case may be, which is or may be imposed under the *Excise Tax Act* (Canada), as amended, or any successor or similar legislation, including provincial legislation that is intended to impose a tax on the consumption of goods or services;

“Lands” means that land located at 51 Forest Hill Parkway, Dartmouth, Nova Scotia;

“Law” or **“Laws”** means the common law and any statute, regulation, by-law, ordinance, policy, standard, code, order, permit, license, or rule of any Governmental Authority having jurisdiction in relation to any aspect of the Facility, as same may be amended, substituted, replaced or enacted from time to time;

“Multi District Facility (“MDF”) means regional recreation facilities that serve a large geography area of the municipality. They provide specialized programming and services which may include pools, fitness centres, arenas, gymnasiums and community meeting spaces.

“Operating Account” has the meaning as attributed to it in Article 7.4;

“Operating Budget” has the meaning as attributed to it in Article 6.1;

“Operating Period” means the period commencing on the Effective Date and ending on the Expiry Date, subject to the earlier termination of this Agreement in accordance with the terms hereof;

“Operations Contract” means an agreement, contract or purchase order entered between the Board, as agent for HRM, and a Supplier to furnish services, equipment, supplies or other things required for the proper operation and maintenance of the Facility during the Operating Period;

“Operations Requirements” means the requirements for the management, operation and maintenance of the Facility as set out in this Agreement and as otherwise specified from time to time by HRM and includes HRM policies applicable to the use of the Facility (which by way of example only, includes policies in respect of tobacco and alcohol use on municipal properties or the closure of municipal venues, by the Chief Administration Officer, due to inclement weather), as these policies may be adopted and amended from time to time;

“Operation Services” means the provision of all labour, materials and services required to manage, operate and maintain the Facility in accordance with the terms and conditions of this Agreement and in accordance with applicable Laws both prior to and during the Operating Period. Operation Services shall include the employment and furnishing of all equipment, supplies, tools, storage, transportation and other things and services of every kind whatsoever necessary for the proper, effective and cost-efficient management, operation and maintenance of the Facility and all administrative, accounting, record-keeping, and similar responsibilities of every kind whatsoever incidental to such obligations. A reference to “Operation Services” shall mean “any part and all of the Operation Services” unless the context otherwise requires;

“Performance Standard” means at any particular time during the Operating Period:

- (a) in relation to the state of condition, maintenance and repair of the Facility, the performance by the Board of all Work hereunder to a level reasonably comparable to what would be provided by a similar facility, having regard to the age of the Facility and allowing for reasonable wear and tear; and
- (b) in relation to the operation of the Facility, to at least the standard of management and operation of a similar facility;

consistent with this Agreement and consistent with the quality of operations of a prudent owner, and facility condition assessment report.;

“Permits” means all permits, permissions and approvals required, or as the context requires, granted by Governmental Authorities for the design, construction and operation of the Facility;

“Plant Equipment” means the heating, ventilation, refrigeration, air-conditioning and other related equipment, not including fixtures or program supplies;

“Programming” means physical, Recreation, Sport, cultural, educational, social and capacity-building programs and other services offered to members of the public through registered or unregistered programs administered and run in or through the Facility;

“Recreation” is the experience that results from freely chosen participation in physical, social, intellectual, and creative pursuits that enhance individual and community wellbeing;

“Renovation” means an alteration of the Facility, or an addition, re-construction or demolition of a portion of the Facility, undertaken at any time;

“Repair” means non-Capital Work in the nature of a repair to the Facility undertaken at any time;

“Required Condition” means the condition of the Facility at any time, including on the Termination Date, that meets the Performance Standard;

“Retail Space” means the space within the Facility as may from time to time by agreement between HRM and the Board be leased to, licensed to, or otherwise operated by, third parties including, without limiting, any retail establishment, restaurant, canteen, beverage or concession outlets, commercial, or office space;

“Revenue” means all monies, proceeds, and funds of every nature and kind received by the Board in respect of the Facility from and after the Effective Date that are either:

- (a) derived directly or indirectly from operations at the Facility (including but not limited to fees paid for services provided in or from the facility, or for use of the Facility, or other payments from lessees or concessionaires in the Retail Space, Advertising and Sponsorship Fees, any parking revenues and any fees from any licensee for the use of any space forming part of the Facility but not including the gross revenues of bingo, licensees, lessees or concessionaires and any other charges to such licensees, lessees or concessionaires such as taxes, common area costs or premiums for insurance), determined in accordance with GAAP consistently applied, excluding, however, the following:
 - (i) applicable HST, excise, sales, gross income, entertainment and use taxes or similar government charges collected directly from patrons or guests, or as a part of the sales price of any goods, services or displays, such as gross receipts, admission, cabaret or similar or equivalent taxes;
 - (ii) proceeds from the sale or other disposition of capital assets or unwanted inventory;
 - (iii) rebates, discounts or credits of a similar nature (not including credit card discounts which shall be included as an item of revenue and shall be considered an operating expense); or
- (b) by way of grants, gifts, sponsorships, bequests, donations, fund-raising or otherwise;

“Schedules” means the schedules attached hereto which form part of this Agreement;

“Services” means services required by the Board for the transaction of its business and affairs, excluding services provided by an employee of the Board through a Personal Services Contract;

“Sport” means an activity involving physical exertion and skill in which an individual or team competes against or others and follows prescribes rules;

“Supplier” means any person, other than the Board and employees of the Board, entering into an Operations Contract to furnish services, equipment, supplies or other things in connection with operation and maintenance of the Facility during the Operating Period;

“Termination Date” means the date on which this Agreement expires or terminates; and

“Work” means any or all of the things to be furnished or performed by the Board pursuant to this Agreement.

1.2 Headings

Headings, recitals and the provision of a table of contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 References

Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, subsection, clause, sub clause or other subdivision is a reference to such Schedule, Article, Section, subsection, clause, sub clause or other subdivision of this Agreement. The terms “hereof”, “hereto”, “herein”, “hereby” and “hereunder”, and similar expressions mean and refer to this Agreement and, unless the context otherwise requires, not to any particular Article.

1.4 Parties

References in this Agreement to the “Parties” shall mean the parties to this Agreement and a reference to a “Party” shall mean one (1) of the parties to this Agreement.

1.5 Number and Gender

Words importing the singular only shall include the plural and vice versa, words importing any gender shall include other genders and references to persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations. Any capitalized word which is a derivative of any word defined in Article 1.1 shall have a meaning corresponding to the defined word.

1.6 Statutes and Regulations

Any reference in this Agreement to all or any part of any statute, regulation, by-law or other legislative enactment shall, unless otherwise expressly stated, be a reference to that statute, regulation, by-law or legislative enactment or relevant part thereof as amended, substituted, replaced or re-enacted from time to time.

1.7 Accounting Terms and Principles

Unless otherwise expressly stated, all accounting terms and principles applicable to this Agreement shall be interpreted and applied in accordance with GAAP which are in effect in Canada, including those published in the handbook of CPA Canada, or any successor, as at the date on which such calculation is made or is required to be made.

1.8 Time

Time shall be of the essence of this Agreement. If the last day of any period of days set out herein falls on a day which is not a Business Day, such period of days shall be extended to the first Business Day immediately following the last day of such period of days. If anything herein falls to be done or held on a day which is not a Business Day, the same shall be done or held on the next succeeding Business Day.

1.9 Authority

Where reference is made to a direction, response, act, decision, determination, consent, waiver, approval, notice, request or other communication of HRM that is required or that may be done, performed or carried out by HRM pursuant to this Agreement, it may be so done, performed or carried out by the HRM Representative or such other Person or Persons as may be authorized by HRM to act in his stead and any such Person or Persons or any other Persons who may be designated from time to time as HRM Representative for the purposes of this Agreement by notice

from HRM to the Board in accordance with this Agreement.

1.10 Governing Law

This Agreement is made in the Province of Nova Scotia and shall be governed by and construed in accordance with the laws in force in the Province of Nova Scotia. The parties submit to the jurisdiction of the Supreme Court of Nova Scotia, subject to any restrictions relating to access to such court under applicable Laws, with respect to all claims and proceedings arising out of or related to this Agreement.

1.11 Amendments in Writing

No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the Parties, either individually by counterpart or collectively. Any amendment, variation or waiver shall take effect on the date specified in the amendment, variation or waiver or, if not so specified, on the date on which the last Party executes and delivers the amendment, variation or waiver.

1.12 No Waiver

- (a) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.
- (b) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall extend only to the party to whom such waiver is expressly granted and shall not be construed as a waiver in favour of any other party in respect of such provision or breach and shall not prejudice the rights of any other party from insisting upon performance of such provision.
- (c) The failure of any party to give notice to the other party, or to take any other steps in exercising any right in respect of the breach or non-fulfillment of any provision of this Agreement, shall not operate as a release or waiver of that right or as a release of the other party from its obligations and liabilities nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.
- (d) The acceptance by any party of payment or performance of any obligation after the breach or non-fulfillment by the other party of any provision of this Agreement shall not constitute a waiver of the provisions of this Agreement.

1.13 Severability

If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable, unless such invalid provision is fundamental to the efficacy of this Agreement, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by Laws.

1.14 Schedules

The following Schedules are attached, and form part of this Agreement:

Schedule "A" Privacy Protection Schedule

1.15 Force Majeure

Notwithstanding anything to the contrary in this Agreement, if HRM or the Board is bona fide delayed in or prevented from performing any obligation arising under this Agreement by reason of third party strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion, EMO responsibilities or other act of God, and not caused by its default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause exists, and the party so delayed shall and is entitled to carry out such obligation within the reasonable time period after the cessation of such cause.

ARTICLE 2 - MANAGEMENT, OPERATION AND MAINTENANCE OF THE FACILITY

2.1 General

The Board agrees to manage, operate, maintain and promote the use of the Facility as agent for HRM from and after the Effective Date and to perform the Work. The Board agrees and HRM authorizes the Board to promote the use of, manage, operate and maintain the Facility on behalf of HRM from the Effective Date in accordance with and subject to the provisions of this Agreement.

2.2 HRM's Objectives

The Board acknowledges that HRM's objectives in entering this Agreement with the Board are as follows:

- (a) Undertaking the operations of the Facility in a cost effective and efficient manner;
- (b) Building a broad based public support for the Facility through the high quality of operation making the Facility a place of civic and community pride;
- (c) Establishing an informed partnership with the Board to generate innovative ideas, share resources, and increase collaboration;
- (d) Making the Facility available to a wide range of community groups; and
- (e) Promoting fair and equitable access by user groups based on community, culture, socio-economic status, ability, sexual identity, sport, and gender.

The Board shall use its reasonable best efforts to promote the use of, operate, manage, and maintain the Facility to meet HRM's objectives as set out in this Article.

Use

The Board covenants that the Facility will only be used throughout the Term for Programming and activities and events that are appropriate and desirable for municipal purposes and the Board covenants and agrees that it may only use the Facility as contemplated by this Agreement and the Annual Budget and Business Plan or as otherwise permitted in writing by HRM from time to time.

ARTICLE 3 - DUTIES AND RESPONSIBILITIES OF THE BOARD

3.1 Board Mandate

The Board shall perform its duties and exercise the powers and authority set out in this Agreement in a timely, diligent, competent, professional and workmanlike manner and according to the Performance Standard, and in accordance with the terms and provisions of this Agreement and the annual budget and business plan.

In all events, the Board shall perform its duties and responsibilities in a diligent, honest, competent and professional manner and in accordance with any applicable directives, instructions, guidelines, policies and procedures of HRM not inconsistent with the terms of this Agreement and at all times maintain the Facility in the Required Condition.

3.2 Specific Duties of the Board

The Board will generally do and perform and, where necessary, contract (either in its own name or, if permitted by this Agreement or authorized by HRM, as agent for HRM) for all matters and things necessary for the proper and efficient management of the Facility, and to carry out the intent of this Agreement. The Board agrees to perform the following specific duties, without limitation to the Board's general obligation to manage, operate, promote and maintain the Facility on behalf of HRM:

- (a) To perform the Operations Services so as to provide continuous service, subject to the terms of this Agreement, to customers in compliance with all applicable Law and Approvals including, without limiting the foregoing, according to the Annual Budget and Business Plan;
- (b) To develop, deliver and staff programming and services which encourage healthy lifestyles through participation in inclusive physical, recreational, cultural, educational, social and capacity-building programs in the Facility;
- (c) To advertise and promote the Facility, and to cross-promote and share marketing with HRM as applicable;
- (d) to consider advertising and sponsorship as potential sources of revenue for inclusion in the Facility's Annual Budget. In so doing, the Board shall use its best efforts to market and sell, at the best price possible, sponsorship and advertising opportunities at the Facility. All advertising, promotional, and sponsorship activities undertaken by the Board shall be conducted in accordance with, but not limited to, Administrative Order 55, *Respecting Sponsorship* as amended from time-to-time. The naming of the facility shall be conducted in accordance with, but not limited to, Administrative Order 56, *Naming Rights* and Administrative Order 46, *Respecting HRM Asset Naming Policies*, as amended from time-to-time;

- (e) to charge and collect on behalf of HRM from users of the Facility, all user charges, revenues from advertising and sponsorship contracts, rents for the Retail Space established by this Agreement, and any and all revenues received from the operations or use of the Facility, as revised from time to time in accordance with this Agreement, plus applicable taxes including HST and property taxes to deposit immediately all amounts collected to the Operating Account established pursuant to this Agreement;
- (f) to conduct inspections with tenants of Retail Space moving into or out of the Facility;
- (g) to conduct regular inspections of the entire Facility for the purpose of determining any repairs, maintenance or capital improvements, or renovations that may be required to maintain the Plant Equipment and building systems and to provide HRM with a reasonably detailed report with respect to each such inspection;
- (h) to use its reasonable best efforts to collect arrears of rent, all Advertising and Sponsorship Fees, or other concession or user fees and rents for the Retail Space and to report quarterly to HRM of any arrears, provided, however, that the Board shall not pursue any legal action on behalf of HRM for the purpose of collecting such arrears without the express written permission of HRM (provided further that nothing in this provision absolves the Board from its obligation to have appropriate payment procedures in place for payment of monthly rents and fees in advance by tenants and users and to collect on behalf of HRM such advance payments of such amounts). Any account arrears that are considered at risk, or are past 90 days need to be reported to HRM.
- (i) to interview prospective tenants and make recommendations to HRM concerning prospective tenants and to negotiate leases or user license agreements with prospective tenants for the Retail Space consistent with a recreation facility on terms and conditions approved by HRM;
- (j) to arrange for the supply, as may be required, of electricity, gas, steam, fuel, water, telephone and other services and to arrange, for the effective and economical operation, maintenance and repair of the Facility and its Plant Equipment (including, without limitation, any heating, ventilating, air-conditioning, plumbing, electrical and elevator equipment) as may be required by HRM or so as to comply with the Performance Standard, and Laws and to arrange for janitorial and any other cleaning services, including window cleaning, building security, ice and snow removal, landscaping, grounds maintenance, painting and any alterations approved by HRM;
- (k) to provide operation and maintenance of the Plant Equipment, furniture fixture and equipment (FF&E) and the Land to the Performance Standard and arrange for technical instruction and training of staff which may be required for the proper operation and maintenance of the Facility, FF&E and the Lands;
- (l) to pay all accounts payable under applicable contracts that are being retained by the Board in the ordinary course of business in a timely manner;
- (m) to provide supervision and control of the activities of users of the Facility, tenants, concessionaires and holders of privileges and their employees, including the removal of users and tenants for non-payment of rent or other proper cause; and

- (n) to follow HRM's policies and directives in respect of the safety of employees and visitors to the Facility, or to develop, implement and maintain internal policies and practices that are at minimum equivalent to HRM's policies and directives.

3.3 Authority to Contract on Behalf of HRM

Subject to the provisions of this Agreement, HRM authorizes the Board to enter into such contracts and agreements as agent of HRM as may be necessary in the performance of the duties, responsibilities and obligations of the Board as described in this Agreement and HRM appoints the Board as its agent for the following purposes:

- (a) for the collection of rent, Advertising and Sponsorship Fees, facility rental rates and any other items of revenue (including HST) relating to the operation of the Facility;
- (b) in the event of an emergency requiring immediate remedial action to be taken and if the Board is unable to contact HRM for instructions, then the Board shall be authorized to act as agent for HRM for the purpose of taking any remedial action reasonably necessary in the circumstances;
- (c) to retain Suppliers as independent contractors pursuant to Operations Contract subject to the annual budget approved by HRM for the Facility and the terms of this Agreement;
- (d) to undertake Facility rentals, as Agent for HRM, with various user groups at rents and fees set out in its Annual Budget and Business Plan.
- (e) to enter into, as agent for HRM, leases and other tenancy agreements, contracts, licenses or other arrangements, at market value, in forms approved by HRM with tenants, occupants, licensees, concession grantees or other uses used consistent with a recreation facility;
- (f) to enter into, as agent for HRM, advertising and sponsorship contracts; and
- (g) as otherwise authorized from time to time by HRM in writing.

3.4 Limitations of Authority

Unless expressly authorized in this Agreement, or by prior written approval of HRM, the Board shall not have the authority to do any of the following:

- (a) obtain loans for HRM, whether secured or unsecured, or give or grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Facility or any portion thereof or any interest of HRM therein, or obtain replacements of any mortgage or mortgages;
- (b) prepay, in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Facility or any portion thereof, except to the extent contemplated by the Annual Budget and Business Plan approved by HRM or as contemplated and approved in writing by HRM;
- (c) cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or corporation;

- (d) cause HRM to enter any contracts with respect to the Facility other than contracts in the ordinary course of managing the Facility which are in accordance with the provisions of this Agreement;
- (e) sell, exchange or convey the Facility or any portion thereof;
- (f) release, compromise, assign or transfer any claim, right or benefit of HRM, except in the ordinary course of managing the Facility pursuant to this Agreement;
- (g) knowingly allow a default judgment to be entered against HRM or the Facility or any assets associated with the Facility;
- (h) modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facility;
- (i) grant easements or other property rights in the Facility;
- (j) lease, purchase or sell any real property on behalf of HRM;
- (k) install or modify closed circuit television equipment without consulting with HRM Corporate Security;
- (l) undertake purchases where the Board has not complied with the competitive bidding practices set out in Article 5 hereof;
- (m) permit or undertake cash advances from any Facility bank accounts; or
- (n) utilize Facility funds for any purposes other than the operation of the Facility.

3.5 Renovations by Board

The Board agrees that it shall not make any Renovation to the Lands and the Facility without the written approval of HRM. Without limiting the generality of the foregoing, the Board shall not excavate or drill or lay new asphalt or concrete pads on the Land nor construct, renovate, install or erect any buildings, structures, fixtures, major improvements or other facilities without first obtaining the written approval of HRM for such works.

3.6 Lease Arrangements

With respect to Retail Space and any leasing, contracting, and licensing the Board agrees to:

- (a) provide tenant and users coordination services including the review of rental applications, and offers to lease, and to engage in good-faith consultations with HRM regarding the terms thereof;
- (b) prepare leases or user license agreements as applicable on a form approved by HRM;
- (c) negotiate with tenants and/or users regarding any modification to the terms of such leases or user license agreements and to arrange for their execution;
- (d) receive plans and specifications for any tenant changes, leasehold improvements, signage or other agreements and to arrange for any approvals required in connection with them; and

- (e) arrange for the completion of any work required of HRM pursuant to the terms of any offer to lease, license agreement or lease, user or tenants agreement and to make or arrange for the payment of any allowance or contributions from HRM to which tenants may be entitled after the satisfactory completion of any tenant or user work including partitioning and any other leasehold improvements.

The terms and conditions of any property lease negotiated by the Board shall be subject to the prior approval of HRM and shall be at market value unless otherwise approved by HRM.

The Board shall supervise the moving in and out of tenants and, so far as is reasonably possible, to arrange the times thereof so that there shall be a minimum of disturbance to the operation of the Facility and inconvenience to any other users. The Board shall use its reasonable best efforts to arrange for performance of all covenants, duties and obligations of HRM pursuant to all leases, licenses, and other agreements and/or user license agreements which are in effect during the Operating Period in so far as such performance is consistent with the terms of this Agreement and any subsequent instructions given from time to time by HRM.

Notwithstanding the foregoing, any tenants, concessionaires, licenses or other operators in the Facility must receive Board permission and obtain all appropriate licences to conduct gambling and lottery activities, not including VLTs or similar gaming devices. The Board is permitted to conduct gambling or lottery activities, provided that they obtain the appropriate licences and do not make use of VLTs or similar gaming devices.

3.7 Advertising and Sponsorship Contracts

With respect to Advertising and Sponsorship Contracts, the Board agrees to:

- (a) provide coordination services for advertising and sponsorship in the Facility, including the review of advertising and sponsorship contracts and good-faith consultations with HRM regarding the terms thereof; and
- (b) receive plans and specifications for any associated signage, including arranging for any approvals required in connection therewith.

HRM shall consult with the Board on digital signage advertising content provided by HRM to be used in the Facility to ensure advertisements and sponsorships are not in conflict with Board sponsorship and advertising agreements.

3.8 Employees

All personnel employed by the Board in the management, administration and operations of the Facility, continue to be selected for employment by, and will be employees of, the Board, and shall under no circumstances or at any time be deemed or implied to be employees of HRM. The Board shall be solely responsible for the hire, dismissal, control, direction, supervision, instruction, and training of its employees. The wages, salaries and benefits of such employees are the responsibility of the Board and shall be paid directly by Board.

The Board shall continue to be responsible for the development of employment policies, and will ensure appropriate coverage for Workers' Compensation purposes, statutory payroll deductions and remittance to appropriate taxing authorities. The Board shall ensure that fidelity bonds, credit checks, criminal records checks and sex-abuse registry records have been obtained and are in

place in respect of all employees of the Facility where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations. The Board will take all measures required in compliance with the Occupational Health and Safety Act to ensure the safety of employees and onsite contract workers.

The Board may arrange with HRM for its employees to have access to HRM training programs, where applicable, on a fee-for-service basis and subject to available space.

3.9 Property of HRM

(a) Books and Records

The Board shall maintain or cause to be maintained at the Facility, or another mutually agreed upon location by the parties, complete and accurate books and records in connection with the management and operations of the Facility in accordance with GAAP. HRM shall have the right at its own expense, and upon reasonable notice and at all reasonable times during normal business hours to audit, examine, make copies and take extracts from the books of account and records maintained by the Board pursuant to this Agreement. Such right may be exercised through any agent or employee designated by HRM.

Upon any termination of this Agreement, all books and records shall be turned over forthwith to HRM at no cost to ensure the orderly continuance of the operation of the Facility. All books and records will thereafter be available to the Board at the Facility, at all reasonable times, for inspection, audit, examination and copying.

(b) Equipment and Material

All equipment, located in or purchased for the Facility at any time by the Board and material relating to the management, operation, capital and maintenance of the Facility shall be and remain the property of HRM and, upon termination of this Agreement, the Board shall return or turn over possession of the same to HRM.

Any equipment with remaining useful life, which does not meet the Board's current or foreseeable future need, may be declared surplus by the Board. Any equipment that is declared surplus shall be made available to HRM for its business units or agents before being disposed of to a third party. Any surplus equipment that cannot be redistributed by HRM internally shall be disposed of by HRM in accordance with the provisions of its Procurement Policy respecting surplus assets, and any funds realized will be directed to the Facility.

3.10 Municipal Records

For greater certainty, all records, reports, books of account and other documents and materials relating to the management, operation, capital and maintenance of the Facility that are the property of HRM under this Article constitute records under the control of a municipality for the purposes of section 463(1) of the *Municipal Government Act* and are subject to Part XX (Freedom of Information and Protection of Privacy) of the *Municipal Government Act*, S.N.S. 1998, c. 18.

Requests for municipal records may be directed to the HRM Access & Privacy Office.

The Board shall cooperate with the HRM Access & Privacy Office within the legislated timelines for requested records.

For greater certainty, all records, reports, books of account and other documents and materials relating to the management, operation, capital and maintenance of the Facility that are the property of HRM under this Article constitute records under the control of a public body for the purposes of section 4(1) of the *Personal Information International Disclosure Protection Act*, S.N.S. 2006, c. 3 and are subject to the Act. In its capacity as manager of the Facility, the Board constitutes a service provider under the Act, and shall comply with its provisions.

The Board shall comply with the requirements as set out in Schedule A, the Privacy Protection Schedule, with respect to the use of personal information as therein defined.

ARTICLE 4 - TERM

4.1 Term

Subject to earlier termination of this Agreement and in accordance with the terms herein, the term of this Agreement shall commence on the Effective Date and end on the Expiry Date which is the date five (5) years after the Effective Date. The period from the Effective Date to the Expiry Date shall be referred to as the Operating Period. The term of the Operating Period may be terminated earlier in accordance with the terms hereof.

4.2 Renewal

This Agreement may be renewed by HRM at its option for two additional five-year terms on terms as contained herein or as amended as acceptable by both parties. HRM shall provide the Board with its notice of intention to exercise this option no later than 12 months prior to the end of the then current Term.

ARTICLE 5 - OPERATIONS CONTRACTS

5.1 Board's Right to enter Operations Contract on behalf of HRM

Subject to the provisions of this Agreement including, without limitation Articles 5.2, 5.3 and 5.4, the Board may enter into Operations Contracts; provided that the Board shall not thereby be relieved of any of its obligations to HRM as set forth in this Agreement. All Operations Contracts shall be in writing. If the Operations Contract is for an expenditure, it shall be for an expenditure that is within the limits of the Annual Budget and Business Plan approved by Council pursuant to this Agreement.

5.2 Prices Subject to Competitive Bidding

When making purchases on behalf of HRM for the Facility, the Board shall comply with the following:

- (a) purchases exceeding \$25,000 must be solicited by HRM, and shall not be divided into multiple purchases so as to reduce the purchase value below that threshold;
- (b) all purchases of goods and services made by the Board exceeding \$1,000 and less than \$25,000, on behalf of HRM shall be done in accordance with the terms of this Agreement, applicable laws, and procurement best practices;

- (c) seek competitive bids/quotes for all purchases of goods and services exceeding \$1,000 but less than \$25,000, and award to the bid providing best value to HRM, unless:
 - (i) HRM provides express written permission to use an alternative method of procurement; or
 - (ii) an unforeseeable situation of urgency exists and the goods or services cannot be obtained in time seeking competitive bids/quotes;
- (d) competitive bids/quotes are not required for purchases valued below \$1,000;
- (e) when selecting a list of vendors to be provided the opportunity to provide bids/quotes, the Board is responsible to ensure a fair and open process is followed:
 - (i) the Board is only required to invite qualified bidders to submit bids/quotes, however they are not to consistently invite bids/quotes from the same or a select group of vendors;
 - (ii) invitations and bidding opportunities are to be equitably distributed among all potential bidders in an area, and all interested and qualified vendors are to be evaluated on a consistent and equitable basis; and
 - (iii) it is recommended that Board retain the names of the vendors contacted for each opportunity;
- (f) document attempts to obtain best value, and retain such documentation (including quotes) and make it available to HRM or HRM's Auditor General for review upon request;
- (g) draw upon HRM's standing offers for the acquisition of commonly purchased goods and services whenever possible, unless HRM provides express written consent permitting otherwise, and where the Board is named in a standing offer, complete a vendor evaluation scorecard at the completion of the contract;
- (h) HRM's standing offers contain commercial confidential information and this information shall not be shared outside of the relationship between the board, HRM and the standing offer holder; and
- (i) the Board shall be responsible for:
 - (i) identifying and initiating procurement activities within their Facility;
 - (ii) complying with this Agreement and other procurement procedures established by HRM's Procurement Section from time to time;
 - (iii) monitoring, managing and enforcing contracts requisitioned by the Facility; and
 - (iv) ensuring the specific objectives of contracts requisitioned by the Facility are achieved.

5.3 Conditions respecting Operations Contracts

The Board agrees that:

- (a) the Board shall make available to HRM a copy of all executed Operations Contracts for the Facility upon request, and a list thereof with each Monthly Report;
- (b) subject as hereinafter provided, no Operations Contract shall be amended, varied or terminated without the prior consent of HRM; provided however, HRM's prior consent is not required for amendments or variations which do not cause the Operation Services to vary from the Operations Requirements or the terms and conditions of this Agreement;
- (c) the Board shall make available to HRM a copy of all amendments or variations to all Operations Contracts forthwith, upon execution thereof, and a list thereof with each Monthly Report; and
- (d) any operations contracts awarded by the Board in accordance with this Agreement shall require contractors to provide the Board with a Certificate of Insurance evidencing a Commercial General Liability policy with limits of not less than Two Million Dollars (\$2,000,000.00) or, for those situations involving a higher risk (including, but not limited to, those involving welding, boiler and machinery, chemical, pyro techniques, or sale of alcohol) not less than Five Million Dollars (\$5,000,000.00), with HRM as Additional Named Insured on the policy, and the contractors shall also be required to provide evidence of WCB converge for their employees, with the same required of any sub-contractors contemplated by the operations contract.

5.4 Long-Term Operations Contracts

The Board shall not enter into any Operations Contract having a term extending beyond the Expiry Date without the prior written consent of HRM.

ARTICLE 6 - BUDGETS AND BUSINESS PLAN

6.1 Budgets

Not later than December 31st or 30 days after receipt of a request from HRM in each Operating Year, the Board shall deliver a detailed proposed Annual Budget for the Facility containing:

- (a) an operating budget, including:
 - (i) projections of anticipated revenues (including a breakdown of use by Subsidized and Non Subsidized Users, if applicable);
 - (ii) proposed user charges for the Facility for the upcoming fiscal year;
 - (iii) operating and maintenance expenses; and
 - (iv) amount of subsidy requested from HRM if required, with a written narrative explaining any significant changes from the previous year's budget or the projected revenues/deficits.

- (b) a capital budget, including:
 - (i) estimates of expenditures required, if any, from the Capital Fund Reserve; and
 - (ii) a project component, including project costs (which includes capital expenditures).
 - (iii) Which shall meet the criteria for Capital Fund Reserve expenditures, as set out in section 7.3.

The Board and HRM staff shall jointly review the proposed Annual Budget for the Facility to agree upon the priorities for operations and to discuss potential alternatives available with respect to capital projects and ensure alignment with Council priorities and Council's direction on HRM's annual budget. Where directed by HRM, the Board shall include in its Annual Budget the implementation of initiatives associated with the Community Facility Master Plan 2 and Regional Council priorities. HRM shall advise the Board of any changes required by HRM, acting reasonably, to the proposed Annual Budget for the Facility and, within one (1) month thereafter, the Board shall submit to HRM a revised budget reflecting the changes required by HRM.

The final proposed Annual Budget for the Facility will subsequently be included with HRM's annual budget for consideration by Halifax Regional Council and the Board shall be prepared to present to Halifax Regional Council if requested, and to answer questions of councillors with respect to the proposed Annual Budget for the Facility.

The proposed budget, or revised budget, as the case may be, approved by HRM in writing shall constitute an approved operating budget for the Facility ("**Operating Budget**") for the purposes of expenditures for operations and maintenance of the Facility for the applicable Operating Year, but shall not be considered authorization for the Board to undertake any capital expenditures (all of which must be specifically approved in writing by HRM).

If, during the fiscal year, the Board proposes changes to the Facility's operation outside of the approved Operating Budget and Business Planning process, a business plan to support the proposed operational change shall be provided to HRM and will require approval by Regional Council.

The Board shall, as part of the HRM's Budget Process, provide to HRM Representative, a 5 year strategic plan for financing service level improvements and alterations to the Facility as a planning guide for future service level improvements and alterations to the Facility as a planning guide for future required improvements or alterations to the Facility. This will be updated annually.

6.2 Community Access & Pricing

HRM is undertaking a fee study for HRM-owned recreation facilities. When the fee study is complete, HRM shall advise the Board of the results, as well as any Council direction arising therefrom, and the Board shall consider it in its preparation of the annual budget and business plan for the operation of the Facility.

The Board shall establish user charges for the services offered at the Facility, subject always to the prior approval of HRM.

6.3 Current Year Surplus and Accumulated Surplus

If, in any fiscal year, a surplus is realized, such surplus shall be transferred to HRM to fund HRM's Capital Fund Reserve, and shall be for the exclusive use of the Facility. The parties shall agree to the date for the transfer annually, following the end of the fiscal year.

Any accumulated surplus held by the Board shall be transferred to HRM's Capital Fund Reserve on the Effective Date, for the exclusive use of the Facility.

All transfers of surpluses shall be a transfer of cash to HRM. Interest will be paid on operating cash balances. Surplus funds in a capital reserve account will earn interest which will be added to the Capital Fund Reserve for the use of the Facility.

6.4 Operating Deficit

If, in any fiscal year, a deficit is realized in excess of the budget approved by Halifax Regional Council in accordance with this Agreement, the Board shall prepare and submit a written report (the deficit report) at the time it submits its Annual Budget to HRM, outlining the magnitude of the deficit, the reasons, and the recommendation for dealing with it in the coming year.

Where the Board is in a deficit position for three consecutive years, HRM shall have the right, in its sole discretion, to terminate this Agreement, or to take any other measures it deems necessary.

For greater certainty, any deficit, or portion thereof, caused solely by:

- (a) a force majeure, more particularly described in Article 1.15;
- (b) the short-term use of the Facility for urgent or emergency purposes by HRM, more particularly described in Article 9.2(g);
- (c) the commencement of unscheduled capital works;
- (d) an initiative directed by HRM outside of the approved Annual Budget or Business Planning process; or
- (e) changes to the schedule of previously scheduled capital work,

shall not be considered by HRM in its determination of whether the Board is in a deficit position for the purposes of termination under this Article.

6.5 Debt Absorption

Upon execution of this Agreement, HRM shall undertake the process to complete the absorption of any outstanding operating and capital debts owed to HRM by the Board for its previous operation of the Facility, subject to appropriation of funds and approval by Regional Council.

6.6 Business Plan

HRM shall provide to the Board a list of programming focus areas to inform its development of a proposed Business Plan for the Facility on or before October 15th in each Operating Year.

Not later than December 31st, or 30 days after receipt of a request from HRM, in each Operating Year, the Board shall deliver a detailed proposed Business Plan for the Facility that encompasses CFMP2 and Regional Council priorities containing, at a minimum:

- (a) vision and mission statement;
- (b) strategic priorities and goals;
- (c) performance measures; and
- (d) risk analysis.

The Business Plan shall be in such form as is required by HRM.

ARTICLE 7 - FINANCIAL ARRANGEMENTS

7.1 Management Fee

No management fee shall be paid by HRM to the Board for activities carried out pursuant to this Agreement.

7.2 Revenues

All Revenues with respect to any activities associated with operation or management of the Facility, and interest earned on such Revenues, shall belong to HRM and when collected or recovered by the Board shall be deemed to be held in trust for the benefit of HRM.

7.3 Capital Fund Reserve

HRM shall establish and maintain a Capital Fund Reserve in accordance with HRM policies and processes including, but not limited to, Administrative Order 2014-015-ADM, *Respecting Reserve Funding Strategies* as amended from time-to-time.

The Capital Fund Reserve shall only be used to fund Capital Work that:

- (a) extends the life or performance of an asset consistent with the Facility Life Cycle Plan; and is not, in the sole discretion of HRM, regular maintenance;
- or
- (b) relates to additions or expansions of the Facility.

7.4 Operating Account

The Board shall maintain a bank account (the "Operating Account") for the Revenues of the Facility, including but not limited to any interest paid on balances in the Operating Account from time to time. All rents and other Revenues from the operations of the Facility (including but not limited to Revenues from retail space, advertising and sponsorship fees, programming, and rental rates and taxes) collected by the Board shall be deposited immediately in the form in which they are received without set-off or deductions into the Operating Account. Where any of the Revenues

from the operations of the Facility are collected directly by HRM, they may be deposited by HRM into a bank account of HRM's choosing.

The Operating Account shall be either:

- (a) established and administered under HRM's existing banking arrangements; or
- (b) established at a bank acceptable to HRM.

Where the Operating Account is established at a bank acceptable to HRM, the Board shall transfer the Operating Account to HRM's existing banking arrangements as soon as is practicable, having regard to existing third-party contracts.

The Board shall have signing authority on the Operating Account and may make payments from the Operating Account from time to time in accordance with this Agreement and subject to any agreement between HRM and the Board.

Where the Operating Account is administered under HRM's existing banking arrangements:

- (a) it shall be separate from HRM's accounts, with HRM Finance staff having the ability to view the account and to transfer funds with appropriate authorizations;
- (b) changes to the Operating Account signatories or online access to the Operating Account will be processed by HRM through its Finance Department; and
- (c) HRM Finance staff shall grant online access to the bank account to individuals in consultation with the Board.

Notwithstanding any other provision of this Agreement, all funds in the Operating Account shall be the property of HRM exclusively.

The Board shall adhere to HRM's Cash Management Policies, including any companion Standard Operating Procedures as provided to the Board by the HRM Representative from time to time. Any surplus cash may be invested, and any such investment shall be in accordance with HRM's Investment Policy by authorized HRM Finance staff.

7.5 Payment of Expenses

From and after the Effective Date, the Board shall be permitted to issue cheques or electronic payments from the Operating Account for the purpose of paying all reasonable and proper expenses incurred on behalf of HRM in connection with the operation and maintenance of the Facility or by the Board for its employment of staff to operate the Facility, subject to and in accordance with this Agreement and the Operating Budget, but the Board shall not issue cheques or electronic payments from the Operating Account to pay capital expenditures or for any other purpose unless approved by HRM in writing. Notwithstanding any other provision of this Agreement, the Board shall not pay out of the Operating Account and shall not undertake or authorize any expenditure, work, repairs, alterations or maintenance estimated to cost in excess of twenty-five thousand dollars (\$25,000.00) for any one item unless:

- (a) HRM's written approval is first obtained; or

- (b) the expenditure relates to a monthly or recurring operating charge and HRM's approval has been provided by the approval of Operating Budget or by acceptance of lease agreements with tenants; or
- (c) any such work is urgently required to be done and failure to do so would cause personal injury or damage to the Facility or its equipment or contents or could impair the value of HRM's investment and HRM or its duly authorized representatives cannot be located for the purpose of giving approval for such work, or if failure to do such work might expose either HRM or the Board, or both to the imposition of penalties, fines, or any other liability, then, in any such case, the Board is authorized to proceed with any such work as it in its absolute discretion reasonably determines to be urgently necessary for the protection and preservation of the Facility or its equipment or contents or HRM's investment therein or to protect HRM and the Board from exposure to fines, penalties, or any other liability.

7.6 Payroll

HRM may prepare and process payroll as a fee for service.

7.7 Taxes

The Board will deliver to HRM, no later than the 22nd of each month, such information and supporting documentation as may be required for HRM to enable it to compute the amount of HST or other Value Added Taxes collected by the Board on HRM's behalf during the preceding month with respect to the operation of the Facility. HST collected by the Board (in the capacity of Agent for HRM) in respect of the Facility's operations (under HRM HST # 89428 3845RT0001) will be accounted for and remitted by HRM and HST paid in respect of expenses of maintaining and operating the Facility will only be claimed by HRM. The Board shall, in respect of any property or services acquired by it on behalf of HRM pursuant to this Agreement, obtain from the supplier of such property or service sufficient evidence, in such form as may be required from time to time pursuant to the *Excise Tax Act* and any regulations made thereunder, as will be necessary to enable the amount of any tax credits which may be claimed by HRM in respect of such expenses to be determined and validly claimed.

The Board is liable for any applicable taxes that it is required to collect for amounts it receives to perform the services that it renders to HRM under this Agreement.

7.8 Receipts and Documentation

The Board shall at all times during the Operating Period secure and maintain invoices, bills and accounts for all expenses related to the Facility, copies of all correspondence, contracts, inventories and records of income, deposits and charges with respect to the Facility and its operation. The Board shall at all times keep and maintain in accordance with generally accepted accounting principles, approved by HRM and consistently applied, full, true and accurate books of account fully reflecting all matters relating to the Facility including all income and expenditures. The books of account shall be kept in such a manner as to clearly separate all income and expenses and to indicate to which source they are attributable.

7.9 Capital Work

HRM shall be responsible for all aspects of the Capital Work. HRM shall give reasonable consideration to requests or comments provided by the Board relating to the Capital Work,

including in respect of prioritization, cost and performance of the Capital Work. The Board is not liable for payments for the Capital Work. Without limiting, the Board's obligations with respect to capital Work include:

- (a) On or before August 31st of each year of the Term, the establishment of a Capital Work Program, to be provided to HRM, which shall:
 - (i) include work plans, priorities, budgets and funding estimates;
 - (ii) be determined having regard to the age and condition of the Facility;
 - (iii) be sufficient to enable the Facility to continuously meet the Applicable Law and Approvals; and
 - (iv) be consistent with Good Industry Practice; and
- (b) On or before August 31st of each year of the Term, the establishment of a Capital Work Budget for the ensuing Operating Year, to be provided to HRM, which shall:
 - (i) set out the estimated amount of Capital Expenditures required for the Capital Work proposed to be completed under the Capital Work Program during the next Operational Year;
 - (ii) conform to the priorities established; and
 - (iii) reflect and at all times remain subject to HRM annual budgetary approval process;
- (c) The Board and HRM shall both review the priorities for Capital Work and the alternatives available with respect to the funding of Capital Work by HRM. HRM, shall finalize the approved Capital Work reflected in the Capital Work Budget not later than thirty (30) days following HRM's approval of its budget during each year of the Term;
- (d) The Capital Work Program and the Capital Work Budget may be amended by agreement of the Parties during an Operating Year as circumstances may dictate.

7.10 Statement and Audits

The Board shall provide HRM with an audited annual financial statement on the operation of the Facility for each Operating Year, prepared in accordance with GAAP and setting out all Revenues and expenditures. The annual financial statements shall be submitted to HRM's Representative within one hundred and twenty (120) days, after the end of each Fiscal Year.

HRM shall have the right to inspect and audit the operations of the Facility and the books and records relating to such operations at any time and from time to time.

The Board shall have the option to utilize HRM's auditor through an optional pricing clause.

7.11 Limitations of Financial Authority

Unless expressly authorized by prior written approval of HRM, the Board shall not have the authority to do any of the following for the Facility:

- (a) open a new bank account except as approved in writing by HRM;
- (b) obtain a credit card for any Facility employee or Board Member in the name of that person on behalf of the Facility except as approved in writing by HRM;
- (c) enter into an arrangement with a payment processor except as approved in writing by HRM;
or
- (d) enter into an arrangement with an ATM provider except as approved by HRM.

7.12 Donations

Donations made to the Board for the Facility may be made to HRM, noting that the donation is to be directed to the Facility or its operations. HRM will issue a charitable receipt directly to the donor, and the funds will be directed to the appropriate account.

ARTICLE 8 - FINANCIAL AND OPERATIONAL REPORTS

8.1 Monthly Financial Reports

The Board shall prepare and furnish to HRM monthly, in a form satisfactory to HRM, a statement of receipts and disbursements and a report on the operations of the Facility including:

- (a) amount of rent and other Revenue collected including, without limiting, Rink Rental Rates and Advertising and Sponsorship Fees;
- (b) the amount of any arrears of rent, Rink Rental Rates and Advertising and Sponsorship Fees;
- (c) aged summary of accounts receivable;
- (d) schedule of allowance for doubtful accounts;
- (e) a description of any maintenance work, in an amount equal to or exceeding \$5000, performed in respect of the Facility and the cost of the same;
- (f) unaudited financial information including a Statement of Financial Position and a Statement of Operations and Accumulated Surplus prepared in accordance with GAAP relative to your Facility.

Where ICT programs and services are capable of providing reporting details for the reports set out in this Article directly to HRM through SAP, the Board shall not be required to provide those monthly financial reports and they shall be generated by HRM directly.

8.2 Quarterly Operations Reports

The Board shall provide a Quarterly Operations Report to the HRM Representative no later than 45 days after the end of each quarter, including the following components:

- (a) discussion and analysis of quarter results highlighting significant variances from budget and latest quarterly forecast;

- (b) discussion and analysis of updated annual forecast and significant variances against budget; and
- (c) discussion and analysis on all recreational program and sporting events held, to include detailed Facility membership numbers, participants per sporting event, recreational activities, rentals, etc.

8.3 Annual Report

The Board shall deliver a detailed annual operation and maintenance report to HRM not later than one hundred twenty (120) days following the end of each Fiscal Year during the Operating Period. The annual operation and maintenance report shall be in a form acceptable to HRM and shall include, but not be limited to, the following for the year ended:

- (a) a general overview of the operation of the Facility in the previous year, including usage of the Facility, Revenues and expenditures, physical status of the Facility at year end;
- (b) detailed information, by month, of the use of the Facility by category of facility users and Revenues, with annual totals and comparisons of previous years, and a brief written narrative to highlight significant changes, if any;
- (c) an annual report on all recreation program and sporting events held, to include detailed Facility membership numbers, participants per sporting event, recreational activities, rentals, etc.;
- (d) detailed information, by month, of the status of leasing arrangements and the volumes of sales revenues generated from Retail Space in the Facility to the extent applicable to determining proportionate rent;
- (e) detailed information, by month, of operations and maintenance activities and costs for the Facility, with annual totals and comparison of previous year's activities and costs, and a brief written narrative to highlight significant changes, if any;
- (f) the fee schedule for all recreational programs, as well as facility rental rates, for the previous year; and
- (g) all other information reasonably requested by HRM.

8.4 Reports Not Binding on HRM

The Board agrees that HRM's receipt of the annual report shall not imply that HRM approves of the Board's management, operation or maintenance of the Facility.

8.5 Acknowledgement of Report

HRM shall acknowledge, with written receipt, the annual report thirty (30) business days after all documents, including Audited financial statements are provided. The acknowledgement will include any areas of concern and any incidents of non-compliance with this Agreement as identified in HRM's review of the annual report.

8.6 Other Reports

The Board shall, if and when, requested from time to time by HRM, prepare and furnish to HRM, such other reports or statements as HRM may reasonably require including, without limiting, status and update reports, on any material aspects of the Work. Other than in the event of an Emergency, reasonable notice of a minimum of 15 business days will be given. HRM will acknowledge receipt of any reports within writing within 15 business days.

ARTICLE 9 - BOOKS, ACCESS AND INSPECTIONS

9.1 Books, Records and Accounts

The Board shall:

- (a) prepare and maintain at all times at a location in or accessible directly from Halifax, proper, accurate and complete books, records, accounts and documents in which fair and proper entries shall be made of all activities and transactions in respect of the management, operation and maintenance of the Facility;
- (b) ensure that HRM has access to such books, records, accounts and documents in order that it may exercise its rights of inspection and audit; and
- (c) ensure that such books, records, accounts and documents shall not be destroyed until the HRM's rights of access, inspection and audit have expired or, if arbitration or court proceedings to which such books, records, accounts or documents are relevant have been commenced, until such arbitration or court proceedings have been finally concluded.

9.2 Access

The Board agrees that HRM shall have the rights as follows:

- (a) to enter the Facility at any time and conduct or cause to be conducted such on-site observations and inspections and such civil, structural, mechanical, electrical, chemical or other tests as HRM deems desirable to ascertain whether the Board is in compliance with this Agreement. Unless deemed an Emergency reasonable notice of a minimum of 72 hours, will be given to the Board of any inspections and or tests;
- (b) the representatives and agents of HRM may at any time have access to the Facility and have access to test results, samples, books, records, accounts and documents related to the Facility, and may carry out such tests as HRM deems necessary in order to exercise its right of inspection and audit or where necessary for the administration of this Agreement.
- (c) the Board shall provide, and shall cause the Suppliers to provide, HRM and its authorized representatives with all requested information and documentation and access thereto on a timely basis;
- (d) HRM in exercising its rights of access, inspection and audit pursuant to this Agreement, shall use all reasonable effort to minimize any disruption to any other Person;
- (e) the existence or exercise by HRM of its rights of access, inspection and audit shall not in

any manner reduce or limit the obligations and responsibilities of the Board pursuant to this Agreement;

- (f) the Board shall provide sufficient, safe and proper facilities at all times for the inspection activities by HRM and its authorized representatives and all inspection and testing activities by Governmental Authorities; and
- (g) HRM reserves the right to use the Facility, at no charge, for civic priorities such as special events, including municipal elections and major sporting or cultural events, or short term use for urgent or emergency purposes, such as emergency situations as directed by the Emergency Management Organization, but this shall not be interpreted to include routine use by HRM for regular business. In the event that HRM requires the exclusive use of the Facility, or the majority thereof, for an extended period of time for a civic priority, the costs associated with such use shall be considered in the Annual Budget and Business Planning process.

9.3 Annual Inspections

The Board shall perform reasonably detailed annual inspections of all aspects of the Facility no later than July 1 of each year during the Operating Period, and HRM's Representative shall be invited to and given three (3) weeks written notice to be present at such inspections. The inspection team of the Board shall be led by the Board's General Manager.

ARTICLE 10 - OPERATIONAL OBLIGATIONS

10.1 Work Management / Office

The Board shall provide and supervise an effective operating management team for the Facility. The management team shall at all times be fully and adequately staffed and sufficiently qualified and experienced to deal with all issues relating to the management, operation and maintenance of the Facility.

10.2 General Manager

The Board shall appoint a qualified individual as the Board's on site General Manager. The Board's General Manager shall devote such of his or her time as is necessary for the proper management of the Facility throughout the Operating Period. The Board's General Manager shall have full authority to act in all matters as are necessary for the proper management, operation and maintenance of the Facility in accordance with the terms of this Agreement. His or her duties shall include the following:

- (a) to be knowledgeable about all aspects of the Facility and all requirements of this Agreement;
- (b) to co-ordinate all activities required under this Agreement and provide regular and careful attention and supervision; and
- (c) to attend meetings with HRM as contemplated by this Agreement.

The Board shall provide HRM with written notice of the name, current address, day and night phone numbers and fax number of the Board's General Manager.

10.3 Meetings and Access to Personnel

The Board shall cause the Board's General Manager, or Acting General Manager, to meet with HRM's Representative upon HRM's request, provided the Board is given one (1) week's notice, to discuss and review the management, operation and maintenance of the Facility. In addition, the Board's General Manager shall inform the HRM Representative in a timely manner of all emergencies, the occurrence of all uncontrollable events, and any other significant information as would be expected under customary and prudent business practices given the nature of the Facility.

The Board shall invite the HRM Representative to attend all meetings of the Board and shall provide them with copies of the meeting minutes of all Board and Committee meetings, except those meetings or portions thereof pertaining to personnel or labour relations issues for Board employees, or negotiations between the Board and HRM. Correspondence to HRM from the Board shall include the HRM Representative.

10.4 Information Communications & Technology

The Board acknowledges and agrees that Legend Recreation System Software Inc., a common recreation and registration management system that is designated, owned and operated by HRM, or any other alternative software solution supplied by HRM, will be exclusively used by the Board at such time that the system is provided to the Board by HRM.

Subject to HRM's appropriation of funding, the Board agrees to use HRM-delivered ICT programs and services, and any applicable systems and reporting integration that these may require, as they become available, including:

- (a) recreation service software;
- (b) core ICT services and support, including email, computers, and basic productivity tools;
- (c) SAP and support;
- (d) Telecom; and
- (e) Digital Signage.

All information technology software, business systems, hardware, data, wireless hardware and software, information technology infrastructure, and telecommunications equipment installed or utilized in the Facility with connection to HRM networks will be owned, supplied, managed, maintained and repaired by HRM.

If the Board wishes to install any Board-owned software on HRM computers, it must first obtain the prior written approval of HRM.

Once implemented, where ICT programs and services are capable of providing reporting details directly to HRM through SAP, the Board shall no longer be required to provide those monthly financial reports as set out in Article 8.1, the information for which is available to HRM directly through SAP.

10.5 Use of Business Systems and Information Technology

The Board's use of the IT Assets, including the Registration System, will be subject to the following conditions:

- (a) **Applicable Laws:** Usage of all IT Assets must be in compliance with Applicable Laws, including, for greater certainty, all privacy legislation and Part XX of the *Municipal Government Act*, and the *Personal Information International Disclosure Protection Act*, as such laws may be amended or replaced from time to time;
- (b) **Security:** Usage of all IT assets will be in accordance with HRM information technology security policies and standards;
- (c) **PCI:** The Board shall maintain all IT assets in compliance with the current Payment Card Industry (PCI) standards, as applicable, in accordance with Article 10.6;
- (d) **Privacy Policy;** the Board shall implement a privacy policy equivalent to or exceeding HRM's privacy policy, including provisions respect breach notification;
- (e) **Access rights:** Network and software access will be granted in accordance with HRM Information Technology Identity Management, network access, and applications access policies and standards; and
- (f) **Hardware:** Usage of information technology hardware will be in accordance with HRM information technology "acceptable use" policy,

as all such policies and standards may be amended or replaced from time to time.

10.6 Payment Card Industry Data Security Standards Inclusion

As part of being in compliance with PCI standards, the Board shall achieve and maintain compliance with the most-current version of the Payment Card Industry Data Security Standards (PCI DSS) as published on the PCI SSC (PCI Security Standards Council) website and shall provide evidence of compliance to HRM upon request.

HRM has resources to assist and provide guidance with PCI DSS compliance.

The Board shall:

- (a) adhere to HRM's Payment Card Industry Data Security Standards (PCI DSS) Compliance and Protecting Cardholder Data Policy, including any companion Standard Operating Procedures (SOP) as provided by HRM;
- (b) engage HRM before entering into any agreement that deals with customer credit card or debit card information in any manner, and use the PCI DSS language provided by HRM in any contract or agreement, including, but not limited to parking payment systems, online booking systems, payment processors;
- (c) ensure that all Board employees who handle customer credit card data take regular security awareness training, and maintain appropriate records of same;

- (d) pay any and all costs associated with maintaining its compliance with PCI DSS requirements and shall pay any and all costs including, but not limited to the costs of obtaining evidence of validation or confirmation of compliance with PCI DSS requirements. The Board shall pay any fines, fees, assessments, costs, including card re-issuing costs, and charges levied (whether by the card brands, the processor or bank) as a result of its non-compliance with the PCI DSS requirements and all other card association rules and regulations applicable to it;
- (e) notify HRM in writing within seven (7) calendar days of discovering that it is not compliant with the PCI DSS Requirements and shall include in this written notice to HRM the steps being taken to remediate the non-compliant status; and
- (f) notify HRM immediately upon learning of a “Compromise” as defined in the most recent version of the PCI DSS and PA-DSS Glossary of Terms, Abbreviations, and Acronyms. Without limiting the generality of the foregoing a Compromise includes an intrusion into a computer system where unauthorized disclosure/theft, modification, data compromise, data breach or destruction of cardholder data is suspected. The notification must include the steps being taken to remediate the Compromise.

10.7 Observance of Applicable HRM Policies

The Board covenants that it will act consistently with, or cause to act consistently with, all applicable HRM Policies provided to it by HRM during the Term of this Agreement in discharging its obligations under this Agreement

10.8 Observance of Applicable Laws

The Board covenants that it will comply with, or cause to be complied with, all applicable Laws, in discharging its obligations under this Agreement including all Laws which relate to the Facility and to the equipment, maintenance, operation and use of the Facility and improvements and to the making of any repair, replacements, alteration, additions, changes, substitutions or improvements of or to the Facility, or any part thereof. The Board covenants to comply with or cause to be complied with all lawful, police, fire and sanitary regulations imposed by any federal, provincial or municipal authorities and to observe and obey all Laws governing the conduct of any businesses conducted at the Facility.

10.9 Occupational Health and Safety Inspections

At a mutually agreed upon time, HRM and the Board may conduct at least one OHS audit of the Facility annually. HRM shall be responsible to implement any recommendations regarding capital works. The Board shall be responsible to implement any non-capital recommendations and shall provide a report to HRM within 60 days of the audit report outlining how the implementation will occur.

10.10 Compliance with Occupational Health and Safety Laws and Environmental Laws

With respect to Laws respecting health and safety of the workplace, the environment and Hazardous Substances or any Law related thereto, the Board:

- (a) covenants to use, operate, manage, maintain and repair the Facility (and to cause its employees, sub-tenants, licensees, occupants and invitees to use the Facility), in

compliance with all Laws, related to the protection of the environment, health and safety. The Board warrants and represents that, during the Term, no Hazardous Substances shall be used, generated, released, manufactured, refined, produced, processed, stored, disposed of or allowed anywhere on, under or about the Facility, other than in accordance with the applicable Law. Without limiting the generality of the foregoing, the Board warrants and represents that it shall comply with all Applicable Laws (including, but not limited to municipal by-laws) regulating the use, generation, storage, transportation and disposal of Hazardous Substances on, under or about the Facility;

- (b) acknowledges that (i) it will be the occupier of and employer at the Facility during the Operating Period and will have far greater control over the Facility than HRM on a day-by-day basis, (ii) it has the authority and the obligation under this Agreement to assume the primary responsibility for creating and maintaining a safe and healthy workplace at the Facility, and (iii) as part of the provision of Operation Services, the Board shall undertake all necessary and prudent actions in respect of occupational health and safety at the Facility, including but not limited to the following:
- (c) shall take every precaution that is reasonable in the circumstances to operate and maintain the Facility in a manner that ensures the health and safety of Persons thereupon;
- (d) shall exercise the precautions and duties of an “occupier of lands or premises used as a workplace” and “employer”, as those terms are used in the Occupational Health and Safety Act and the regulations;
- (e) shall comply with HRM’s policies and programs relative to workplace health and safety and adopt internal policies and programs (subject to HRM’s review and approval) that are substantially similar to HRM’s policies and programs, but which may differ to the extent required to adapt the Board’s policies and programs to operate the Facility in accordance with the Occupational Health and Safety Act and the regulations;
- (f) shall produce such reports from time to time as HRM may reasonably require to audit and verify the Board’s efforts in respect of health and safety and the Facility;
- (g) shall comply with the Occupational Health and Safety Act and the regulations; and
- (h) shall immediately disclose to relevant Governmental Authority and to HRM the occurrence of an event whereby the Board failed to comply with the Occupational Health and Safety Act or the regulations.

ARTICLE 11 - HRM COVENANTS

11.1 HRM Representative

HRM shall provide the Board with written notice of the name, current address, and day and night telephone numbers, and email address of the HRM Representative.

ARTICLE 12 - OPERATIONAL OR FACILITY MODIFICATIONS

12.1 Modifications by HRM

(a) Operational

HRM shall have the right at any time during the Operating Period and for any reason whatsoever to require the Board to make modifications to its operating procedures for the Facility, including modifications to its maintenance practices, provided such modifications will not have a material adverse effect on the Board's ability to perform any of its obligations under this Agreement.

(b) Facility

HRM shall have the right at any time, and from time to time, to make modifications to the Facility itself. HRM may at its sole discretion issue a public call for proposals or a tender for modifications to the Facility. Such modifications may result in disruption to Facility usage, up to and including temporary closure. HRM will provide as much notice as is reasonably possible in the circumstances of any such disruptions.

ARTICLE 13 - FACILITY CONDITION

13.1 Required Condition

The Board covenants and agrees that, except to the extent the Board is relieved of any of the following obligations under the provisions of this Agreement, at all times, including on the Termination Date, the Facility shall meet all the criteria required for the proper operation and maintenance of the Facility according to the Performance Standard as provided for in this Agreement.

13.2 Facility Condition Assessment

HRM may conduct a comprehensive, independent inspection of the condition of the Facility at any time during the Operating Period that the Board or HRM, on reasonable grounds determines is necessary and as soon as possible after any Termination Date of this Agreement is determined prior to the Expiry Date. The inspection shall include an examination of: all structural components, decks and roofs; the exterior of the Facility including all architectural features, adjacent pavement and landscaping; all Plant Equipment; all electrical systems and equipment; all FF&E requirements; all plumbing and drainage systems, the condition of leasehold improvements in retail premises and all finishes. This Facility Condition Assessment shall contain recommendations as to the work, if any, that is essential to ensure the integrity of the Facility and its equipment, with a time frame for that work, and, if necessary, that certain items or procedures in the Operations Manual be amended or updated.

13.3 Inspection Activities

The Board shall, as part of each inspection undertaken in accordance with this Agreement:

- (a) coordinate and cooperate with and assist HRM in all aspects of the inspection of the Facility;
- (b) provide reasonable access to the Facility;

- (c) permit motors, electrical and other systems to be inspected and tested;
- (d) provide all relevant records which relate in any way to the inspections and conditions;
- (e) provide such other assistance and facilities as are required by HRM such that it can perform the necessary inspection and assessment functions; and
- (f) the Board may request from HRM inspections be completed.

13.4 Correction of Deficiencies

If any deficiency in the condition of the Facility arises from the failure of the Board to provide routine maintenance and Repairs in accordance with this Agreement, then HRM may at the Board's cost, correct or repair all such deficiencies.

The Board shall not be responsible for deficiencies that are a result of deferred Capital Repairs that are known to HRM.

13.5 Additional Criteria for the Facility

In addition to correction of deficiencies identified in the Facility Capital Condition Assessment the Board shall be responsible to ensure that the Facility is in the Required Condition at all times, during the Operating Period and on any Termination Date, except to the extent the Board is relieved of such obligations under the terms of this Agreement, where sufficient capital funds have not been provided to maintain the required condition, and except for reasonable wear and tear:

- (a) all structural components including foundations and walls shall be in sound condition;
- (b) any cracks or spalling of concrete or other defects shall be adequately repaired;
- (c) all steel surfaces shall be in good condition, with new applications of suitable protective coatings;
- (d) electrical systems and lighting shall be in satisfactory condition;
- (e) the exterior to the structure, including all architectural features, adjacent pavements, landscaping, vegetation and other ancillary components shall be in good condition;
- (f) all parking areas are to be in good condition;
- (g) all Plant Equipment, mechanical systems, controls, elevators and other equipment and systems including, without limiting the FF&E and all systems related to the maintenance and creation of the Facility, are to be in a satisfactory working condition; and
- (h) All roofing to be in good condition.

ARTICLE 14 - DEFAULTS BY BOARD, TERMINATION, SUSPENSION AND REMEDIES

14.1 Termination for Material Breach

This Agreement may be terminated in writing by either party for a material breach of any of its terms, provided that the party that is in material breach is first given written notice of the breach.

The party alleging breach shall give a written notice of the breach to the party in breach, and that party shall remedy the default to the satisfaction of the other party within ten (10) business days of receipt of such written notice, or if such default cannot reasonably be remedied within such ten (10) business day period, the party shall promptly begin to remedy the default within the ten (10) business day period and thereafter diligently prosecute to conclusion all acts necessary to remedy the default, then such default shall be deemed to be remedied.

If the Board fails to remedy a default in accordance with this Article, HRM shall have the right, at its election, to exercise any or all of the following remedies:

- (a) terminate in whole or in part, the rights or obligations of the Board under this Agreement;
- (b) take possession of the Facility; and
- (c) remedy or cause to be remedied the default.

14.2 Right to Dispute Breach Notice

In the event that either party delivers written notice of a material breach to the other party pursuant to Article 14.1, that party may within seven (7) days of such notice deliver a dispute notice to the other and the matter shall be referred for resolution pursuant to the Dispute Resolution Procedures.

14.3 Termination Notice on Failure of Board to Remedy

On the occurrence of a default which HRM in its sole discretion considers may cause irreparable harm to any Person or to the Facility then HRM shall have the right to terminate this Agreement and exercise all of the other rights and remedies described in Article 14.1 and if HRM elects to terminate this Agreement, the Board shall have no right to dispute the matter.

14.4 Remedies are Cumulative

This Agreement shall not be construed as limiting HRM's rights or remedies at law or in equity and any such rights or remedies of HRM whether at law or in equity or under this Agreement:

- (a) may be exercised individually or together with any one or more of its other rights or remedies and as often or in such order as HRM deems expedient; and

- (b) are cumulative and are in addition to and not in substitution for any other rights and remedies.

14.5 Emergencies

Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable opinion of HRM there is a real or apprehended Emergency or damage to persons, property or the environment arising out of or in connection with any matter, state, condition or thing relating to this Agreement, as a result of a breach by the Board of this Agreement, HRM may, without notice and without prejudice to other remedies, (but without obligation to do so) rectify any such matter, state, condition or thing and, in which event the Board shall be responsible for all costs and expenses incurred by HRM in connection therewith.

14.6 Discretionary Right to Terminate

This Agreement may be terminated at any time by either of the parties hereto for any reason whatsoever, acting reasonably, on twelve (12) months written notice to the other party or by mutual agreement.

14.7 Obligations of the Board on Termination

Where HRM or the Board has terminated this Agreement in accordance with the terms hereof, the Board shall on the effective date of the termination:

- (a) stop the performance of all Work and services hereunder;
- (b) terminate all Operations Contracts as HRM may specify in writing;
- (c) provide to HRM a detailed list of all tangible and intangible property relating in any way to the management, operation and maintenance of the Facility including all items required under Article 3.9 and all equipment, machinery, fixtures, supplies, designs, concepts, plans, drawings, specifications, schedules, models, samples, patents, technology leases, licenses, books and records and an updated list of the names and addresses of all tenants, licensed users and customers of the Facility;
- (d) be deemed to have licensed to HRM a royalty and license to use any and all patented and proprietary information, designs or processes contemplated to be used by HRM in the operation, management and maintenance of the Facility, and shall forthwith execute and deliver to HRM a paid up royalty and license, in form and substance satisfactory to HRM, to use any and all such patented and proprietary information, designs or processes contemplated to be used in the management, operation and maintenance of the Facility;
- (e) assign and transfer to HRM the Board's right, title and interest in and to all liquor and other licenses and permits, if any, used by the Board in the operation of the Facility;
- (f) deliver all books and records;
- (g) remove from the Facility all material, debris, equipment and supplies that are designated in writing by HRM to be so removed;
- (h) do all such acts, execute and deliver to HRM all such documents, conveyances, deeds,

assignments, transfers, bills of sale, assurances and certificates and take all actions as may be required by HRM to exercise its rights hereunder;

- (i) take any other action towards termination of the Work which HRM acting reasonably shall request in writing; and
- (j) deliver to HRM a sufficient quantity of inventory and supplies to operate and maintain the Facility for thirty (30) days.

14.8 Further Assurances

The Board agrees that, upon the reasonable request of HRM, it will do all such acts and execute all such further documents, assurances, certificates and the like as may be necessary or desirable in HRM's opinion, acting reasonably, to effect the purpose of this Article 14, whether before or after this Agreement is terminated.

14.9 Termination

Where this Agreement is terminated in accordance with the terms herein, the Board shall on the effect date of termination:

- (a) vacate and surrender the Facility to HRM and no longer provide management services as contemplated under this Agreement;
- (b) no longer hold itself out to be the agent of HRM in respect of the Facility;
- (c) provide HRM with an updated list of the names and addresses of all tenants and current user groups of the Facility, as well as all suppliers;
- (d) provide to HRM a detailed list of all entities to which Community Builders Inc held itself out as an agent of HRM in respect of the Facility;
- (e) provide to HRM a detailed list of all tangible and intangible property relating in any way to the management, operation and maintenance of the Facility, and assign, transfer and deliver to HRM the Board's right, title, interest in and possession of same;
- (f) deliver to HRM all of the books and records respecting the Facility; and
- (g) take any other action that HRM, acting reasonably, shall request in writing.

ARTICLE 15 – INSURANCE

15.1 Insurance for the Operating Period

All insurance coverage language, policies and limits will be amounts deemed reasonable and prudent by HRM. The Board shall complete or assist in the completion of all insurance applications as may be required and provide substantiating documentation as required.

15.2 Insurance coverage provided by HRM

HRM shall provide the following insurance coverages for the Facility, with the Board as an Additional Insured:

(a) Automobile

In accordance with the provincial Direct Compensation Property Damage Process, HRM will insure those HRM-owned and Board-operated vehicles with insurance coverages as appropriate.

(b) Commercial General Liability

HRM will provide insurance coverage related to legal liability imposed upon HRM or the Board for negligent acts that cause bodily injury and/or property damage to a third party arising from entering onto, leaving or while on the Facility premises, any products sold or other Facility operations or activities, including programs.

(c) Excess Liability Coverage

HRM will provide excess policies as known to HRM to ensure sufficient levels of insurance coverage are in place to best protect HRM and the Facility.

(d) Property (including business interruption)

HRM will insure all real and personal property owned by HRM or the Board or for which the Board is or HRM is legally responsible. This coverage insures for all risks of direct physical loss or damage including, but not limited to, fire plus many other hazards including windstorm and lighting.

(e) Crime Insurance

HRM will insure the Facility for crime losses that are not insured under other insurance policies.

(f) Boiler and Machinery Coverage (accident to an object)

HRM will provide insurance coverage against the sudden and accidental damages of pressure vessels, mechanical and electrical equipment owned and maintained by HRM or the Board, including expediting expense and contingent business interruption.

HRM shall purchase the following coverage for the Board under a policy for all HRM Multi-District Facilities, with HRM as an Additional Insured:

(g) Directors and Officers

HRM will provide insurance coverage to insure against claims related to the wrongful acts or omissions committed or omitted by directors and board members, including for acts related to decisions and organization policies.

15.3 Claims Summaries

HRM shall provide the Board with a summary of all outstanding and paid claims by fiscal year

upon reasonable request from the Board, but not less than on a quarterly basis.

15.4 Settlement of Claims

Settlement authority for claims against or on behalf of HRM or the Board or involving the Facility shall be at the sole authority of HRM.

The Board shall cooperate with HRM, Insurers or others as may be necessary to assist in identification, quantification, assessment and mitigation of risks to the Facility, HRM or the public by implementing recommended strategies to manage risks.

15.5 Notification of Claims

The Board shall notify the HRM Representative in writing as soon as possible after: i) receipt of notice of any injury occurring in, on or about the Facility, that could reasonably be expected to result in a claim being made against HRM and/or the Board that involves the Facility, or ii) of any claim against HRM and/or the Board which involves the Facility. The Board shall take no action (such as the admission of liability) which would or could reasonably be anticipated to operate to bar HRM from obtaining any protection afforded by any policies of insurance it may hold or which would or could reasonably be anticipated to operate to prejudice the defence in any legal proceedings involving HRM or the Facility, or otherwise prevent HRM from protecting itself against any such claim, demand or legal proceeding. The Board shall fully cooperate with HRM in the defence of any claim, demand or legal proceeding.

15.6 Workers' Compensation Insurance

The Board shall obtain workers' compensation insurance for its employees in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia). The Board shall also ensure that workers' compensation insurance in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia) is provided by all Suppliers.

ARTICLE 16 - GENERAL COVENANTS

16.1 General Covenants of the Board

The Board shall maintain in good standing its status under the Companies Act as a company limited by guarantee, shall conduct itself at all times in accordance with its Memorandum of Association and Articles of Association, including as a not for profit corporation, and shall carry on no business other than that of the management and operation of the Facility under this Agreement.

ARTICLE 17 - INDEMNITY

17.1 Indemnification

HRM shall indemnify, defend and hold harmless the Board, and each officer and director thereof, against any loss, expense, damage, claim, liability obligation, judgement or injury suffered or sustained by reason of any act, omission or alleged act or omission arising out of the activities of the Board pursuant to this Agreement provided, however, that the Board, member officer or

director, as the case may be, has acted in good faith and the act or omission giving rise to the claim is not fraudulent, deceitful, intended to cause harm or injury, or illegal.

ARTICLE 18 - CONFIDENTIAL INFORMATION

18.1 Non-Disclosure

All information concerning HRM, the Facility and the tenants and users of the Facility (including but not limited to "Personal Information", as defined in the *Municipal Government Act*) obtained by the Board in the performance of its duties under this Agreement shall be held in strict confidence and shall not be used or stored by the Board or disclosed to any third party without HRM's prior written consent and always in accordance with applicable Laws. This provision shall survive any termination of this Agreement.

In addition to the above, the Board shall abide by the provisions of Schedule A, the Privacy Protection Schedule, with respect to its handling of Personal Information.

Confidential Information shall be held in the strictest confidence by the Board and HRM and no Confidential Information shall be disclosed to any Person, except Confidential Information:

- (a) of a party where that party consents in writing to its disclosure;
- (b) in the public domain through no wrongful act of the disclosing party;
- (c) received from a Third Party without restriction on further disclosure and without breach of this Agreement;
- (d) developed independently without breach of this Agreement;
- (e) disclosed in accordance with the mandatory disclosure requirements of any Laws;
- (f) disclosed in accordance with HRM's policies in effect from time to time;
- (g) required to be disclosed by order or direction of a court of competent jurisdiction or pursuant to any regulation, policy, guideline, statement, order, direction, conditional order, license or Approval, or request of any Governmental Authority or other body having statutory powers of decision; or
- (h) provided to an arbitral tribunal appointed pursuant to the terms and conditions of this Agreement where the disclosing party has taken all reasonable steps to ensure that the arbitrator is bound by a confidentiality agreement substantially the same as the provisions of this Article.

HRM represents and the Board acknowledges that HRM is a municipal body governed by provincial legislation, including, without limitation, the *Halifax Regional Municipality Charter* (Nova Scotia), the *Municipal Government Act* (Nova Scotia), and the *Personal Information International Disclosure Protection Act* (Nova Scotia) and as such this Agreement is subject to the freedom of information and protection of privacy provisions of the above-noted legislation.

18.2 Permitted Disclosure

Notwithstanding Article 18.1, Confidential Information received by a party may be disclosed to its corporate directors, employees and the auditors, accountants, legal counsel, engineering and other consultants, financial advisors, insurers and sureties (collectively "Representatives") for the purpose of administering or enforcing this Agreement provided such representatives (i) have a need to know; (ii) use the Confidential information for the purpose of administering or enforcing this Agreement; and (iii) are contractually bound to protect the Confidential Information as required hereunder.

HRM may disclose Confidential Information to members of Regional Council, HRM officials and employees of HRM if and to the extent only that such disclosure of such Confidential Information is necessary to the performance of the duties of such Persons or for the purpose of administering or enforcing this Agreement but for no other purpose.

18.3 Liability for Breach

A Party disclosing Confidential Information pursuant to Article 18.2 shall be liable for damages resulting from any breach of confidentiality arising from the acts or omissions of the Person to whom the Party disclosed such Confidential Information.

18.4 Survival

The provisions of this Article 18 shall remain in force and effect for a period of ten (10) years after the satisfaction of all of the obligations of the Board pursuant to this Agreement.

ARTICLE 19 - DISPUTE RESOLUTION

19.1 Commencement of Process

If HRM and the Board are unable to agree on any aspect of the Agreement that is subject to arbitration, either the Board or HRM may give notice of a dispute to the other, which is to contain the particulars of the matter in dispute and the relevant provisions of this Agreement. The other party shall reply in writing within 10 business days after receiving it, setting out in such reply the details of its response and any other relevant provisions of this Agreement.

19.2 Amicable Negotiations

HRM and the Board shall use best efforts to resolve any dispute.

If the dispute is not resolved within 15 business days following receipt of the reply, the dispute shall be resolved in accordance with Article 19.3.

19.3 Arbitration Proceedings

All differences between the parties arising out of this Agreement that cannot be resolved through amicable negotiations shall be submitted to arbitration as follows:

- (a) If the parties are unable to agree, either HRM or the Board (the initiating party) may appoint an arbitrator by notice in writing to the second party. The second party will have 10 business days after receipt of the notice to appoint its arbitrator, or to agree to have the matter heard

by the arbitrator named by the initiating party, written notice of which will be given to the initiating party. Where two arbitrators are chosen, they shall, within 10 business days after the appointment of the second arbitrator, appoint a third arbitrator who shall be the sole determiner of the matter;

- (b) The single arbitrator shall provide a decision in writing within ten (10) business days of his or her appointment;
- (c) The parties shall each be responsible for their own costs of arbitration and shall be jointly and equally responsible for the cost of the single arbitrator who determines the matter; and
- (d) The decision of the single arbitrator shall be final and binding.

No one shall be appointed or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either party.

19.4 Governance of Arbitration

The following provisions shall govern the arbitration:

- (a) to the extent not inconsistent with this Article, the arbitrator shall conduct the arbitration in such a manner as the Board considers appropriate, but each of HRM and the Board shall be treated fairly and shall be given full opportunity to present a case;
- (b) arbitration hearings shall be held in the Halifax Regional Municipality;
- (c) all arbitration hearings shall be in private unless the parties otherwise agree; and
- (d) any party may be represented at any arbitration hearing by legal counsel.

19.5 Matters not Subject to Arbitration

Notwithstanding Article 19.3, the following matters are not subject to arbitration:

- (a) policies and standards established by HRM, provided that such policies and standards do not directly contradict the express terms of this Agreement;
- (b) allocation of HRM budget and resources;
- (c) compliance with Applicable Laws and corporate policies; and
- (d) the ownership of the Facility.

19.6 Applicable Law

The Parties agree that any arbitration pursuant to this Agreement shall be governed by the terms of this Article 19 and to the extent not inconsistent therewith, the Commercial Arbitration Act (Nova Scotia).

19.7 Continuation of Work During Dispute

Notwithstanding that a matter or matters have been referred to the Dispute Resolution Procedures set forth in this Article 19, each of the Board and HRM shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay.

ARTICLE 20 – NOTICES

20.1 Notices

Any consent, waiver, approval, notice, request, direction, response, determination or other communication (collectively, “notice or other communication”) required or permitted to be given or made pursuant to this Agreement shall only be effective if in writing and shall be sufficiently given or made if:

- (a) delivered during normal business hours on a Business Day and left at the relevant address set forth below:

to the Board, addressed as follows:

Attention: Mr. Kevin Fraser, Chair, Community Builders Inc.
51 Forest Hills Pkwy, Box 17
Dartmouth, Nova Scotia
B2W 6C6

if to HRM, addressed as follows:

Attention: Brad Anguish, Director, Parks and Recreation
Halifax Regional Municipality
1841 Argyle Street
P.O. Box 1749
Halifax NS B3J 3A5

Any notice or other communication so given or made shall be deemed to have been given or made on the same day and to have been received on the day of delivery if delivered as aforesaid or on the day of receipt of same by telex, telefax, e-mail or other recorded means of electronic communication, as the case may be, provided such day is a Business Day and that such notice is received prior to 3:00 p.m. Halifax time, and, if not, on the first Business Day thereafter.

Each party may change its address, telephone and telefax number or e-mail address by notice to the other pursuant hereto.

ARTICLE 21 – GENERAL

21.1 Assignment

Neither HRM nor the Board may assign any or all of its interest in this Agreement except with the consent of the other party provided, however, the Board hereby consents to HRM assigning its interest in any of this Agreement to a municipal agency or municipal corporation provided the assignee acquires all of HRM’s interests, rights, benefits and obligations under such assigned agreements and such assignment does not release HRM from its obligations under this

Agreement and provided further that HRM may arbitrarily and unreasonably withhold its consent to any assignment, in whole or in part of this Agreement, by the Board.

21.2 No Partnership, Joint Venture or Agency

Nothing in this Agreement, nor the conduct of any party, shall in any manner whatsoever constitute or be intended to constitute HRM as the agent or representative or fiduciary of the Board or any other party, nor constitute or be intended to constitute a partnership or joint venture between HRM and the Board or any other party, but rather as between HRM and the Board each party shall be severally responsible, liable and accountable for its own obligations under this Agreement or otherwise for any conduct arising therefrom and for all claims, demands, actions and causes of action arising directly or indirectly therefrom. Neither party shall have the authority to make nor shall it make any statements, representations or commitments of any kind, or take any action that will bind the other party except as expressly provided in this Agreement or as otherwise authorized in writing by the applicable party.

The Board shall, for all purposes under this Agreement and in relation to any aspect of the performance of its obligations in respect of the work, be an independent contractor and will have responsibility for and control over the details and means of performing such obligations in accordance with the terms and conditions of this Agreement.

21.3 Official Dealings with HRM

No communication or dealing between the Board and any department, committee or body functioning under the administration of the Halifax Regional Municipality shall be deemed to be a communication or dealing under the provisions of this Agreement between HRM and the Board as parties to this Agreement or to effect the HRM or the Board with notice of any such communication or dealing under this Agreement; it being intended and agreed that any communication or dealing between the HRM and the Board as parties to this Agreement shall only be effective if provided in the manner provided by Article 20 of this Agreement. No communication or dealing between the Board as a party to this Agreement, shall relieve the Board from the responsibility of discharging its lawful obligations to the Halifax Regional Municipality as a municipality separate and apart from the obligations of the Board imposed by this Agreement.

21.4 Further Assurances

Each of the parties shall, from time to time, at its own Cost and expense, execute or cause to be executed all such further documents and do or cause to be done all things which are necessary to give effect to the provisions of this Agreement.

21.5 Entire Agreement

This Agreement is the entire agreement between HRM and the Board with respect to operation, management and maintenance of the Facility. Unless otherwise expressly stated, this entire agreement supersedes all prior agreements, understandings or writings among the parties, whether written or oral and whether legally enforceable or not in respect of the Facility. Subject to applicable Law, no party shall be bound by or be liable for any statement, representation, promise, warranty, inducement, agreement, obligation or understanding of any kind or nature not set forth in this Agreement.

21.6 Effective Date

This Agreement will become effective when both parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

21.7 Independent Legal Advice

Each of the parties acknowledge that they have been advised to obtain and have been afforded sufficient opportunity to obtain independent legal advice prior to entering into this Agreement.

21.8 Enurement

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

EXECUTION

The parties have executed this agreement through authorized representatives on the date stated opposite each respective party's signature.

COMMUNITY BUILDERS INC.

Date

Name:
Title:

Date

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Date

Mike Savage, Mayor

Date

Kevin Arjoon, Municipal Clerk

DRAFT

Schedule "A"

Privacy Protection Schedule

Definitions

1. In this Schedule,
 - (a) "**access**" means disclosure by the provision of access;
 - (b) "**applicable legislation**" means the *Personal Information International Disclosure Protection Act* and the Freedom of Information and Protection of Privacy provisions contained within Part XX of the *Municipal Government Act*;
 - (c) "**contact information**" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
 - (d) "**personal information**" means recorded information about an identifiable individual, including (i) the individual's name, address or telephone number, (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations, (iii) the individual's age, sex, sexual orientation, marital status or family status, (iv) an identifying number, symbol or other particular assigned to the individual, (v) the individual's fingerprints, blood type or inheritable characteristics, (vi) information about the individual's health-care history, including a physical or mental disability, (vii) information about the individual's educational, financial, criminal or employment history, (viii) anyone else's opinions about the individual, and (ix) the individual's personal views or opinions, except if they are about someone else.

Purpose

2. The purpose of this Schedule is to:
 - (a) enable HRM to comply with HRM's statutory obligations under the applicable legislation with respect to personal information; and
 - (b) ensure that, as a service provider, the Board is aware of and complies with the Board's statutory obligations under the applicable legislation with respect to personal information.

Collection of personal information

3. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Board may only collect or create personal information that is necessary for the performance of the Board's obligations, or the exercise of the Board's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Board must collect personal information directly from the individual the information is about.

5. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Board must tell an individual from whom the Board collects personal information:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated by HRM to answer questions about the Board's collection of personal information.

Accuracy of personal information

6. The Board must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Board or HRM to make a decision that directly affects the individual the information is about.

Requests for access to personal information

7. If the Board receives a request for access to personal information from a person other than HRM, the Board must promptly advise the person to make the request to HRM unless the Agreement expressly requires the Board to provide such access and, if HRM has advised the Board of the name or title and contact information of an official of HRM to whom such requests are to be made, the Board must also promptly provide that official's name or title and contact information to the person making the request.

Correction of personal information

8. Within 5 Business Days of receiving a written direction from HRM to correct or annotate any personal information, the Board must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, HRM must advise the Board of the date the correction request to which the direction relates was received by HRM in order that the Board may comply with section 10.
10. Within 5 Business Days of correcting or annotating any personal information under section 8, the Board must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to HRM, the Board disclosed the information being corrected or annotated.
11. If the Board receives a request for correction of personal information from a person other than HRM, the Board must promptly advise the person to make the request to HRM and, if HRM has advised the Board of the name or title and contact information of an official of HRM to whom such requests are to be made, the Board must also promptly provide that official's name or title and contact information to the person making the request.

Protection of personal information

12. The Board must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to personal information

13. Unless HRM otherwise directs in writing, the Board must not store personal information outside Canada or permit access to personal information from outside Canada.

Retention of personal information

14. Unless the Agreement otherwise specifies or unless HRM directs otherwise in writing, the Board must retain personal information for at least one year following the date of its use and securely dispose of personal information no later than three years after its use.

Use of personal information

15. Unless HRM otherwise directs in writing, the Board may only use personal information if that use is for the performance of the Board's obligations, or the exercise of the Board's rights, under the Agreement.

Disclosure of personal information

16. Unless HRM otherwise directs in writing, the Board may only disclose personal information inside Canada to any person other than HRM if the disclosure is for the performance of the Board's obligations, or the exercise of the Board's rights, under the Agreement.
17. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Board must not disclose personal information outside Canada.

Notice of foreign demands for disclosure

18. In addition to any obligation the Board may have to provide the notification contemplated by section 6(1) of the *Personal Information International Disclosure Protection Act*, if in relation to personal information in the custody or under the control of the Board, the Board:
 - (a) receives a foreign demand for disclosure;
 - (b) receives a request to disclose, produce or provide access that the Board knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
 - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Board must immediately notify HRM and, in so doing, provide the information described in section 6(2) of the *Personal Information International Disclosure Protection Act*. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 2(1) of the *Personal Information International Disclosure Protection Act*.

Notice of unauthorized disclosure

19. If the Board knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Board, the Board must immediately notify HRM. In this section, the phrase “unauthorized disclosure of personal information” will bear the same meaning as in section 2(1) of the *Personal Information International Disclosure Protection Act*.

Inspection of personal information

20. In addition to any other rights of inspection HRM may have under the Agreement or under statute, HRM may, at any reasonable time and on reasonable notice to the Board, enter on the Board’s premises to inspect any personal information in the possession of the Board or any of the Board’s information management policies or practices relevant to the Board’s management of personal information or the Board’s compliance with this Schedule and the Board must permit, and provide reasonable assistance to, any such inspection.

Compliance with the applicable legislation and directions

21. The Board must in relation to personal information comply with:
 - (a) the requirements of the applicable legislation to the Board as a service provider, including any applicable order under the applicable legislation; and
 - (b) any direction given by HRM under this Schedule.
22. The Board acknowledges that it is familiar with the requirements of the applicable legislation governing personal information that are applicable to it as a service provider.

Notice of non-compliance

23. If for any reason the Board does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Board must promptly notify HRM of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

24. In addition to any other rights of termination which HRM may have under the Agreement or otherwise at law, HRM may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Board, terminate the Agreement by giving written notice of such termination to the Board, upon any failure of the Board to comply with this Schedule in a material respect.

Interpretation

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.

26. Any reference to the “Board” in this Schedule includes any subcontractor or agent retained by the Board to perform obligations under the Agreement and the Board must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of the Board in this Schedule will survive the termination of the Agreement.
28. If a provision of the Agreement (including any direction given by HRM under this Schedule) conflicts with a requirement of the applicable legislation or an applicable order under the applicable legislation, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
29. The Board must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires the Board to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the applicable legislation.

MANAGEMENT AGREEMENT

Attachment 3

Between:

Halifax Regional

Municipality and

Alderney Landing Facility Association

Halifax Regional Municipality
Parks & Recreation
PO Box 1749
Halifax, Nova Scotia B3J 3A5

HALIFAX

MANAGEMENT AGREEMENT

Between:

HALIFAX REGIONAL MUNICIPALITY

a municipal corporation in the Province of Nova Scotia (“HRM”)

- and -

ALDERNEY LANDING FACILITY ASSOCIATION

a society incorporated in Nova Scotia (the “Association”)

WHEREAS HRM has a mandate to provide recreation services to its residents;

AND WHEREAS HRM is the sole owner of Alderney Landing (the “Facility”), located at 2 Ochterloney Street in Dartmouth, Nova Scotia;

AND WHEREAS the Association is a community-based society which has played an important role in HRM’s delivery of recreational services, including by delivering programming and services that ensure a healthy, engaged and inclusive community, and managing the Facility on HRM’s behalf;

AND WHEREAS HRM’s Multi-District Facilities represent Regional centres;

AND WHEREAS HRM and the Association agree that all residents of the Halifax Regional Municipality should have similar opportunities, regardless of gender, age, sexual orientation, ability, race, culture, faith or socio-economic status;

AND WHEREAS HRM wishes to engage the services of the Association to be responsible for the operation, management, maintenance and repair of the Facility, for and in conjunction with HRM;

AND WHEREAS HRM desires to engage the Association to promote the use of, operate, manage, maintain and repair the Facility and the Association agrees to perform such services for and on behalf of HRM, in accordance with the terms of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the mutual covenants herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

Capitalized words and phrases used herein shall, for all purposes of this Agreement and the Schedules hereto (unless there is something in the subject matter or context inconsistent therewith or unless otherwise defined herein) have the meaning set out in the definitions below:

“Approvals” means all approvals, authorizations, certificates, consents, licenses, permits, qualifications or orders of any Governmental Authority required by applicable Laws in connection with any of the following:

- (a) the operation, management, or maintenance of the Facility; and
- (b) the performance by the Association of its obligations pursuant to this Agreement,

or any waivers or exemptions from the requirements for any such Approvals, provided that any such waivers or exemptions are in full force and effect;

“Best Value” means the bid that is determined by the Association to be in its best interests, not necessarily the lowest price bid, which is determined by evaluation of bids based on criteria or factors that may include purchase price, life cycle cost considerations, environmental and social considerations, delivery, servicing, past experience and performance, and any other criteria or factors stated in the bid documents;

“Betterment” means the cost incurred to enhance the service potential of a tangible capital asset, by increasing the previously assessed service capacity, lowering the associated operating costs, extending the useful life, or improving the quality of output, including additions to a capital asset, or the substitution of a better component for one currently used;

“Business Day” means any day excluding Saturday, Sunday or a statutory or civic holiday observed by chartered banks in Halifax, Nova Scotia;

“Capital Expenditure” means the funds required for the acquisition, construction, development, or betterment of a tangible capital asset, including the cost of its installation at the location and in the condition necessary for its intended use, which may be comprised of the purchase price, installation costs, design and engineering fees, legal fees, survey costs, site preparation costs, freight charges, transportation, insurance costs, and duties;

“Capital Fund Reserve” means a reserve fund, maintained, and controlled by HRM for funding Capital Work in relation to any MDF.

“Capital Work” means work done on the Facility as directed by HRM’s department of Facility Design and Construction and approved in the HRM capital budget.

“Claims” means any and all claims, liabilities, demands, losses, damages, actions and causes of action of any kind or nature including, without limitation, expenses, costs and legal fees;

“Costs” means all outlays, payments, expenses and costs of every kind and nature including, without limitation, costs, expenses, fees, disbursements, dues, sums of money, salaries, interest, wages, rentals and legal fees on a solicitor-client basis, and for greater certainty shall exclude damages awarded by a court;

“Council” means the municipal council of HRM;

“Dispute Resolution Procedures” means the procedures set forth in Article 18 to be used by the Association and HRM for dispute resolution of certain disputes as provided in this Agreement;

“Effective Date” means the date on which the last of the Association and HRM has executed this Agreement, as indicated by the date associated with that party’s signature;

“Emergency” means a sudden, unexpected capital, or impending situation that poses an inherent risk to people, property, or a significant interference with normal activities;

“Expiry Date” means the date five (5) years after the Effective date;

“Facility” means the property owned by HRM known as Alderney Landing located at 2 Ochterloney Street in Dartmouth Nova Scotia;

“Generally Accepted Accounting Principles (GAAP)” Not for Profit Accounting means a framework of accounting standards, rules and procedures which are in effect in Canada, including those published in Standards and Guidance Collection of the Chartered Professional Accountant of Canada, or any successor;

“Goods” means materials, furniture, merchandise, equipment, stationery and other supplies required by the Association for the transaction of its business and affairs, including services that are incidental to the provision of such supplies;

“HRM’s Representative” means such HRM employee(s), designated as such from time to time by HRM, who will act on behalf of HRM with respect to all powers, duties and authorities of HRM under this Agreement;

“HST” means the Goods and Services Tax or the Harmonized Sales Tax, as the case may be, which is or may be imposed under the *Excise Tax Act* (Canada), as amended, or any successor or similar legislation, including provincial legislation that is intended to impose a tax on the consumption of goods or services;

“Lands” means those lands located at 2 Ochterloney Street Dartmouth Nova Scotia, as outlined in red and further described on the attached Schedule “B”;

“Law” or **“Laws”** means the common law and any statute, regulation, by-law, ordinance, policy, standard, code, order, permit, license, or rule of any Governmental Authority having jurisdiction in relation to any aspect of the Facility, as same may be amended, substituted, replaced or enacted from time to time;

“Multi District Facility (“MDF”) means Regional Recreation Facilities that serve a large geography area of the municipality. They provide specialized programming and services, which may include pools, fitness centres, arenas, gymnasiums, community meeting spaces, and various amenities to enhance community and cultural life.

“Operating Account” has the meaning as attributed to it in Article 7.4;

“Operating Budget” has the meaning as attributed to it in Article 6.1;

“Operating Period” means the period commencing on the Effective Date and ending on the Expiry Date, subject to the earlier termination of this Agreement in accordance with the terms hereof;

“Operations Contract” means an agreement, contract or purchase order entered between the Association, as agent for HRM, and a Supplier to furnish services, equipment, supplies or other things required for the proper operation and maintenance of the Facility during the Operating Period;

“Operations Requirements” means the requirements for the management, operation and maintenance of the Facility as set out in this Agreement and as otherwise specified from time to time by HRM and includes HRM policies applicable to the use of the Facility (which by way of example only, includes policies in respect of tobacco and alcohol use on municipal properties or the closure of municipal venues, by the Chief Administrative Officer, due to inclement weather), as these policies may be adopted and amended from time to time;

“Operation Services” means the provision of all labour, materials and services required to manage, operate and maintain the Facility in accordance with the terms and conditions of this Agreement and in accordance with applicable Laws both prior to and during the Operating Period. Operation Services shall include the employment and furnishing of all equipment, supplies, tools, storage, transportation and other things and services of every kind whatsoever necessary for the proper, effective and cost-efficient management, operation and maintenance of the Facility and all administrative, accounting, record-keeping, and similar responsibilities of every kind whatsoever incidental to such obligations. A reference to “Operation Services” shall mean “any part and all of the Operation Services” unless the context otherwise requires;

“Performance Standard” means at any particular time during the Operating Period:

- (a) in relation to the state of condition, maintenance and repair of the Facility, the performance by the Association of all Work hereunder to a level reasonably comparable to what would be provided by a similar facility, having regard to the age of the Facility and allowing for reasonable wear and tear; and
- (b) in relation to the operation of the Facility, to at least the standard of management and operation of a similar facility;

consistent with this Agreement and consistent with the quality of operations of a prudent owner;

“Permits” means all permits, permissions and approvals required, or as the context requires, granted by Governmental Authorities for the design, construction and operation of the Facility;

“Plant Equipment” means the heating, ventilation, refrigeration, air-conditioning and other related equipment, not including fixtures or program supplies;

“Programming” means physical, Recreation, Sport, cultural, educational, social and capacity-building programs and other services offered to members of the public through registered or unregistered programs administered and run in or through the Facility;

“Renovation” means an alteration of the Facility, or an addition, re-construction or demolition of a portion of the Facility, undertaken at any time;

“Repair” means non-Capital Work in the nature of a repair to the Facility undertaken at any time and other than pursuant to the Life Cycle Requirements;

“Required Condition” means the condition of the Facility at any time, including on the

Termination Date, that meets the Performance Standard;

“Retail Space” means the space within the Facility as may from time to time by agreement between HRM and the Association be leased to, licensed to, or otherwise operated by, third parties including, without limiting, any retail establishment, restaurant, canteen, beverage or concession outlets, commercial or office space;

“Revenue” means all monies, proceeds, and funds of every nature and kind received by the Association in respect of the Facility from and after the Effective Date that are either:

- (a) derived directly or indirectly from operations at the Facility (including but not limited to fees paid for services provided in or from the facility, or for use of the Facility, or other payments from lessees or concessionaires in the Retail Space, Advertising and Sponsorship Fees, any parking revenues and any fees from any licensee for the use of any space forming part of the Facility but not including the gross revenues of bingo, licensees, lessees or concessionaires and any other charges to such licensees, lessees or concessionaires such as taxes, common area costs or premiums for insurance), determined in accordance with GAAP consistently applied, excluding, however, the following:
 - (i) applicable HST, excise, sales, gross income, entertainment and use taxes or similar government charges collected directly from patrons or guests, or as a part of the sales price of any goods, services or displays, such as gross receipts, admission, cabaret or similar or equivalent taxes;
 - (ii) proceeds from the sale or other disposition of capital assets or unwanted inventory;
 - (iii) rebates, discounts or credits of a similar nature (not including credit card discounts which shall be included as an item of revenue and shall be considered an operating expense); or
- (b) by way of grants, gifts, sponsorships, bequests, donations, fund-raising or otherwise

“Schedules” means the schedules attached hereto which form part of this Agreement;

“Services” means services required by the Association for the transaction of its business and affairs, excluding services provided by an employee of the Association through a personal services contract;

“Supplier” means any person, other than the Association and employees of the Association, entering into an Operations Contract to furnish services, equipment, supplies or other things in connection with operation and maintenance of the Facility during the Operating Period;

“Termination Date” means the date on which this Agreement expires or terminates; and

“Work” means any or all of the things to be furnished or performed by the Association pursuant to this Agreement.

1.2 Headings

Headings, recitals and the provision of a table of contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 References

Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, subsection, clause, sub clause or other subdivision is a reference to such Schedule, Article, Section, subsection, clause, sub clause or other subdivision of this Agreement. The terms “hereof”, “hereto”, “herein”, “hereby” and “hereunder”, and similar expressions mean and refer to this Agreement and, unless the context otherwise requires, not to any particular Article.

1.4 Parties

References in this Agreement to the “Parties” shall mean the parties to this Agreement and a reference to a “Party” shall mean one (1) of the parties to this Agreement.

1.5 Number and Gender

Words importing the singular only shall include the plural and vice versa, words importing any gender shall include other genders and references to persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations. Any capitalized word which is a derivative of any word defined in 0 shall have a meaning corresponding to the defined word.

1.6 Statutes and Regulations

Any reference in this Agreement to all or any part of any statute, regulation, by-law or other legislative enactment shall, unless otherwise expressly stated, be a reference to that statute, regulation, by-law or legislative enactment or relevant part thereof as amended, substituted, replaced or re-enacted from time to time.

1.7 Accounting Terms and Principles

Unless otherwise expressly stated, all accounting terms and principles applicable to this Agreement shall be interpreted and applied in accordance with GAAP which are in effect in Canada, including those published in the handbook of the Canadian Institute of Chartered Accountants, or any successor, as at the date on which such calculation is made or is required to be made.

1.8 Time

Time shall be of the essence of this Agreement. If the last day of any period of days set out herein falls on a day which is not a Business Day, such period of days shall be extended to the first Business Day immediately following the last day of such period of days. If anything herein falls to be done or held on a day which is not a Business Day, the same shall be done or held on the next succeeding Business Day.

1.9 Authority

Where reference is made to a direction, response, act, decision, determination, consent, waiver, approval, notice, request or other communication of HRM that is required or that may be done, performed or carried out by HRM pursuant to this Agreement, it may be so done, performed or carried out by the HRM Representative or such other Person or Persons as may be authorized by HRM to act in his stead and any such Person or Persons or any other Persons who may be

designated from time to time as HRM Representative for the purposes of this Agreement by notice from HRM to the Association in accordance with this Agreement.

1.10 Governing Law

This Agreement is made in the Province of Nova Scotia and shall be governed by and construed in accordance with the laws in force in the Province of Nova Scotia. The parties submit to the jurisdiction of the Supreme Court of Nova Scotia, subject to any restrictions relating to access to such court under applicable Laws, with respect to all claims and proceedings arising out of or related to this Agreement.

1.11 Amendments in Writing

No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the Parties, either individually by counterpart or collectively. Any amendment, variation or waiver shall take effect on the date specified in the amendment, variation or waiver or, if not so specified, on the date on which the last Party executes and delivers the amendment, variation or waiver.

1.12 No Waiver

- (a) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.
- (b) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall extend only to the party to whom such waiver is expressly granted and shall not be construed as a waiver in favour of any other party in respect of such provision or breach and shall not prejudice the rights of any other party from insisting upon performance of such provision.
- (c) The failure of any party to give notice to the other party, or to take any other steps in exercising any right in respect of the breach or non-fulfillment of any provision of this Agreement, shall not operate as a release or waiver of that right or as a release of the other party from its obligations and liabilities nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.
- (d) The acceptance by any party of payment or performance of any obligation after the breach or non-fulfillment by the other party of any provision of this Agreement shall not constitute a waiver of the provisions of this Agreement.

1.13 Severability

If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable, unless such invalid provision is fundamental to the efficacy of this Agreement, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by Laws.

1.14 Schedules

The following Schedules are attached, and form part of this Agreement:

Schedule "A" Privacy Protection Schedule
Schedule "B" Lands

1.15 Force Majeure

Notwithstanding anything to the contrary in this Agreement, if HRM or the Association is bona fide delayed in or prevented from performing any obligation arising under this Agreement by reason of third party strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion, EMO responsibilities or other act of God, and not caused by its default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause exists, and the party so delayed shall and is entitled to carry out such obligation within the reasonable time period after the cessation of such cause.

ARTICLE 2 - MANAGEMENT, OPERATION, AND MAINTENANCE OF THE FACILITY

2.1 General

The Association agrees to manage, operate, maintain and promote the use of the Facility as agent for HRM from and after the Effective Date and to perform the Work. The Association agrees and HRM authorizes the Association to promote the use of, manage, operate and maintain the Facility on behalf of HRM from the Effective Date in accordance with and subject to the provisions of this Agreement.

2.2 HRM's Objectives

The Association acknowledges that HRM's objectives in entering this Agreement with the Association are as follows:

- (a) Undertaking the operations of the Facility in a cost effective and efficient manner;
- (b) Building a broad based public support for the Facility through the high quality of operation making the Facility a place of civic and community pride;
- (c) Establishing an informed partnership with the Association to generate innovative ideas, share resources, and increase collaboration;
- (d) Making the Facility available to a wide range of community groups; and
- (e) Promoting fair and equitable access by user groups based on community, culture, socio-economic status, ability, sexual identity and gender.

The Association shall use its reasonable best efforts to promote the use of, operate, manage, and maintain the Facility to meet HRM's objectives as set out in this Article.

2.3 Use

The Association covenants that the Facility will only be used throughout the Term for Programming and activities and events that are appropriate and desirable for municipal purposes and the Association covenants and agrees that it may only use the Facility as contemplated by this Agreement and the annual budget and business plan or as otherwise permitted in writing by HRM from time to time.

ARTICLE 3 - DUTIES AND RESPONSIBILITIES OF THE ASSOCIATION

3.1 Association Mandate

The Association shall perform its duties and exercise the powers and authority set out in this Agreement in a timely, diligent, competent, professional and workmanlike manner and according to the Performance Standard, and in accordance with the terms and provisions of this Agreement and the annual budget and business plan.

In all events, the Association shall perform its duties and responsibilities in a diligent, honest, competent, and professional manner and in accordance with any applicable directives, instructions, guidelines, policies and procedures of HRM not inconsistent with the terms of this Agreement and at all times maintain the Facility in the Required Condition.

3.2 Specific Duties of the Association

The Association will generally do and perform and, where necessary, contract (either in its own name or, if permitted by this Agreement or authorized by HRM, as agent for HRM) for all matters and things necessary for the proper and efficient management of the Facility, and to carry out the intent of this Agreement. The Association agrees to perform the following specific duties, without limitation to the Association's general obligation to manage, operate, promote and maintain the Facility on behalf of HRM:

- (a) To perform the Operations Services so as to provide continuous service, subject to the terms of this Agreement, to customers in compliance with all applicable Law and Approvals including, without limiting the foregoing, according to the annual budget and business plan;
- (b) To develop, deliver and staff programming and services which encourage healthy lifestyles through participation in inclusive cultural, recreational, cultural, educational, social and capacity-building programs in the Facility;
- (c) To advertise and promote the Facility, and to cross-promote and share marketing with HRM as applicable;
- (d) To consider advertising and sponsorship as a potential source of revenue for inclusion in the Facility's annual budget. In so doing, the Association shall use its best efforts to market and sell, at the best price possible, sponsorship and advertising opportunities at the Facility. All advertising, promotional, and sponsorship activities undertaken by the Association shall be conducted in accordance with, but not limited to, Administrative Order 55, Respecting Sponsorship as amended from time-to-time. HRM shall retain all Facility naming rights, and revenues generated by the HRM from the sale of naming rights shall be allocated in accordance with the term of the naming rights' agreement. The naming of

the facility shall be conducted in accordance with, but not limited to, Administrative Order 56, Naming Rights and Administrative Order 46, Respecting HRM Asset Naming Policies, as amended from time-to-time;

- (e) to charge and collect on behalf of HRM from users of the Facility, all user charges, revenues from advertising and sponsorship contracts, rents for the Retail Space established by this Agreement, and any and all revenues received from the operations or use of the Facility, as revised from time to time in accordance with this Agreement, plus applicable taxes including HST and property taxes. To deposit immediately all amounts collected to the Operating Account established pursuant to this Agreement.
- (f) to conduct inspections with tenants of Retail Space moving into or out of the Facility;
- (g) to conduct regular inspections of the entire Facility for the purpose of determining any repairs, maintenance or capital improvements, or renovations that may be required to maintain the Plant Equipment and building systems and to provide HRM with a reasonably detailed report with respect to each such inspection;
- (h) to use its reasonable best efforts to collect arrears of rent, all Advertising and Sponsorship Fees, or other concession or user fees and rents for the Retail Space and to report quarterly to HRM of any arrears, provided, however, that the Association shall not pursue any legal action on behalf of HRM for the purpose of collecting such arrears without the express written permission of HRM (provided further that nothing in this provision absolves the Association from its obligation to have appropriate payment procedures in place for payment of monthly rents and fees in advance by tenants and users and to collect on behalf of HRM such advance payments of such amounts). Any account arrears that are considered at risk, or are past 90 days and exceed one-thousand dollars, need to be reported to HRM;
- (i) to interview prospective tenants and make recommendations to HRM concerning prospective tenants and to negotiate leases or user license agreements with prospective tenants for the Retail Space consistent with a recreation facility on terms and conditions approved by HRM;
- (j) to arrange for the supply, as may be required, of electricity, gas, steam, fuel, water, telephone and other services and to arrange, for the effective and economical operation, maintenance and repair of the Facility and its Plant Equipment (including, without limitation, any heating, ventilating, air-conditioning, plumbing, electrical and elevator equipment) as may be required by HRM or so as to comply with the Performance Standard, and Laws and to arrange for janitorial and any other cleaning services, including window cleaning, building security, ice and snow removal, landscaping, grounds maintenance, painting and any alterations approved by HRM;
- (j) to provide operation and maintenance tenants and users and to collect on behalf of HRM such advance payments of such amounts
- (k) of the Plant Equipment, furniture fixture and equipment (FF&E) and the Land to the Performance Standard and arrange for technical instruction and training of staff which may be required for the proper operation and maintenance of the Facility, FF&E and the Lands;

- (l) pay all accounts payable under applicable contracts that are being retained by the Association in the ordinary course of business in a timely manner;
- (m) to provide supervision and control of the activities of users of the Facility, tenants, concessionaires and holders of privileges and their employees, including the removal of users and tenants for non-payment of rent or other proper cause; and to follow HRM's policies and directives in respect of the safety of employees and visitors to the Facility, or to develop, implement and maintain internal policies and practices that are equivalent to or exceed HRM's policies and directives.
- (n) to follow HRM's policies and directives in respect of the safety of employees and visitors to the Facility, or to develop, implement and maintain internal policies and practices that are equivalent to or exceed HRM's policies and directives.

3.3 Authority to Contract on Behalf of HRM

Subject to the provisions of this Agreement, HRM authorizes the Association to enter into such contracts and agreements as agent of HRM as may be necessary in the performance of the duties, responsibilities and obligations of the Association as described in this Agreement and HRM appoints the Association as its agent for the following purposes:

- (a) for the collection of rent, advertising and sponsorship fees, facility rental rates and any other items of revenue (including HST) relating to the operation of the Facility;
- (b) in the event of an emergency requiring immediate remedial action to be taken and if the Association is unable to contact HRM for instructions, then the Association shall be authorized to act as agent for HRM for the purpose of taking any remedial action reasonably necessary in the circumstances;
- (c) to retain Suppliers as independent contractors pursuant to Operations Contract subject to the Operating Budget approved by HRM for the Facility and the terms of this Agreement;
- (d) to undertake Facility rentals, as Agent for HRM, with various user groups at rents and fees set out in its annual budget and business plan.
- (e) to enter into, as agent for HRM, leases and other tenancy agreements, contracts, licenses or other arrangements, at market value, in forms approved by HRM with tenants, occupants, licensees, concession grantees or other uses used consistent with a recreation facility;
- (f) to enter into, as agent for HRM, advertising and sponsorship contracts; and
- (g) as otherwise authorized from time to time by HRM in writing.

3.4 Limitations of Authority

Unless expressly authorized in this Agreement, or by prior written approval of HRM, the Association shall not have the authority to do any of the following:

- (a) obtain loans for HRM, whether secured or unsecured, or give or grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the

Facility or any portion thereof or any interest of HRM therein, or obtain replacements of any mortgage or mortgages;

- (b) prepay, in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Facility or any portion thereof, except to the extent contemplated by the annual budget and business plan approved by HRM or as contemplated and approved in writing by HRM;
- (c) cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or corporation;
- (d) cause HRM to enter any contracts with respect to the Facility other than contracts in the ordinary course of managing the Facility which are in accordance with the provisions of this Agreement;
- (e) sell, exchange or convey the Facility or any portion thereof;
- (f) release, compromise, assign or transfer any claim, right or benefit of HRM, except in the ordinary course of managing the Facility pursuant to this Agreement;
- (g) knowingly allow a default judgment to be entered against HRM or the Facility or any assets associated with the Facility;
- (h) modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facility;
- (i) grant easements or other property rights in the Facility;
- (j) lease, purchase or sell any real property, including the Facility or any part thereof, on behalf of HRM;
- (k) undertake purchases where the Association has not complied with the competitive bidding practices set out in Article 5 hereof;
- (l) install or modify closed circuit television equipment without consulting with HRM Corporate Security
- (m) permit or undertake cash advances from any Facility bank accounts; or
- (n) utilize Facility funds for any purposes other than the operation of the Facility.

3.5 Renovations by Association

The Association agrees that it shall not make any Renovation to the Lands and the Facility without the written approval of HRM. Without limiting the generality of the foregoing, the Association shall not excavate or drill or lay new asphalt or concrete pads on the Land nor construct, renovate, install or erect any buildings, structures, fixtures, major improvements or other facilities without first obtaining the written approval of HRM for such works. For greater certainty, the requirement for written approval does not include temporary structures erected for special events hosted at the Facility for a period of no longer than 35 days.

3.6 Lease Arrangements

With respect to Retail Space and any leasing, contracting, licensing, the Association agrees to:

- (a) provide tenant and users coordination services including the review of rental applications, offers to lease, and to engage in good-faith consultations with HRM regarding the terms thereof;
- (b) prepare leases or user license agreements as applicable on a form approved by HRM;
- (c) negotiate with tenants and/or users regarding any modification to the terms of such leases or user license agreements and to arrange for their execution;
- (d) receive plans and specifications for any tenant changes, leasehold improvements, signage or other agreements and to arrange for any approvals required in connection with them; and
- (e) arrange for the completion of any work required of HRM pursuant to the terms of any offer to lease, license agreement or lease, user or tenants agreement and to make or arrange for the payment of any allowance or contributions from HRM to which tenants may be entitled after the satisfactory completion of any tenant or user work including partitioning and any other leasehold improvements.

The terms and conditions of any property lease negotiated by the Association shall be subject to the prior approval of HRM and shall be at market value unless otherwise approved by HRM.

The Association shall supervise the moving in and out of tenants and, so far as is reasonably possible, to arrange the times thereof so that there shall be a minimum of disturbance to the operation of the Facility and inconvenience to any other users. The Association shall use its reasonable best efforts to arrange for performance of all covenants, duties and obligations of HRM pursuant to all leases, licenses, and other agreements and/or user license agreements which are in effect during the Operating Period in so far as such performance is consistent with the terms of this Agreement and any subsequent instructions given from time to time by HRM.

Notwithstanding the foregoing, any tenants, concessionaires, licenses or other operators in the Facility must receive Association permission and obtain all appropriate licences to conduct gambling and lottery activities, not including VLTs or similar gaming devices. The Association is permitted to conduct gambling or lottery activities, provided that they obtain the appropriate licences and do not make use of VLTs or similar gaming devices.

3.7 Advertising and Sponsorship Contracts

With respect to Advertising and Sponsorship Contracts, the Association agrees to:

- (a) provide coordination services for advertising and sponsorship in the Facility, including the review of advertising and sponsorship contracts and good-faith consultations with HRM regarding the terms thereof; and
- (b) receive plans and specifications for any associated signage, including arranging for any approvals required in connection therewith.

3.8 Employees

All personnel employed by the Association in the management, administration, and operations of the Facility, continue to be selected for employment by, and will be employees of, the Association, and shall under no circumstances or at any time be deemed or implied to be employees of HRM. The Association shall be solely responsible for the hire, dismissal, control, direction, supervision, instruction, and training of its employees. The wages, salaries and benefits of such employees are the responsibility of the Association and shall be paid directly by Association.

The Association shall continue to be responsible for the development of employment policies, and will ensure appropriate coverage for Workers' Compensation purposes, statutory payroll deductions and remittance to appropriate taxing authorities. The Association shall ensure that fidelity bonds, credit checks, criminal records checks and sex-abuse registry records have been obtained and are in place in respect of all employees of the Facility where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations. The Association will take all measures required in compliance with the Occupational Health and Safety Act to ensure the safety of employees and onsite contract workers.

3.9 Property of HRM

(a) Books and Records

The Association shall maintain or cause to be maintained at the Facility complete and accurate books and records in connection with the management and operations of the Facility in accordance with GAAP. HRM shall have the right at its own expense, and upon reasonable notice and at all reasonable times during normal business hours to audit, examine, make copies and take extracts from the books of account and records maintained by the Association pursuant to this Agreement. Such right may be exercised through any agent or employee designated by HRM.

Upon any termination of this Agreement, all books and records shall be turned over forthwith to HRM at no cost to ensure the orderly continuance of the operation of the Facility. All books and records will thereafter be available to the Association at the Facility, at all reasonable times, for inspection, audit, examination and copying.

(b) Equipment and Material

All equipment, located in or purchased for the Facility at any time by the Association and material relating to the management, operation, capital and maintenance of the Facility shall be and remain the property of HRM and, upon termination of this Agreement, the Association shall return or turn over possession of the same to HRM,

Any equipment with remaining useful life, which does not meet the Association's current or foreseeable future need, may be declared surplus by the Association. Any equipment that is declared surplus shall be made available to HRM for its business units or agents before being disposed of to a third party. Any surplus equipment that cannot be redistributed by HRM internally shall be disposed of by HRM in accordance with its Procurement Policy respecting Surplus Assets.

3.10 Municipal Records

For greater certainty, all records, reports, books of account and other documents and materials relating to the management, operation, capital and maintenance of the Facility that are the property of HRM under this Article constitute records under the control of a municipality for the purposes of section 463(1) of the *Municipal Government Act* and are subject to Part XX (Freedom of Information and Protection of Privacy) of the *Municipal Government Act*, S.N.S. 1998, c. 18.

Requests for municipal records may be directed to the HRM Access & Privacy Office.

The Association shall cooperate with the HRM Access & Privacy Office within the legislated timelines for requested records.

For greater certainty, all records, reports, books of account and other documents and materials relating to the management, operation, capital and maintenance of the Facility that are the property of HRM under this Article constitute records under the control of a public body for the purposes of section 4(1) of the *Personal Information International Disclosure Protection Act*, S.N.S. 2006, c. 3 and are subject to the Act. In its capacity as manager of the Facility, the Association constitutes a service provider under the Act, and shall comply with its provisions.

The Association shall comply with the requirements as set out in Schedule A, the Privacy Protection Schedule, with respect to the use of personal information as therein defined.

ARTICLE 4 - TERM

4.1 Term

Subject to earlier termination of this Agreement and in accordance with the terms herein, the term of this Agreement shall commence on the Effective Date and end on the Expiry Date which is the date five (5) years after the Effective Date. The period from the Effective Date to the Expiry Date shall be referred to as the Operating Period. The term of the Operating Period may be terminated earlier in accordance with the terms hereof.

4.2 Renewal

This Agreement may be renewed by HRM at its option for two additional five-year terms on terms as contained herein or as amended as acceptable by both parties. HRM shall provide the Association with its notice of intention to exercise this option no later than 12 months prior to the end of the then current Term.

ARTICLE 5 - OPERATIONS CONTRACTS

5.1 Association's Right to enter Operations Contract on behalf of HRM

Subject to the provisions of this Agreement including, without limitation Articles 5.2, 5.3 and 5.4, the Association may enter into Operations Contracts; provided that the Association shall not thereby be relieved of any of its obligations to HRM as set forth in this Agreement. All Operations Contracts shall be in writing. If the Operations Contract is for an expenditure, it shall be for an

expenditure that is within the limits of the annual budget and business plan approved by Council pursuant to this Agreement.

5.2 Prices Subject to Competitive Bidding

When making purchases on behalf of HRM for the Facility, the Association shall comply with the following:

- (a) purchases exceeding \$25,000 must be solicited by HRM, and shall not be divided into multiple purchases so as to reduce the purchase value below that threshold;
- (b) all purchases of goods and services made by the Association exceeding \$1,000 and less than \$25,000, on behalf of HRM shall be done in accordance with the terms of this Agreement, applicable laws, and procurement best practices;
- (c) seek competitive bids/quotes for all purchases of goods and services exceeding \$1,000 but less than \$25,000, and award to the bid providing best value to HRM, unless:
 - (i) HRM provides express written permission to use an alternative method of procurement; or
 - (ii) an unforeseeable situation of urgency exists and the goods or services cannot be obtained in time seeking competitive bids/quotes;
- (d) competitive bids/quotes are not required for purchases valued below \$1,000;
- (e) when selecting a list of vendors to be provided the opportunity to provide bids/quotes, the Association is responsible to ensure a fair and open process is followed:
 - (i) the Association is only required to invite qualified bidders to submit bids/quotes, however they are not to consistently invite bids/quotes from the same or a select group of vendors;
 - (ii) invitations and bidding opportunities are to be equitably distributed among all potential bidders in an area, and all interested and qualified vendors are to be evaluated on a consistent and equitable basis; and
 - (iii) it is recommended that Association retain the names of the vendors contacted for each opportunity;
- (f) document attempts to obtain best value, and retain such documentation (including quotes) and make it available to HRM or HRM's Auditor General for review upon request;
- (g) draw upon HRM's standing offers for the acquisition of commonly purchased goods and services whenever possible, unless HRM provides express written consent permitting otherwise;
- (h) HRM's standing offers contain commercial confidential information and this information shall not be shared outside of the relationship between the Association, HRM and the standing offer holder;
- (i) complete a vendor evaluation scorecard at the completion of each contract; and

- (j) the Association shall be responsible for:
 - (i) identifying and initiating procurement activities within their Facility;
 - (ii) complying with this Agreement and other procurement procedures established by HRM's Procurement Section from time to time;
 - (iii) monitoring, managing and enforcing contracts requisitioned by the Facility; and
 - (iv) ensuring the specific objectives of contracts requisitioned by the Facilities are achieved.

5.3 Conditions respecting Operations Contracts

The Association agrees that:

- (a) the Association shall make available to HRM a copy of all executed Operations Contracts for the Facility upon request, and a list thereof with each Monthly Report;
- (b) subject as hereinafter provided, no Operations Contract shall be amended, varied or terminated without the prior consent of HRM; provided however, HRM's prior consent is not required for amendments or variations which do not cause the Operation Services to vary from the Operations Requirements or the terms and conditions of this Agreement;
- (c) the Association shall make available to HRM a copy of all amendments or variations to all Operations Contracts forthwith, upon execution thereof, and a list thereof with each Monthly Report; and
- (d) any operations contracts awarded by the Association in accordance with this Agreement shall require contractors to provide the Association with a Certificate of Insurance evidencing a Commercial General Liability policy with limits of not less than Two Million Dollars (\$2,000,000.00) or, for those situations involving a higher risk (including, but not limited to, those involving welding, boiler and machinery, chemical, pyro techniques, or sale of alcohol) not less than Five Million Dollars (\$5,000,000.00), with HRM as Additional Named Insured on the policy, and the contractors shall also be required to provide evidence of WCB converge for their employees, with the same required of any sub-contractors contemplated by the operations contract.

5.4 Long-Term Operations Contracts

The Association shall not enter into any Operations Contract having a term extending beyond the Expiry Date without the prior written consent of HRM.

ARTICLE 6 - BUDGETS AND BUSINESS PLAN

6.1 Budgets

Not later than December 31st or 30 days after receipt of a request from HRM in each Operating Year, the Association shall deliver a detailed proposed Annual Budget for the Facility containing:

- (a) an operating budget, including:

- (i) projections of anticipated revenues (including a breakdown of use by Subsidized and Non Subsidized Users);
 - (ii) proposed user charges for the Facility for the upcoming fiscal year
 - (iii) operating and maintenance expenses; and
 - (iv) amount of subsidy requested from HRM if required, with a written narrative explaining any significant changes from the previous year's budget or the projected revenues/deficits.
- (b) a capital budget, including:
- (i) estimates of expenditures required, if any, from the Capital Fund Reserve; and
 - (ii) a project component, including project costs (which includes capital expenditures) which shall meet the criteria for Capital Fund Reserve expenditures, as set out in section 7.3.

The Association and HRM staff shall jointly review the proposed Annual Budget for the Facility to agree upon the priorities for operations and to discuss potential alternatives available with respect to capital projects and ensure alignment with Council priorities and Council's direction on HRM's annual budget. HRM shall advise the Association of any changes required by HRM, acting reasonably, to the proposed Annual Budget for the Facility and, within one (1) month thereafter, the Association shall submit to HRM a revised budget.

The final proposed Annual Budget for the Facility will subsequently be included with HRM's annual budget for consideration by Halifax Regional Council and the Association shall be prepared to present to Halifax Regional Council if requested, and to answer questions of Councillors with respect to the proposed Annual Budget for the Facility.

The proposed budget, or revised budget, as the case may be, approved by HRM in writing shall constitute an approved operating budget for the Facility ("**Operating Budget**") for the purposes of expenditures for operations and maintenance of the Facility for the applicable Operating Year, but shall not be considered authorization for the Association to undertake any capital expenditures (all of which must be specifically approved in writing by HRM).

If, during the fiscal year, the Association proposes changes to the Facility's operation outside of the approved Operating Budget and Business Planning process, a business plan to support the proposed operational change shall be provided to HRM and will require approval by Regional Council.

The Association shall, as part of the HRM's Budget Process, provide to HRM Representative, a 5 year strategic plan for financing service level improvements and alterations to the Facility as a planning guide for future service level improvements and alterations to the Facility as a planning guide for future required improvements or alterations to the Facility. This will be updated annually.

6.2 Community Access & Pricing

The Association shall implement HRM initiatives as directed, in accordance with any Cultural plans and this shall be included in the Association's proposed annual budget.

The Association shall establish user charges for the services offered at the Facility, subject always to the prior approval of HRM.

6.3 Operating Surplus

If, in any fiscal year, a surplus is realized, such surplus shall be transferred to HRM to fund HRM's Capital Fund Reserve and shall be for the exclusive use of the Facility. The parties shall agree to the date for the transfer annually, following the end of the fiscal year.

Any accumulated surplus held by the Association shall be transferred to HRM's Capital Fund Reserve on the Effective Date, for the exclusive use of the Facility.

6.4 Operating Deficit

If, in any fiscal year, a deficit is realized in excess of the budget approved by Halifax Regional Council in accordance with this Agreement, the Association shall prepare and submit a written report (the deficit report) at the time it submits its Annual Budget to HRM, outlining the magnitude of the deficit, the reasons, and the recommendation for dealing with it in the coming year.

Where the Association is in a deficit position for three consecutive years, HRM shall have the right, in its sole discretion, to terminate this Agreement, or to take any other measures it deems necessary.

For greater certainty, any deficit, or portion thereof, caused solely by:

- (a) a force majeure, more particularly described in Article 1.15;
- (b) the short term use of the Facility for urgent or emergency purposes by HRM, more particularly described in Article 9.2 (g)
- (c) the commencement of unscheduled capital works;
- (d) an initiative directed by HRM outside of the approved Annual Budget or Business Planning process; or
- (e) changes to the schedule of previously scheduled capital work,

shall not be considered by HRM in its determination of whether the Association is in a deficit position for the purposes of termination under this Article.

6.5 Debt Absorption

Upon execution of this Agreement, HRM shall undertake the process to complete the absorption of any outstanding operating and capital debts owed to HRM by the Association for its previous operation of the Facility, subject to appropriation of funds and approval by Regional Council.

6.6 Business Plan

HRM may provide to the Association a list of programming focus areas to inform its development of a proposed Business Plan for the Facility on or before October 15th in each Operating Year.

Not later than December 31st, or 30 days after receipt of a request from HRM, in each Operating Year, the Association shall deliver a detailed proposed Business Plan that is reflective of any HRM cultural plan.

- (a) vision and mission statement;
- (b) strategic priorities and goals;
- (c) performance measures; and
- (d) risk analysis

The Business Plan shall be in such form as is required by HRM.

ARTICLE 7 - FINANCIAL ARRANGEMENTS

7.1 Management Fee

No management fee shall be paid by HRM to the Association for activities carried out pursuant to this Agreement.

7.2 Revenues

All Revenues with respect to any activities associated with operation or management of the Facility, and interest earned on such Revenues, shall belong to HRM and when collected or recovered by the Association shall be deemed to be held in trust for the benefit of HRM.

7.3 Capital Fund Reserve

HRM shall establish and maintain a Capital Fund Reserve in accordance with HRM policies and processes including, but not limited to, Administrative Order 2014-015-ADM, *Respecting Reserve Funding Strategies* as amended from time-to-time.

The Capital Fund Reserve shall only be used to fund Capital Work that is not, in the sole discretion of HRM, regular maintenance, and that:

- (a) is a new construction, expansion, renovation, or replacement project for an existing facility, with a total cost of at least \$25,000.00 over the life of the project, including costs of land, engineering, architectural planning, and contract services required for the project;
- (b) is a purchase of major equipment (assets) costing \$50,000.00 or more with a useful life of at least ten years; or
- (c) is a major maintenance or rehabilitation project for existing facilities with a cost of \$25,000.00 or more and an economic life of at least 10 years.

7.4 Operating Account

The Association shall maintain a bank account (the "Operating Account") for the Revenues of the Facility, including but not limited to any interest paid on balances in the Operating Account from time to time. All rents and other Revenues from the operations of the Facility (including but not limited to Revenues from retail space, advertising and sponsorship fees, programming, and rental rates and taxes) collected by the Association shall be deposited immediately in the form in which they are received without set-off or deductions into the Operating Account. Where any of the Revenues from the operations of the Facility are collected directly by HRM, they may be deposited by HRM into a bank account of HRM's choosing.

The Operating Account shall be either:

- (a) established and administered under HRM's existing banking arrangements; or
- (b) established at a bank acceptable to HRM.

Where the Operating Account is established at a bank acceptable to HRM, the Association shall transfer the Operating Account to HRM's existing banking arrangements as soon as is practicable, having regard to existing third-party contracts.

The Association shall have signing authority on the Operating Account and may make payments from the Operating Account from time to time in accordance with this Agreement and subject to any agreement between HRM and the Association.

Where the Operating Account is administered under HRM's existing banking arrangements:

- (a) it shall be separate from HRM's accounts, with HRM Finance staff having the ability to view the account and to transfer funds with appropriate authorizations;
- (b) changes to the Operating Account signatories or online access to the Operating Account will be processed by HRM through its Finance Department; and
- (c) HRM Finance staff shall grant online access to the bank account to individuals in consultation with the Association.

Notwithstanding any other provision of this Agreement, all funds in the Operating Account shall be the property of HRM exclusively.

The Association shall adhere to HRM's Cash Management Policies, including any companion Standard Operating Procedures as provided to the Association by the HRM Representative from time to time. Any surplus cash may be invested, and any such investment shall be in accordance with HRM's Investment Policy by authorized HRM Finance staff.

7.5 Payment of Expenses

From and after the Effective Date, the Association shall be permitted to issue cheques or electronic payments from the Operating Account for the purpose of paying all reasonable and proper expenses incurred on behalf of HRM in connection with the operation and maintenance of the Facility or by the Association for its employment of staff to operate the Facility, subject to and

in accordance with this Agreement and the Operating Budget, but the Association shall not issue cheques or electronic payments from the Operating Account to pay capital expenditures or for any other purpose unless approved by HRM in writing. Notwithstanding any other provision of this Agreement, the Association shall not pay out of the Operating Account and shall not undertake or authorize any expenditure, work, repairs, alterations or maintenance estimated to cost in excess of twenty-five thousand dollars (\$25,000.00) for any one item unless:

- (a) HRM's written approval is first obtained; or
- (b) the expenditure relates to a monthly or recurring operating charge and HRM's approval has been provided by the approval of Operating Budget or by acceptance of lease agreements with tenants; or
- (c) any such work is urgently required to be done and failure to do so would cause personal injury or damage to the Facility or its equipment or contents or could impair the value of HRM's investment and HRM or its duly authorized representatives cannot be located for the purpose of giving approval for such work, or if failure to do such work might expose either HRM or the Association, or both to the imposition of penalties, fines, or any other liability, then, in any such case, the Association is authorized to proceed with any such work as it in its absolute discretion reasonably determines to be urgently necessary for the protection and preservation of the Facility or its equipment or contents or HRM's investment therein or to protect HRM and the Association from exposure to fines, penalties, or any other liability.

7.6 Payroll

HRM may prepare and process payroll as a fee for service.

7.7 Taxes

The Association will deliver to HRM, no later than the 22nd of each month, such information and supporting documentation as may be required for HRM to enable it to compute the amount of HST or other Value Added Taxes collected by the Association on HRM's behalf during the preceding month with respect to the operation of the Facility. HST collected by the Association (in the capacity of Agent for HRM) in respect of the Facility's operations (under HRM HST # 89428 3845RT0001) will be accounted for and remitted by HRM and HST paid in respect of expenses of maintaining and operating the Facility will only be claimed by HRM. The Association shall, in respect of any property or services acquired by it on behalf of HRM pursuant to this Agreement, obtain from the supplier of such property or service sufficient evidence, in such form as may be required from time to time pursuant to the *Excise Tax Act* and any regulations made thereunder, as will be necessary to enable the amount of any tax credits which may be claimed by HRM in respect of such expenses to be determined and validly claimed.

The Association is liable for any applicable taxes that it is required to collect for amounts it receives to perform the services that it renders to HRM under this Agreement

7.8 Receipts and Documentation

The Association shall at all times during the Operating Period secure and maintain invoices, bills and accounts for all expenses related to the Facility, copies of all correspondence, contracts, inventories and records of income, deposits and charges with respect to the Facility and its

operation. The Association shall at all times keep and maintain in accordance with generally accepted accounting principles, approved by HRM and consistently applied, full, true and accurate books of account fully reflecting all matters relating to the Facility including all income and expenditures. The books of account shall be kept in such a manner as to clearly separate all income and expenses and to indicate to which source they are attributable.

7.9 Capital Work

HRM shall be responsible for all aspects of the Capital Work. HRM shall give reasonable consideration to requests or comments provided by the Association relating to the Capital Work, including in respect of prioritization, cost and performance of the Capital Work. The Association is not liable for payments for the Capital Work. Without limiting, the Association's obligations with respect to capital Work include:

- (a) On or before August 31st of each year of the Term, the establishment of a Capital Work Program, to be provided to HRM, which shall:
 - (i) include work plans, priorities, budgets and funding estimates;
 - (ii) be determined having regard to the age and condition of the Facility;
 - (iii) be sufficient to enable the Facility to continuously meet the Applicable Law and Approvals; and
 - (iv) be consistent with Good Industry Practice; and
- (b) On or before August 31st of each year of the Term, the establishment of a Capital Work Budget for the ensuing Operating Year, to be provided to HRM, which shall:
 - (i) set out the estimated amount of Capital Expenditures required for the Capital Work proposed to be completed under the Capital Work Program during the next Operational Year;
 - (ii) conform to the priorities established; and
 - (iii) reflect and at all times remain subject to HRM annual budgetary approval process; and
- (c) The Association and HRM shall both review the priorities for Capital Work and the alternatives available with respect to the funding of Capital Work by HRM. HRM, shall finalize the approved Capital Work reflected in the Capital Work Budget not later than thirty (30) days following HRM's approval of its budget during each year of the Term;
- (d) The Capital Work Program and the Capital Work Budget may be amended by agreement of the Parties during an Operating Year as circumstances may dictate.

7.10 Statement and Audits

The Association shall provide HRM with an audited annual financial statement on the operation of the Facility for each Operating Year, prepared in accordance with GAAP not for profit

accounting standards and setting out all Revenues and expenditures. The annual financial statements shall be submitted to HRM's Representative within one hundred twenty (120) days, after the end of each Fiscal Year.

HRM shall have the right to inspect and audit the operations of the Facility and the books and records relating to such operations at any time and from time to time.

The Association shall have the option to utilize HRMs auditor through an optional pricing clause.

7.11 Limitations of Financial Authority

Unless expressly authorized by prior written approval of HRM, the Association shall not have the authority to do any of the following for the Facility:

- (a) open a new bank account except as approved in writing by HRM;
- (b) obtain a credit card for any Facility employee or Association Member in the name of that person on behalf of the Facility except as approved in writing by HRM;
- (c) enter into an arrangement with a payment processor except as approved in writing by HRM; or
- (d) enter into an arrangement with an ATM provider except as approved by HRM.

7.12 Donations

Donations made to the Association for the Facility may be made to HRM, noting that the donation is to be directed to the Facility or its operations. HRM will issue a charitable receipt directly to the donor, and the funds will be directed to the appropriate account.

ARTICLE 8 - FINANCIAL AND OPERATIONAL REPORTS

8.1 Monthly Financial Reports

The Association shall prepare and furnish to HRM monthly, in a form satisfactory to HRM, a statement of receipts and disbursements and a report on the operations of the Facility including:

- (a) amount of rent and other Revenue collected including, without limiting, Rental Rates and Advertising and Sponsorship Fees;
- (b) the amount of any arrears of rent, rental rates, Advertising and Sponsorship Fees;
- (c) aged summary of accounts receivable;
- (d) schedule of allowance for doubtful accounts;
- (e) a description of any maintenance work, in an amount equal to or exceeding \$5000, performed in respect of the Facility and the cost of the same;
- (f) unaudited financial information including a Statement of Financial Position and a Statement

of Operations and Accumulated Surplus prepared in accordance with GAAP for Not for Profits.

Where ICT programs and services are capable of providing reporting details for the reports set out in this Article directly to HRM through SAP, the Association shall not be required to provide those monthly financial reports and they shall be generated by HRM directly.

8.2 Quarterly Operations Reports

The Association shall provide a Quarterly Operations Report to the HRM Representative no later than 45 days after the end of each quarter, including the following components:

- (a) discussion and analysis of quarter results highlighting significant variances from budget and latest quarterly forecast;
- (b) discussion and analysis of updated annual forecast and significant variances against budget;
- (c) discussion and analysis on all recreational program and sporting events held, to include detailed Facility membership numbers, participants per sporting event, recreational activities, rentals.

8.3 Annual Report

The Association shall deliver a detailed annual operation and maintenance report to HRM not later than ninety (90) days following the end of each Fiscal Year during the Operating Period. The annual operation and maintenance report shall be in a form acceptable to HRM and shall include, but not be limited to, the following for the year ended:

- (a) a general overview of the operation of the Facility in the previous year, including usage of the Facility, Revenues and expenditures, physical status of the Facility at year end;
- (b) detailed information, by month, of the use of the Facility by category of facility users and Revenues, with annual totals and comparisons of previous years, and a brief written narrative to highlight significant changes, if any;
- (c) an annual report on all programs events held, to include participants per event, rentals, etc.;
- (d) detailed information, by month, of the status of leasing arrangements and the volumes of sales revenues generated from Retail Space in the Facility to the extent applicable to determining proportionate rent;
- (e) detailed information, by month, of operations and maintenance activities and costs for the Facility, with annual totals and comparison of previous year's activities and costs, and a brief written narrative to highlight significant changes, if any;
- (f) facility rental rates for the previous year.
- (g) all other information reasonably requested by HRM.

8.4 Reports Not Binding on HRM

The Association agrees that HRM's receipt of the annual report shall not imply that HRM approves of the Association's management, operation or maintenance of the Facility.

8.5 Acknowledgement of Report

HRM shall acknowledge, with written receipt, the annual report thirty (30) business days after all documents, including Audited financial statements are provided. The acknowledgement will include any areas of concern and any incidents of non-compliance with this Agreement as identified in HRM's review of the annual report.

8.6 Other Reports

The Association shall, if and when, requested from time to time by HRM, prepare and furnish to HRM, such other reports or statements as HRM may reasonably require including, without limiting, status and update reports, on any material aspects of the Work. Other than in the event of an Emergency, reasonable notice of a minimum of 15 business days will be given. HRM will acknowledge receipt of any reports within writing within 15 business days.

ARTICLE 9 - BOOKS, ACCESS AND INSPECTIONS

9.1 Books, Records and Accounts

The Association shall:

- (a) prepare and maintain at all times at a location in, or accessible directly from Halifax proper, accurate and complete books, records, accounts and documents in which fair and proper entries shall be made of all activities and transactions in respect of the management, operation and maintenance of the Facility;
- (b) ensure that HRM has access to such books, records, accounts and documents in order that it may exercise its rights of inspection and audit; and
- (c) ensure that such books, records, accounts and documents shall not be destroyed until the HRM's rights of access, inspection and audit have expired or, if arbitration or court proceedings to which such books, records, accounts or documents are relevant have been commenced, until such arbitration or court proceedings have been finally concluded.

9.2 Access

The Association agrees that HRM shall have the rights as follows:

- (a) to enter the Facility at any time and conduct or cause to be conducted such on-site observations and inspections and such civil, structural, mechanical, electrical, chemical or other tests as HRM deems desirable to ascertain whether the Association is in compliance with this Agreement. Unless deemed an Emergency reasonable notice of a minimum of 72 hours, will be given to the Association of any inspections and or tests;

- (b) the representatives and agents of HRM may at any time have access to the Facility and have access to test results, samples, books, records, accounts and documents related to the Facility, and may carry out such tests as HRM deems necessary in order to exercise its right of inspection and audit or where necessary for the administration of this Agreement;
- (c) the Association shall provide, and shall cause the Suppliers to provide, HRM and its authorized representatives with all requested information and documentation and access thereto on a timely basis;
- (d) HRM in exercising its rights of access, inspection and audit pursuant to this Agreement, shall use all reasonable effort to minimize any disruption to any other Person;
- (e) the existence or exercise by HRM of its rights of access, inspection and audit shall not in any manner reduce or limit the obligations and responsibilities of the Association pursuant to this Agreement;
- (f) the Association shall provide sufficient, safe and proper facilities at all times for the inspection activities by HRM and its authorized representatives and all inspection and testing activities by Governmental Authorities; and
- (g) HRM reserves the right to use the Facility, at no charge, for civic priorities such as special events, including municipal elections and major sporting or cultural events, or short term use for urgent or emergency purposes, such as emergency situations as directed by the Emergency Management Organization, but this shall not be interpreted to include routine use by HRM for regular business.

9.3 Annual Inspections

The Association shall perform reasonably detailed annual inspections of all aspects of the Facility no later than July 1 of each year during the Operating Period, and HRM's Representative shall be invited to and given three (3) weeks written notice to be present at such inspections. The inspection team of the Association shall be led by the Association's Executive Director.

ARTICLE 10 - OPERATIONAL OBLIGATIONS

10.1 Work Management / Office

The Association shall provide and supervise an effective operating management team for the Facility. The management team shall at all times be fully and adequately staffed and sufficiently qualified and experienced to deal with all issues relating to the management, operation and maintenance of the Facility.

10.2 Executive Director

The Association shall appoint a qualified individual as the Association's on site Executive Director. The Association's Executive Director shall devote such of his or her time as is necessary for the proper management of the Facility throughout the Operating Period. The Association's Executive Director shall have full authority to act in all matters as are necessary for the proper management, operation and maintenance of the Facility in accordance with the terms of this Agreement. His or

her duties shall include the following:

- (a) to be knowledgeable about all aspects of the Facility and all requirements of this Agreement;
- (b) to co-ordinate all activities required under this Agreement and provide regular and careful attention and supervision; and
- (c) to attend meetings with HRM as contemplated by this Agreement.

The Association shall provide HRM with written notice of the name, current address, day and night phone numbers and fax number of the Association's Executive Director.

10.3 Meetings and Access to Personnel

The Association shall cause the Association's Executive Director to meet with HRM's Representative upon HRM's request, provided the Association is given one (1) week's notice, to discuss and review the management, operation and maintenance of the Facility. In addition, the Association's Executive Director shall inform the HRM Representative in a timely manner of all emergencies, the occurrence of all uncontrollable events, and any other significant information as would be expected under customary and prudent business practices given the nature of the Facility.

The Association shall invite the HRM Representative to attend all meetings of the Association and shall provide them with copies of the meeting minutes of all Association and Committee meetings, except those meetings or portions thereof pertaining to personnel or labour relations issues for Association Employees, or negotiations between the Association and HRM. Correspondence to HRM from the Association shall include the HRM Representative.

10.4 Information Communications & Technology

The Association acknowledges and agrees that Legend Recreation System Software Inc., a common recreation and registration management system that is designated, owned and operated by HRM, or any other alternative software solution supplied by HRM, will be exclusively used by the Association at such time that the system is provided to the Association by HRM.

Subject to HRM's appropriation of funding, the Association agrees to use HRM-delivered ICT programs and services, and any applicable systems and reporting integration that these may require, as they become available, including:

- (a) recreation service software;
- (b) core ICT services and support, including email, computers, and basic productivity tools;
- (c) SAP and support;
- (d) Telecom; and
- (e) Digital Signage.

All information technology software, business systems, hardware, data, wireless hardware and software, information technology infrastructure, and telecommunications equipment installed or

utilized in the Facility with connection to HRM networks will be owned, supplied, managed, maintained and repaired by HRM.

If the Association wishes to install any Association-owned software on HRM computers, it must first obtain the prior written approval of HRM.

Once implemented, where ICT programs and services are capable of providing reporting details directly to HRM through SAP, the Association shall no longer be required to provide those monthly financial reports as set out in Article 8.1, the information for which is available to HRM directly through SAP.

10.5 Use of Business Systems and Information Technology

The Association's use of the IT Assets, including the Registration System, will be subject to the following conditions:

- (a) **Applicable Laws:** Usage of all IT Assets must be in compliance with Applicable Laws, including, for greater certainty, all privacy legislation and Part XX of the *Municipal Government Act*, and the *Personal Information International Disclosure Protection Act*, as such laws may be amended or replaced from time to time;
- (b) **Security:** Usage of all IT assets will be in accordance with HRM information technology security policies and standards;
- (c) **PCI:** The Association shall maintain all IT assets in compliance with the current Payment Card Industry (PCI) standards, as applicable, in accordance with Article 10.6;
- (d) **Privacy Policy:** the Association shall implement a privacy policy equivalent to or exceeding HRM's privacy policy, including provisions respect breach notification;
- (e) **Access rights:** Network and software access will be granted in accordance with HRM Information Technology Identity Management, network access, and applications access policies and standards; and
- (f) **Hardware:** Usage of information technology hardware will be in accordance with HRM information technology "acceptable use" policy,

as all such policies and standards may be amended or replaced from time to time.

10.6 Payment Card Industry Data Security Standards Inclusion

As part of being in compliance with PCI standards, the Association shall achieve and maintain compliance with the most-current version of the Payment Card Industry Data Security Standards (PCI DSS) as published on the PCI SSC (PCI Security Standards Council) website and shall provide evidence of compliance to HRM upon request.

HRM has resources to assist and provide guidance with PCI DSS compliance.

The Association shall:

- (a) adhere to HRM's Payment Card Industry Data Security Standards (PCI DSS) Compliance

and Protecting Cardholder Data Policy, including any companion Standard Operating Procedures (SOP) as provided by HRM;

- (b) engage HRM before entering into any agreement that deals with customer credit card or debit card information in any manner, and use the PCI DSS language provided by HRM in any contract or agreement, including, but not limited to parking payment systems, online booking systems, payment processors;
- (c) ensure that all Association employees who handle customer credit card data take regular security awareness training, and maintain appropriate records of same;
- (d) pay any and all costs associated with maintaining its compliance with PCI DSS requirements and shall pay any and all costs including, but not limited to the costs of obtaining evidence of validation or confirmation of compliance with PCI DSS requirements. The Association shall pay any fines, fees, assessments, costs, including card re-issuing costs, and charges levied (whether by the card brands, the processor or bank) as a result of its non-compliance with the PCI DSS requirements and all other card association rules and regulations applicable to it;
- (e) notify HRM in writing within seven (7) calendar days of discovering that it is not compliant with the PCI DSS Requirements and shall include in this written notice to HRM the steps being taken to remediate the non-compliant status; and
- (f) notify HRM immediately upon learning of a “Compromise” as defined in the most recent version of the PCI DSS and PA-DSS Glossary of Terms, Abbreviations, and Acronyms. Without limiting the generality of the foregoing a Compromise includes an intrusion into a computer system where unauthorized disclosure/theft, modification, data compromise, data breach or destruction of cardholder data is suspected. The notification must include the steps being taken to remediate the Compromise.

10.7 Observance of Applicable HRM Policies

The Association covenants that it will act consistently with, or cause to act consistently with, all applicable HRM Policies provided to it by HRM during the Term of this Agreement in discharging its obligations under this Agreement.

10.8 Observance of Applicable Laws

The Association covenants that it will comply with, or cause to be complied with, all applicable Laws, in discharging its obligations under this Agreement including all Laws which relate to the Facility and to the equipment, maintenance, operation and use of the Facility and improvements and to the making of any repair, replacements, alteration, additions, changes, substitutions or improvements of or to the Facility, or any part thereof. The Association covenants to comply with or cause to be complied with all lawful, police, fire and sanitary regulations imposed by any federal, provincial or municipal authorities and to observe and obey all Laws governing the conduct of any businesses conducted at the Facility.

10.9 Occupational Health and Safety Inspections

At a mutually agreed upon time, HRM and the Association may conduct at least one OHS audit of the Facility annually. HRM shall be responsible to implement any recommendations regarding

capital works. The Association shall be responsible to implement any non-capital recommendations and shall provide a report to HRM within 60 days of the audit report outlining how the implementation will occur.

10.10 Compliance with Occupational Health and Safety Laws and Environmental Laws

With respect to Laws respecting health and safety of the workplace, the environment and Hazardous Substances or any Law related thereto:

- (a) The Association covenants to use, operate, manage, maintain and repair the Facility (and to cause its employees, sub-tenants, licensees, occupants and invitees to use the Facility), in compliance with all Laws, related to the protection of the environment, health and safety. The Association warrants and represents that, during the Term, no Hazardous Substances shall be used, generated, released, manufactured, refined, produced, processed, stored, disposed of or allowed anywhere on, under or about the Facility, other than in accordance with the applicable Law. Without limiting the generality of the foregoing, the Association warrants and represents that it shall comply with all Applicable Laws (including, but not limited to municipal by-laws) regulating the use, generation, storage, transportation and disposal of Hazardous Substances on, under or about the Facility;
- (b) The Association acknowledges that (i) it will be the occupier of and employer at the Facility during the Operating Period and will have far greater control over the Facility than HRM on a day-by-day basis, (ii) it has the authority and the obligation under this Agreement to assume the primary responsibility for creating and maintaining a safe and healthy workplace at the Facility, and (iii) as part of the provision of Operation Services, the Association shall undertake all necessary and prudent actions in respect of occupational health and safety at the Facility, including but not limited to the following:
 - (c) take every precaution that is reasonable in the circumstances to operate and maintain the Facility in a manner that ensures the health and safety of Persons thereupon;
 - (d) exercise the precautions and duties of an “occupier of lands or premises used as a workplace” and “employer”, as those terms are used in the Occupational Health and Safety Act and the regulations;
 - (e) comply with HRM’s policies and programs relative to workplace health and safety and adopt internal policies and programs (subject to HRM’s review and approval) that are substantially similar to HRM’s policies and programs, but which may differ to the extent required to adapt the Association’s policies and programs to operate the Facility in accordance with the Occupational Health and Safety Act and the regulations;
 - (f) produce such reports from time to time as HRM may reasonably require to audit and verify the Association’s efforts in respect of health and safety and the Facility;
 - (g) comply with the Occupational Health and Safety Act and the regulations; and
 - (h) immediately disclose to relevant Governmental Authority and to HRM the occurrence of an event whereby the Association failed to comply with the Occupational Health and Safety Act or the regulations.

ARTICLE 11 - HRM COVENANTS

11.1 HRM Representative

HRM shall provide the Association with written notice of the name, current address, day and night telephone numbers and fax number of the HRM Representative.

ARTICLE 12 - OPERATIONAL OR FACILITY MODIFICATIONS

12.1 Modifications by HRM

(a) Operational

HRM shall have the right at any time during the Operating Period and for any reason whatsoever to require the Association to make modifications to its operating procedures for the Facility, including modifications to its maintenance practices, provided such modifications will not have a material adverse effect on the Association's ability to perform any of its obligations under this Agreement.

(b) Facility

HRM shall have the right at any time, and from time to time, to make modifications to the Facility itself. HRM may at its sole discretion issue a public call for proposals or a tender for modifications to the Facility. Such modifications may result in disruption to Facility usage, up to and including temporary closure. Where possible, HRM will consult with the Board on the scheduling of such modifications, and HRM will provide as much notice as is reasonably possible in the circumstances of any such disruptions.

ARTICLE 13 - FACILITY CONDITION

13.1 Required Condition

The Association covenants and agrees that, except to the extent the Association is relieved of any of the following obligations under the provisions of this Agreement, at all times, including on the Termination Date, the Facility shall meet all the criteria required for the proper operation and maintenance of the Facility according to the Performance Standard as provided for in this Agreement.

13.2 Condition Survey Report

At HRM's expense, HRM may conduct a comprehensive, independent inspection of the condition of the Facility at any time during the Operating Period that the Association or HRM, on reasonable grounds determines is necessary and as soon as possible after any Termination Date of this Agreement is determined prior to the Expiry Date. The inspection shall include an examination of: all structural components, decks and roofs; the exterior of the Facility including all architectural features, adjacent pavement and landscaping; all electrical systems and equipment; all FF&E requirements; all plumbing and drainage systems, the condition of leasehold improvements in retail premises and all finishes. This Condition Survey Report shall contain recommendations as

to the work, if any, that is essential to ensure the integrity of the Facility and its equipment, with a time frame for that work, and, if necessary, that certain items or procedures in the Operations Manual be amended or updated.

13.3 Inspection Activities

The Association shall, as part of each inspection undertaken in accordance with this Agreement:

- (a) coordinate and cooperate with and assist HRM in all aspects of the inspection of the Facility;
- (b) provide reasonable access to the Facility;
- (c) permit motors, electrical and other systems to be inspected and tested;
- (d) provide all relevant records which relate in any way to the inspections and conditions;
- (e) provide such other assistance and facilities as are required by HRM such that it can perform the necessary inspection and assessment functions; and
- (f) the Association may request from HRM inspections be completed.

13.4 Correction of Deficiencies

If any deficiency in the condition of the Facility arises from the failure of the Association to provide routine maintenance and Repairs in accordance with this Agreement, then HRM may at the Association's cost, correct or repair all such deficiencies.

The Association shall not be responsible for deficiencies that are a result of deferred Capital Repairs that are known to HRM.

13.5 Additional Criteria for the Facility

In addition to correction of deficiencies identified in the Facility Capital Condition Assessment the Association shall be responsible to ensure that the Facility is in the Required Condition at all times, during the Operating Period and on any Termination Date, except to the extent the Association is relieved of such obligations under the terms of this Agreement and except for reasonable wear and tear:

- (a) all structural components including foundations and walls shall be in sound condition;
- (b) any cracks or spalling of concrete or other defects shall be adequately repaired;
- (c) all steel surfaces shall be in good condition, with new applications of suitable protective coatings;
- (d) electrical systems and lighting shall be in satisfactory condition;
- (e) the exterior to the structure, including all architectural features, adjacent pavements, landscaping, vegetation and other ancillary components shall be in good condition;
- (f) all parking areas are to be in good condition;

- (g) all mechanical systems, controls, elevators and other equipment and systems including, without limiting the FF&E and all systems related to the maintenance and creation of the Facility, are to be in a satisfactory working condition; and
- (h) All roofing to be in good condition.

ARTICLE 14 - DEFAULTS BY COMPANY, TERMINATION, SUSPENSION AND REMEDIES

14.1 Termination for Material Breach

This Agreement may be terminated in writing by either party for a material breach of any of its terms, provided that, they are pertaining to this agreement, the party that is in material breach is first given written notice of the breach.

The party alleging breach shall give a written notice of the breach to the party in breach, and that party shall remedy the default to the satisfaction the other party within ten (10) business days of receipt of such written notice, or if such default cannot reasonably be remedied within such ten (10) business day period, the party shall promptly begin to remedy the default within the ten (10) business day period and thereafter diligently prosecute to conclusion all acts necessary to remedy the default, then such default shall be deemed to be remedied.

If the Association fails to remedy a default in accordance with this Article, HRM shall have the right, at its election, to exercise any or all of the following remedies:

- (a) terminate in whole or in part, the rights or obligations of the Association under this Agreement;
- (b) take possession of the Facility; and
- (c) remedy or cause to be remedied the default.

14.2 Right to Dispute Breach Notice

In the event that either party delivers written notice of a material breach to the other party pursuant to Article 14.1, that party may within seven (7) days of such notice deliver a dispute notice to the other and the matter shall be referred for resolution pursuant to the Dispute Resolution Procedures.

14.3 Termination Notice on Failure of Association to Remedy

On the occurrence of a default which HRM in its sole discretion considers may cause irreparable harm to any Person or to the Facility then HRM shall have the right to terminate this Agreement and exercise all of the other rights and remedies described in Article 14.1 and if HRM elects to terminate this Agreement, the Association shall have no right to dispute the matter.

14.4 Remedies are Cumulative

This Agreement shall not be construed as limiting HRM's rights or remedies at law or in equity and any such rights or remedies of HRM whether at law or in equity or under this Agreement:

- (a) may be exercised individually or together with any one or more of its other rights or remedies and as often or in such order as HRM deems expedient; and
- (b) are cumulative and are in addition to and not in substitution for any other rights and remedies.

14.5 Emergencies

Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable opinion of HRM there is a real or apprehended Emergency or damage to persons, property or the environment arising out of or in connection with any matter, state, condition or thing relating to this Agreement, as a result of a breach by the Association of this Agreement, HRM may, without notice and without prejudice to other remedies, (but without obligation to do so) rectify any such matter, state, condition or thing and, in which event the Association shall be responsible for all costs and expenses incurred by HRM in connection therewith.

14.6 Discretionary Right to Terminate

This Agreement may be terminated at any time by either of the parties hereto for any reason whatsoever, acting reasonably, on twelve (12) months written notice to the other party or by mutual agreement.

14.7 Obligations of the Association on Termination

Where HRM or the Association has terminated this Agreement in accordance with the terms hereof, the Association shall on the effective date of the termination:

- (a) stop the performance of all Work and services hereunder;
- (b) terminate all Operations Contracts as HRM may specify in writing;
- (c) provide to HRM a detailed list of all tangible and intangible property relating in any way to the management, operation and maintenance of the Facility including all items required under Article 3.9 and all equipment, machinery, fixtures, supplies, designs, concepts, plans, drawings, specifications, schedules, models, samples, patents, technology leases, licenses, books and records and an updated list of the names and addresses of all tenants, licensed users and customers of the Facility;
- (d) be deemed to have licensed to HRM a royalty and license to use any and all patented and proprietary information, designs or processes contemplated to be used by HRM in the operation, management and maintenance of the Facility, and shall forthwith execute and deliver to HRM a paid up royalty and license, in form and substance satisfactory to HRM, to use any and all such patented and proprietary information, designs or processes contemplated to be used in the management, operation and maintenance of the Facility;
- (e) assign and transfer to HRM the Association's right, title and interest in and to all liquor and other licenses and permits, if any, used by the Association in the operation of the Facility to the extent permitted by the law;

- (f) return to a grantor any equipment or surplus funds that were provided to the Association and by their nature are not eligible to be owned by a municipality;
- (g) deliver all books and records;
- (h) remove from the Facility all material, debris, equipment and supplies that are designated in writing by HRM to be so removed;
- (i) do all such acts, execute and deliver to HRM all such documents, conveyances, deeds, assignments, transfers, bills of sale, assurances and certificates and take all actions as may be required by HRM to exercise its rights hereunder;
- (j) take any other action towards termination of the Work which HRM acting reasonably shall request in writing; and
- (k) deliver to HRM a sufficient quantity of inventory and supplies to operate and maintain the Facility for thirty (30) days.

14.8 Further Assurances

The Association agrees that, upon the reasonable request of HRM, it will do all such acts and execute all such further documents, assurances, certificates and the like as may be necessary or desirable in HRM's opinion, acting reasonably, to effect the purpose of this Article 14, whether before or after this Agreement is terminated.

14.9 Termination

Where this Agreement is terminated in accordance with the terms herein, the Association shall on the effect date of termination:

- (a) vacate and surrender the Facility to HRM and no longer provide management services as contemplated under this Agreement;
- (b) no longer hold itself out to be the agent of HRM in respect of the Facility;
- (c) provide HRM with an updated list of the names and addresses of all tenants and current user groups of the Facility, as well as all suppliers;
- (d) provide to HRM a detailed list of all entities to which the Association held itself out as an agent of HRM in respect of the Facility;
- (e) provide to HRM a detailed list of all tangible and intangible property relating in any way to the management, operation and maintenance of the Facility, and assign, transfer and deliver to HRM the Association's right, title, interest in and possession of same;
- (f) deliver to HRM all of the books and records respecting the Facility; and
- (g) take any other action that HRM, acting reasonably, shall request in writing.

ARTICLE 15 – INSURANCE

15.1 Insurance for the Operating Period

All insurance coverage language, policies and limits will be amounts deemed reasonable and prudent by HRM. The Association shall complete or assist in the completion of all insurance applications as may be required and provide substantiating documentation as required.

15.2 Insurance coverage provided by HRM

HRM shall provide the following insurance coverages for the Facility, with the Association as an Additional Insured:

(a) Automobile

In accordance with the provincial Direct Compensation Property Damage Process, HRM will insure those HRM-owned and Association-operated vehicles with insurance coverages as appropriate.

(b) Commercial General Liability

HRM will provide insurance coverage related to legal liability imposed upon HRM or the Association for negligent acts that cause bodily injury and/or property damage to a third party arising from entering onto, leaving or while on the Facility premises, any products sold or other Facility operations or activities, including programs.

(c) Excess Liability Coverage

HRM will provide excess policies as known to HRM to ensure sufficient levels of insurance coverage are in place to best protect HRM and the Facility.

(d) Property (including business interruption)

HRM will insure all real and personal property owned by HRM or the Association or for which the Association is or HRM is legally responsible. This coverage insures for all risks of direct physical loss or damage including, but not limited to, fire plus many other hazards including windstorm and lightning.

(e) Crime Insurance

HRM will insure the Facility for crime losses that are not insured under other insurance policies.

(f) Boiler and Machinery Coverage (accident to an object)

HRM will provide insurance coverage against the sudden and accidental damages of pressure vessels, mechanical and electrical equipment owned and maintained by HRM or the Association, including expediting expense and contingent business interruption.

HRM shall purchase the following coverage for the Association under a policy for all HRM Multi-District Facilities, with HRM as an Additional Insured:

(g) Directors and Officers

HRM will provide insurance coverage to insure against claims related to the wrongful acts or omissions committed or omitted by directors and Association members, including for acts related to decisions and organization policies.

15.3 Claims Summaries

HRM shall provide the Association with a summary of all outstanding and paid claims by fiscal year upon reasonable request from the Association, but not less than on a quarterly basis.

15.4 Settlement of Claims

Settlement authority for claims against or on behalf of HRM or the Association or involving the Facility shall be at the sole authority of HRM.

The Association shall cooperate with HRM, Insurers or others as may be necessary to assist in identification, quantification, assessment and mitigation of risks to the Facility, HRM or the public by implementing recommended strategies to manage risks.

15.5 Notification of Claims

The Association shall notify the HRM Representative in writing as soon as possible after: i) receipt of notice of any injury occurring in, on or about the Facility, that could reasonably be expected to result in a claim being made against HRM and/or the Association that involves the Facility, or ii) of any claim against HRM and/or the Association which involves the Facility. The Association shall take no action (such as the admission of liability) which would or could reasonably be anticipated to operate to bar HRM from obtaining any protection afforded by any policies of insurance it may hold or which would or could reasonably be anticipated to operate to prejudice the defence in any legal proceedings involving HRM or the Facility, or otherwise prevent HRM from protecting itself against any such claim, demand or legal proceeding. The Association shall fully cooperate with HRM in the defence of any claim, demand or legal proceeding.

15.6 Workers' Compensation Insurance

The Association shall obtain workers' compensation insurance for its employees in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia). The Association shall also ensure that workers' compensation insurance in accordance with the requirements of the *Workers' Compensation Act* (Nova Scotia) is provided by all Suppliers.

ARTICLE 16 - GENERAL COVENANTS

16.1 General Covenants of the Association

The Association agrees as follows:

(a) Maintenance of Status and Existence

The Association shall maintain in good standing its status under the *Societies Act*, RSNS 1989, c.435, shall conduct itself at all times in accordance with its constitution and by-laws and the

requirements of the *Societies Act*, and shall carry on no business other than that of the management and operation of the Facility under this Agreement.

(b) Compliance with Laws and Maintenance of Approvals

The Association shall comply with all applicable Laws in connection with the Facility and, at all times during the undertaking of and with respect to the performance of the Work, shall obtain and maintain in good standing all Approvals and Permits necessary in connection with the Work and shall ensure that all Approvals and Permits which are obtained may be enforced by the Association. The Association will use all reasonable efforts to ensure that all Approvals and Permits may be enforced by HRM if this Agreement is terminated;

(c) Notification of Litigation

The Association shall give notice to HRM, with separate notice being given to the Municipal Clerk, of any action, suit or proceeding pending, or proceeding or orders undertaken by any Governmental Authority, or before any arbitrator, mediator or referee that materially adversely affects or, would reasonably be expected to materially adversely affect the Facility;

(d) Notice of Events

The Association shall provide notice to HRM of any event, circumstance or Laws known to the Association that materially adversely affects or would reasonably be expected to materially adversely affect:

- (i) the Facility or this Agreement or the interest of the Association therein;
- (ii) the capacity of the Association to perform the Association's obligations under this Agreement;
- (iii) the capacity of HRM to perform its obligations under this Agreement;
- (iv) the validity or enforceability of this Agreement; or
- (v) the rights of HRM as specifically set out in this Agreement.

ARTICLE 17 - INDEMNITY

17.1 Indemnification

HRM shall indemnify, defend and hold harmless the Association, and each officer and director thereof, against any loss, expense, damage, claim, liability obligation, judgement or injury suffered or sustained by reason of any act, omission or alleged act or omission arising out of the activities of the Association pursuant to this Agreement provided, however, that the Association, member officer or director, as the case may be, has acted in good faith and the act or omission giving rise to the claim is not fraudulent, deceitful, intended to cause harm or injury, or illegal.

ARTICLE 18 - CONFIDENTIAL INFORMATION

18.1 Non-Disclosure

All information concerning HRM, the Facility and the tenants and users of the Facility (including but not limited to "Personal Information", as defined in the *Municipal Government Act*) obtained by the Association in the performance of its duties under this Agreement shall be held in strict confidence and shall not be used or stored by the Association or disclosed to any third party without HRM's prior written consent and always in accordance with applicable Laws. This provision shall survive any termination of this Agreement.

In addition to the above, the Association shall abide by the provisions of Schedule A, the Privacy Protection Schedule, with respect its handling of Personal Information.

Confidential Information shall be held in the strictest confidence by the Association and HRM and no Confidential Information shall be disclosed to any Person, except Confidential Information:

- (a) of a party where that party consents in writing to its disclosure;
- (b) in the public domain through no wrongful act of the disclosing party;
- (c) received from a Third Party without restriction on further disclosure and without breach of this Agreement;
- (d) developed independently without breach of this Agreement;
- (e) disclosed in accordance with the mandatory disclosure requirements of any Laws;
- (f) disclosed in accordance with HRM's policies in effect from time to time;
- (g) required to be disclosed by order or direction of a court of competent jurisdiction or pursuant to any regulation, policy, guideline, statement, order, direction, conditional order, license or Approval, or request of any Governmental Authority or other body having statutory powers of decision; or
- (h) provided to an arbitral tribunal appointed pursuant to the terms and conditions of this Agreement where the disclosing party has taken all reasonable steps to ensure that the arbitrator is bound by a confidentiality agreement substantially the same as the provisions of this Article.

HRM represents and the Association acknowledges that HRM is a municipal body governed by provincial legislation, including, without limitation, the *Halifax Regional Municipality Charter* (Nova Scotia), the *Municipal Government Act* (Nova Scotia), and the *Personal Information International Disclosure Protection Act* (Nova Scotia) and as such this Agreement is subject to the freedom of information and protection of privacy provisions of the above-noted legislation.

18.2 Permitted Disclosure

Notwithstanding Article 18.1, Confidential Information received by a party may be disclosed to its corporate directors, employees and the auditors, accountants, legal counsel, engineering and other consultants, financial advisors, insurers and sureties (collectively "Representatives") for the

purpose of administering or enforcing this Agreement provided such representatives (i) have a need to know; (ii) use the Confidential information for the purpose of administering or enforcing this Agreement; and (iii) are contractually bound to protect the Confidential Information as required hereunder.

HRM may disclose Confidential Information to members of Regional Council, HRM officials and employees of HRM if and to the extent only that such disclosure of such Confidential Information is necessary to the performance of the duties of such Persons or for the purpose of administering or enforcing this Agreement but for no other purpose.

18.3 Liability for Breach

A Party disclosing Confidential Information pursuant to Article 18.2 shall be liable for damages resulting from any breach of confidentiality arising from the acts or omissions of the Person to whom the Party disclosed such Confidential Information.

18.4 Survival

The provisions of this 18 shall remain in force and effect for a period of ten (10) years after the satisfaction of all of the obligations of the Association pursuant to this Agreement.

ARTICLE 19 - DISPUTE RESOLUTION

19.1 Commencement of Process

If HRM and the Association are unable to agree on any aspect of the Agreement that is subject to arbitration, either the Association or HRM may give notice of a dispute to the other, which is to contain the particulars of the matter in dispute and the relevant provisions of this Agreement. The other party shall reply in writing within 10 business days after receiving it, setting out in such reply the details of its response and any other relevant provisions of this Agreement.

19.2 Amicable Negotiations

HRM and the Association shall use best efforts to resolve any dispute.

If the dispute is not resolved within 15 business days following receipt of the reply, the dispute shall be resolved in accordance with Article 19.3.

19.3 Arbitration Proceedings

All differences between the parties arising out of this Agreement that cannot be resolved through amicable negotiations shall be submitted to arbitration as follows:

- (a) If the parties are unable to agree, either HRM or the Association (the initiating party) may appoint an arbitrator by notice in writing to the second party. The second party will have 10 business days after receipt of the notice to appoint its arbitrator, or to agree to have the matter heard by the arbitrator named by the initiating party, written notice of which will be given to the initiating party. Where two arbitrators are chosen, they shall, within 10 business days after the appointment of the second arbitrator, appoint a third arbitrator who shall be the sole determiner of the matter;

- (b) The single arbitrator shall provide a decision in writing within ten (10) business days of his or her appointment;
- (c) The parties shall each be responsible for their own costs of arbitration and shall be jointly and equally responsible for the cost of the single arbitrator who determines the matter; and
- (d) The decision of the single arbitrator shall be final and binding.

No one shall be appointed or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either party.

19.4 Governance of Arbitration

The following provisions shall govern the arbitration:

- (a) to the extent not inconsistent with this Article, the arbitrator shall conduct the arbitration in such a manner as the Association considers appropriate, but each of HRM and the Association shall be treated fairly and shall be given full opportunity to present a case;
- (b) arbitration hearings shall be held in the Halifax Regional Municipality;
- (c) all arbitration hearings shall be in private unless the parties otherwise agree; and
- (d) any party may be represented at any arbitration hearing by legal counsel.

19.5 Matters not Subject to Arbitration

Notwithstanding Article 19.3, the following matters are not subject to arbitration:

- (a) policies and standards established by HRM, provided that such policies and standards do not directly contradict the express terms of this Agreement;
- (b) allocation of HRM budget and resources;
- (c) compliance with Applicable Laws and corporate policies; and
- (d) the ownership of the Facility.

19.6 Applicable Law

The Parties agree that any arbitration pursuant to this Agreement shall be governed by the terms of this Article 19 and to the extent not inconsistent therewith, the Commercial Arbitration Act (Nova Scotia).

19.7 Continuation of Work During Dispute

Notwithstanding that a matter or matters have been referred to the Dispute Resolution Procedures set forth in this Article 19, each of the Association and HRM shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay.

ARTICLE 20 – NOTICES

20.1 Notices

Any consent, waiver, approval, notice, request, direction, response, determination or other communication (collectively, “notice or other communication”) required or permitted to be given or made pursuant to this Agreement shall only be effective if in writing and shall be sufficiently given or made if:

- (a) delivered during normal business hours on a Business Day and left at the relevant address set forth below:

to the Association, addressed as follows:

Attention: Mr. Scott McGaw, Chair, Alderney Landing Facility Association
2 Ochterloney Street
PO Box 725
Dartmouth, NS B2Y 3Z3

if to HRM, addressed as follows:

Attention: Brad Anguish, Director, Parks and Recreation
Halifax Regional Municipality
1841 Argyle Street
P.O. Box 1749 Halifax NS B3J 3A5

Any notice or other communication so given or made shall be deemed to have been given or made on the same day and to have been received on the day of delivery if delivered as aforesaid or on the day of receipt of same by telex, telefax, e-mail or other recorded means of electronic communication, as the case may be, provided such day is a Business Day and that such notice is received prior to 3:00 p.m. Halifax time, and, if not, on the first Business Day thereafter.

Each party may change its address, telephone, and telefax number or e-mail address by notice to the other pursuant hereto.

ARTICLE 21 – GENERAL

21.1 Assignment

Neither HRM nor the Association may assign any or all of its interest in this Agreement except with the consent of the other party provided, however, the Association hereby consents to HRM assigning its interest in any of this Agreement to a municipal agency or municipal corporation provided the assignee acquires all of HRM’s interests, rights, benefits and obligations under such assigned agreements and such assignment does not release HRM from its obligations under this Agreement and provided further that HRM may arbitrarily and unreasonably withhold its consent to any assignment, in whole or in part of this Agreement, by the Association.

21.2 No Partnership, Joint Venture or Agency

Nothing in this Agreement, nor the conduct of any party, shall in any manner whatsoever constitute or be intended to constitute HRM as the agent or representative or fiduciary of the Association or any other party, nor constitute or be intended to constitute a partnership or joint venture between HRM and the Association or any other party, but rather as between HRM and the Association each party shall be severally responsible, liable and accountable for its own obligations under this Agreement or otherwise for any conduct arising therefrom and for all claims, demands, actions and causes of action arising directly or indirectly therefrom. Neither party shall have the authority to make nor shall it make any statements, representations or commitments of any kind, or take any action that will bind the other party except as expressly provided in this Agreement or as otherwise authorized in writing by the applicable party.

The Association shall, for all purposes under this Agreement and in relation to any aspect of the performance of its obligations in respect of the work, be an independent contractor and will have responsibility for and control over the details and means of performing such obligations in accordance with the terms and conditions of this Agreement.

21.3 Official Dealings with HRM

No communication or dealing between the Association and any department, committee or body functioning under the administration of the Halifax Regional Municipality shall be deemed to be a communication or dealing under the provisions of this Agreement between HRM and the Association as parties to this Agreement or to effect the HRM or the Association with notice of any such communication or dealing under this Agreement; it being intended and agreed that any communication or dealing between the HRM and the Association as parties to this Agreement shall only be effective if provided in the manner provided by Article 20 of this Agreement. No communication or dealing between the Association as a party to this Agreement, shall relieve the Association from the responsibility of discharging its lawful obligations to the Halifax Regional Municipality as a municipality separate and apart from the obligations of the Association imposed by this Agreement.

21.4 Further Assurances

Each of the parties shall, from time to time, at its own Cost and expense, execute or cause to be executed all such further documents and do or cause to be done all things which are necessary to give effect to the provisions of this Agreement.

21.5 Entire Agreement

This Agreement is the entire agreement between HRM and the Association with respect to operation, management and maintenance of the Facility. Unless otherwise expressly stated, this entire agreement supersedes all prior agreements, understandings or writings among the parties, whether written or oral and whether legally enforceable or not in respect of the Facility. Subject to applicable Law, no party shall be bound by or be liable for any statement, representation, promise, warranty, inducement, agreement, obligation or understanding of any kind or nature not set forth in this Agreement.

21.6 Effective Date

This Agreement will become effective when both parties have signed it. The date of this

Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

21.7 Independent Legal Advice

Each of the parties acknowledge that they have been advised to obtain and have been afforded sufficient opportunity to obtain independent legal advice prior to entering into this Agreement.

21.8 Enurement

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

EXECUTION

The parties have executed this agreement through authorized representatives on the date stated opposite each respective party's signature.

**ALDERNEY LANDING
FACILITY
ASSOCIATION**

Date

Name:
Title:

Date

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Date

Mike Savage, Mayor

Date

Kevin Arjoon, Municipal Clerk

Schedule "A"

Privacy Protection Schedule

Definitions

1. In this Schedule,
 - (a) **"access"** means disclosure by the provision of access;
 - (b) **"applicable legislation"** means the *Personal Information International Disclosure Protection Act* and the Freedom of Information and Protection of Privacy provisions contained within Part XX of the *Municipal Government Act*;
 - (c) **"contact information"** means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
 - (d) **"personal information"** means recorded information about an identifiable individual, including (i) the individual's name, address or telephone number, (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations, (iii) the individual's age, sex, sexual orientation, marital status or family status, (iv) an identifying number, symbol or other particular assigned to the individual, (v) the individual's fingerprints, blood type or inheritable characteristics, (vi) information about the individual's health-care history, including a physical or mental disability, (vii) information about the individual's educational, financial, criminal or employment history, (viii) anyone else's opinions about the individual, and (ix) the individual's personal views or opinions, except if they are about someone else.

Purpose

2. The purpose of this Schedule is to:
 - (a) enable HRM to comply with HRM's statutory obligations under the applicable legislation with respect to personal information; and
 - (b) ensure that, as a service provider, the Association is aware of and complies with the Association's statutory obligations under the applicable legislation with respect to personal information.

Collection of personal information

3. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Association may only collect or create personal information that is necessary for the performance of the Association's obligations, or the exercise of the Association's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Association must collect personal information directly from the individual the information is about.

5. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Association must tell an individual from whom the Association collects personal information:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated by HRM to answer questions about the Association's collection of personal information.

Accuracy of personal information

6. The Association must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Association or HRM to make a decision that directly affects the individual the information is about.

Requests for access to personal information

7. If the Association receives a request for access to personal information from a person other than HRM, the Association must promptly advise the person to make the request to HRM unless the Agreement expressly requires the Association to provide such access and, if HRM has advised the Association of the name or title and contact information of an official of HRM to whom such requests are to be made, the Association must also promptly provide that official's name or title and contact information to the person making the request.

Correction of personal information

8. Within 5 Business Days of receiving a written direction from HRM to correct or annotate any personal information, the Association must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, HRM must advise the Association of the date the correction request to which the direction relates was received by HRM in order that the Association may comply with section 10.
10. Within 5 Business Days of correcting or annotating any personal information under section 8, the Association must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to HRM, the Association disclosed the information being corrected or annotated.
11. If the Association receives a request for correction of personal information from a person other than HRM, the Association must promptly advise the person to make the request to HRM and, if HRM has advised the Association of the name or title and contact information of an official of HRM to whom such requests are to be made, the Association must also promptly provide that official's name or title and contact information to the person making the request.

Protection of personal information

12. The Association must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to personal information

13. Unless HRM otherwise directs in writing, the Association must not store personal information outside Canada or permit access to personal information from outside Canada.

Retention of personal information

14. Unless the Agreement otherwise specifies or unless HRM directs otherwise in writing, the Association must retain personal information for at least one year following the date of its use and securely dispose of personal information no later than three years after its use.

Use of personal information

15. Unless HRM otherwise directs in writing, the Association may only use personal information if that use is for the performance of the Association's obligations, or the exercise of the Association's rights, under the Agreement.

Disclosure of personal information

16. Unless HRM otherwise directs in writing, the Association may only disclose personal information inside Canada to any person other than HRM if the disclosure is for the performance of the Association's obligations, or the exercise of the Association's rights, under the Agreement.
17. Unless the Agreement otherwise specifies or HRM otherwise directs in writing, the Association must not disclose personal information outside Canada.

Notice of foreign demands for disclosure

18. In addition to any obligation the Association may have to provide the notification contemplated by section 6(1) of the *Personal Information International Disclosure Protection Act*, if in relation to personal information in the custody or under the control of the Association, the Association:
 - (a) receives a foreign demand for disclosure;
 - (b) receives a request to disclose, produce or provide access that the Association knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
 - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Association must immediately notify HRM and, in so doing, provide the information described in section 6(2) of the *Personal Information International Disclosure Protection Act*. In this section, the phrases “foreign demand for disclosure” and “unauthorized disclosure of personal information” will bear the same meanings as in section 2(1) of the *Personal Information International Disclosure Protection Act*.

Notice of unauthorized disclosure

19. If the Association knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Association, the Association must immediately notify HRM. In this section, the phrase “unauthorized disclosure of personal information” will bear the same meaning as in section 2(1) of the *Personal Information International Disclosure Protection Act*.

Inspection of personal information

20. In addition to any other rights of inspection HRM may have under the Agreement or under statute, HRM may, at any reasonable time and on reasonable notice to the Association, enter on the Association’s premises to inspect any personal information in the possession of the Association or any of the Association’s information management policies or practices relevant to the Association’s management of personal information or the Association’s compliance with this Schedule and the Association must permit, and provide reasonable assistance to, any such inspection.

Compliance with the applicable legislation and directions

21. The Association must in relation to personal information comply with:
 - (a) the requirements of the applicable legislation to the Association as a service provider, including any applicable order under the applicable legislation; and
 - (b) any direction given by HRM under this Schedule.
22. The Association acknowledges that it is familiar with the requirements of the applicable legislation governing personal information that are applicable to it as a service provider.

Notice of non-compliance

23. If for any reason the Association does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Association must promptly notify HRM of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

24. In addition to any other rights of termination which HRM may have under the Agreement or otherwise at law, HRM may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Association, terminate the Agreement by

giving written notice of such termination to the Association, upon any failure of the Association to comply with this Schedule in a material respect.

Interpretation

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
26. Any reference to the “Association” in this Schedule includes any subcontractor or agent retained by the Association to perform obligations under the Agreement and the Association must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of the Association in this Schedule will survive the termination of the Agreement.
28. If a provision of the Agreement (including any direction given by HRM under this Schedule) conflicts with a requirement of the applicable legislation or an applicable order under the applicable legislation, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
29. The Association must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires the Association to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the applicable legislation.

Schedule "B"

Lands



*The Lands shall include the ground floor "Link" area between the Facility and the Alderney Landing Ferry Terminal, including the stairs and elevator adjacent to Alderney Landing Theatre, but shall not include the stairs and escalator from the Alderney Landing Ferry Terminal to the pedway, nor the pedway to Alderney Gate.